

SUBMISSION ON PROPOSED LEGISLATIVE AMENDMENTS TO THE LOCAL GOVERNMENT ACT 2019

Introduction

The Local Government Association of the Northern Territory (LGANT) is the peak body proudly representing 17 member councils, and one associate member. Our membership represents a range of demographics across municipal, shire and regional council areas across the Northern Territory. We are committed to representing their diverse viewpoints, experiences, concerns and aspirations which naturally vary because no two communities are the same. However, our councils, and we as their representative body, are united and driven by the principles as set out by the *Local Government Act 2019*. These read that local government must be flexible, adaptable, democratic, responsive and accountable. Regardless of politics, the service delivery, the leadership and democratic self-governance that is at the core of local government are all underpinned by these principles.

As the representative peak body, LGANT's views are informed by the views of member councils and associate members. To this end, we carried out extensive consultation with members including three open forum sessions, one-on-one communication with council CEOs and principal elected members, and three written feedback rounds that helped to shape this submission. We are proud to be in a position to help shape a modernised local government sector, with Territory councils rightfully at the helm, shaping that future with their constituents and their unique challenges in mind.

We commend the Territory Government on its progress in delivering on its 'Year of Action' agenda for 2025. Unfortunately, the speed with which some amendments to the *Local Government Act 2019* have been released, many without prior consultation with the sector, have resulted in inconsistencies, misinformation and a lack of clarity around the intent of certain amendments. The lack of evidence backing some of the proposed changes is also alarming. Referring you to best practice for policy makers: a clear problem must be demonstrated which necessitates the change; amendments should be supported by a set of objectives; consultation should be genuine and timely; and evidence and information to support the amendments should be made available where possible. The consultation process has fallen well short of best practice process while proposing quite significant amendments that stand to impact the financial sustainability of councils and the wellbeing of elected members, and done so by releasing discussion papers, some of which contain misinformation and lead to negative implications about local government councils.

We would however like to acknowledge the Department's efforts throughout this Tranche (Tranche 2) of the amendments on consulting with the sector prior to the public release of discussion papers, and to some extent addressing our concerns in those discussion papers.

We look forward to receiving the consultation summary report from the Department and the continuation of discussions on proposed amendments. The Have Your Say website is silent on the steps between the consultation closing date and the introduction of amendments in the November sittings so we would appreciate advice on this.

Discussion Paper – Part A

Delegations - Sections 40 and 83.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Tenders:**
 - **Supportive of amending the Act to remove the footnote at Section 40(4)(b) requiring a council resolution. LGANT considers the provisions to be otherwise clear in relation to the process by which a CEO's delegated decision about a tender is reported to council.**
- **Committees:**
 - **Not supportive of limiting the involvement of independent, external expertise on committees.**
 - **Amend the Act/Regulations so that financial reports only need to be approved at the same frequency as council meetings.**

The ability for councils to delegate their functions in certain circumstances enables meetings to take place in step with the cadence of ordinary council meetings, avoiding unnecessary delays. However, it is accepted that committees with external members should not have financial delegation or be in a position to direct elected members. The role of committees with external members should be to provide advice and recommendations consistent with their external, independent expertise and they should continue as they have a valuable role to play e.g. audit and risk committees.

Further, the Australian Institute of Company Directors 'Guiding principles of good governance', and general guidance provided for the good governance of Board Committees, recommends that a proportion of a committee be made up of independent members. External, independent members are generally individuals who are suitably qualified and experienced to hold that position, who are not conflicted on the basis of their relationships or interests, and their independence helps to avoid undue influence.

If all council committees, such as audit and risk committees, were to be limited to elected members only, commensurate investment in learning and development of elected members would need to occur to counter the loss of skilled independent committee members.

If the concern is the delegation of monthly financial reporting responsibilities to committees comprised of external members, LGANT recommends a change to the Act/Regulations so these only need to be approved at the same frequency as council meetings. Hence no need to delegate to a committee if councils only meet once every two months. The Act reads that councils can establish committees so if there are requirements for financial decisions to be made outside the cadence of ordinary council meetings, then the committees should be exclusive of external members and have clearly articulated delegations.

Offences for Conflict of Interest - Section 73.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Supportive of proposed amendment to add 'staff' into section 73(1)c.**

Ordinary and Special Meetings - Section 93; Regulations 102-105.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **The Department (the regulator) to monitor compliance by undertaking desktop scanning rather than shifting this responsibility to councils and imposing more compliance.**

Holding of elections - Sections 160 and 11 (1) (a).

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Supportive of the proposal to introduce a provision to allow the returning officer to make a change to the election day in an emergency for a period of not more than 21 days.**
- **Supportive of amending section 11 for public notices in relation to elections to be in a manner deemed appropriate for the LGA by the returning officer of the local government area.**

Tenders and Procurement Exemptions - Regulations 36, 38.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Supportive of the frequency at which the reporting is recommended to occur for both regulation 36(8) and 38.**

LGANT recommends amendments to regulation 38 include:

- That the quarterly reporting requirement can be satisfied by a summary of the reason and delegation that led to the decision being made;
- That the quarterly report be classified as 'for noting' (as opposed to 'for decision').

Local Government (Electoral) Regulations - 26, 35, 65, 87.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Supportive of amending regulation 26(1)(a) to allow postal vote applications from 1 Jan in a general election year.**
- **Supportive of amending regulation 26(1)(b) to allow electors to apply for a postal vote as soon as NTEC is notified of a casual vacancy.**
- **Supportive of amending regulation 35 to allow the NTEC to publish candidate statements and photos on its website.**
- **Supportive to amending regulation 65 to remove the requirement to match up an elector's signature before admitting a postal vote to scrutiny.**
- **Supportive of amending regulation 87 to clarify that the costs of managing non-voters and not to be passed on to councils.**

LGANT recommendation:

- **the penalty for failing to vote under section 142(3)(b) of the Act be increased.**

Candidate statements

There must be one central place where voters can access information about all nominees. The NTEC website is the most logical place to publish candidate information statements given they already publish candidate information and that their website is most likely the first place that voters will go to when searching for election information. In other jurisdictions such as South Australia and Victoria the candidate statements are published on the electoral commission websites.

Currently NTEC publishes links to candidates' websites or social media pages if provided on the candidate nomination form and LGANT recommends this continue. However, not all candidates have a personal website or social media page (they may not have internet access or may lack the skills to set-up and manage a digital election campaign) but all candidates should have equal opportunity to provide information to support their nomination.

Non-voters

NTEC has previously lobbied the NTG for an increase in non-voter fines to \$50 to recover costs following the reduction in the fine to \$25 in 2021 to be consistent with the Legislative Assembly provisions. LGANT is supportive of this and has also previously advocated for an increase in the non-voter fine to \$50.

Discussion Paper – Part B

Superannuation payments for elected members - New

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Supportive of a new provision in the *Local Government Act 2019* to allow elected members to receive superannuation payments, without the requirement of a unanimous resolution by council, equivalent to provisions afforded MLAs super under the *Legislative Assembly Members' Superannuation Contribution Act 2004* (which provides for guaranteed superannuation payments for MLAs), with the added provision that individual elected members may opt-out of receiving superannuation payments to accommodate the varying personal circumstances of elected members.**

LGANT recommendations:

- That the *Local Government Act 2019* include clarification that elected members are considered employees for the purposes of superannuation only, as is in other jurisdictions such as Western Australia and New South Wales where the Local Government Acts state that elected members are treated as employees for the purposes of superannuation only – including clarification that superannuation contributions do not constitute salary.
- Payments must be on top of current elected member allowances (not deducted from current allowances), in-line with the provisions for MLAs.
- The onus of providing the required documentation and any necessary follow-up to opt out of (or back into) superannuation payments must sit with the individual elected members. Councils must not be held liable for failing to pay superannuation if an elected member has previously opted out of payments but then decides to opt back in.
- The Department develop guidelines on superannuation in consultation with the sector.

The decision to pay superannuation (or extra allowances in lieu of superannuation payments) to elected members must not be based on the financial sustainability of councils. If a council does not have the budget for these payments, this is indicative of the broader issues of the financial sustainability of local government councils. Total annual superannuation for an elected member of a shire council, where the councillor allowance is \$7,462 per annum, will only be approximately \$895 (which is considerably less than the increase in allowances for two of the three shire councils from 2024 to 2025).

Instead, superannuation should be seen as a way to attract diverse candidates and not limit it to those that can afford to be excluded from guaranteed superannuation payments.

Potential candidates should not be discouraged from nominating, and elected members not penalised, due to the underfunding of councils.

LGANT position:

- **Not supportive of the opt-in provisions for councils to pay superannuation to elected members and to have the option to make a super contribution on behalf of elected members as a portion of those members' remuneration as suggested in the Discussion Paper.**

LGANT recommendations:

- If payment of superannuation is not included in the amendments, then the Victorian model, where elected members not receiving the superannuation guarantee rate receive an additional allowance equivalent to the level of the superannuation guarantee rate, should be implemented.

This proposed amendment is no different than the current provisions whereby a council may make a unanimous resolution that all members wish to be subjected to PAYG taxation to enable them to be eligible for superannuation guarantee contributions on top of their allowances.

The requirement for the resolution to be unanimous is problematic considering that elected members should be representative of the broad range of socio-economic backgrounds of the community and would therefore have differing personal financial needs.

Although LGANT is not supportive of this proposed amendment, if it is adopted, we request that the following recommendations are considered:

- It needs to be clearly defined in the new provisions if councils will need to pass a unanimous resolution for the elected members of their council to receive superannuation.
- If a council is required to pass a unanimous resolution, then it should be a requirement for this to happen in the first meeting of the council and the Act updated accordingly.
- If the council makes this unanimous resolution, councils should then make a recommendation to the Minister or Remuneration Tribunal who would make the final decision. This would remove the perceived conflict of interest.
- It must be made clear in the Act that elected members are considered employees for the purposes of superannuation only, as is clarified in other jurisdictions such as Western Australia and New South Wales where the Local Government Acts state that elected members are treated as employees for the purposes of superannuation only - that superannuation contributions do not constitute salary.
- To avoid any future uncertainty regarding the calculation of superannuation payments, the wording in this proposed amendment to be changed from 'fees' to 'allowances' to align with the wording in the NT Remuneration Tribunal determination of allowances for members of local councils. The determination only refers to fees in the context of membership fees for professional organisations and professional development attendance fees all other payments to elected members are referred to as allowances.

- Guidelines must be developed by the Department in partnership with the sector.

Conditional Rating - Sections 219, 7, 224 and 227.

Keep as is (no change required)

Agree with proposed change

Other

LGANT positions:

- **Supportive of amendments that will remove conditionally rateable land provisions from the Act.**
- **Supportive of the phasing out of mining tenements being grouped for rating purposes, however recommend an immediate phasing out rather than the proposed 10 years.**
- **Supportive of proposed amendment to section 224 to clarify councils are permitted to apportion the amount of rates payable to the amount of time the land was rateable.**
- **Neutral on a comparable valuation method. Councils can apply differential rating categories to mining tenements once conditionally rateable land provisions are removed from the Act.**

LGANT recommends:

- That councils receive support and guidance on implementing appropriate rating categories for different types of mining activities (e.g. operating mines and extractive/quarry operations) to ensure fairness and equity when conditionally rateable land is removed from the Act.
- Consideration of **Attachment 1** – Differential Rates Case Studies.

Conditionally rateable land

LGANT has had a long-standing position that conditionally rateable land should be removed from the Act and it is disappointed the options presented to the Minister for Housing, Local Government and Community Development in our December 2024 submission on conditionally rateable land are not considered as part of the Discussion Paper.

Conditional rating is a form of rate capping or rate pegging and these limits have had devastating impacts on the financial sustainability of councils here in the NT and in other jurisdictions and hence their ability to deliver and maintain services and infrastructure to residents.

LGANT has however heard concerns from the pastoral and mining sectors so proposed in its December 2024 submission to the Minister for Housing, Local Government and Community Development, that councils receive support and guidance on implementing appropriate rating categories for different types of mining activities (e.g. operating mines and extractive/quarry operations) to ensure fairness and equity once the conditional rating provision is removed from the Act.

Under the current legislation, the Minister sets the rates annually by consulting ministers responsible for mining and pastoral matters, while councils must make a submission rather than being directly consulted

(noting that 12 councils have land within their area that attracts conditional rating). This is out of step with contemporary practice, as highlighted by the Department itself in Discussion Paper B. Councils impacted by conditional rating should be consulted prior to setting rates. The current processes and provisions, including regulation 111 of the *Local Government (General) Regulations 2021* emphasise consultation with the pastoral and mining sectors while there is no requirement for the Minister to consult councils prior to gazettal of rates.

A review of rate-setting for particular industries across the jurisdictions (as conducted by the Department and shared with LGANT) demonstrates that other jurisdictions have some flexibility, to full differential powers, or discretion in setting rates. These processes are supported by a range of safeguards that consider for example, principles of fairness, public consultation processes and/or policies to prevent unreasonable rate setting. These processes demonstrate a goal for an equitable outcome for councils and industry alike.

To date, the Territory Government has demonstrated a hesitancy to reform the system for fear of industry push-back – meanwhile for example, a pastoral station that sits across both Queensland and the Territory pays in the range of \$150,000 to the responsible Queensland local government council, and a mere \$5,000 to the responsible Territory local government council. So, the often-heard threat that if conditional rating is removed, industry will take their business to more accommodating jurisdictions is not credible and only serves to strong-arm a government that has already placed multiple mechanisms in place to demonstrate that the ‘Territory is open for business’. Meanwhile, councils are restricted from generating revenue through rates and unfortunately this tends to occur some of the lowest socio-economic areas in Australia.

Territory local government councils are asking for similar support and concern for their financial sustainability that is shown to pastoral and mining industries, some of which are interstate or internationally owned. Council rates are an investment in the Territory; they stay in the Territory and their benefits are felt by residents and those who conduct business in the Territory.

The Discussion Paper talks to the predictability for the mining and pastoral industries by rates set by the Minister. The sectors have been benefitting from predictably low rates for many years and table below shows this by way of comparison other jurisdictions versus those set by the NT Government under section 219:

| Jurisdiction | Mining sector rate per \$1,000 of assessed value | Pastoral sector rate per \$1,000 of assessed value |
|-------------------------------|--|--|
| Cloncurry Shire (Qld) | \$193.59 – \$653.72 | \$49.74 – \$58.54 |
| Port Hedland (WA) | \$227.57 | \$120.00 |
| Western Downs (Qld) | \$4.97 – \$588.30 | \$2.68 |
| Shire of Ashburton (WA) | \$385.68 | \$192.90 |
| Northern Territory Government | \$8.74 | \$0.77 |

See Attachment 1 – *Differential Rates Case Studies* for further information.

Through our advocacy work, we have engaged with industry peak bodies to share our asks and to flag our intention to continue to advocate for councils setting rates independently. We acknowledge their hesitancy in supporting this position and while our good-will through engaging with them has generally been welcomed, we have also heard that council services that are partially funded by rates do not reach them, that they do not rely on any council-provided services and that they are self-sufficient operations.

While we struggle to understand how use, or lack thereof, of council services can be quantified, peak bodies for these industries all make some form of commitment to the communities within which they operate. Whether separated by a boundary or fence line, these lands still exist within that context and prospective projects attempt to gain social licence by touting their benefit to the broader community. A shift away from conditional rating simply represents a means through which councils can set fair rates for the mining and pastoral industries that are fed back into communities through services and improved infrastructure. Ring-fencing industry operations to suggest that operations are completely self-sustaining, and therefore council rates should not apply to them, seems to go against the core values of many peak bodies and industry leaders who claim to practice corporate social responsibility.

While nationwide commentary offers much scrutiny of local government councils as using exorbitant rates to address internal financially irresponsible practices or poor management, the situation faced by regional councils in the NT is that for many years there was no increase or indexation of the Operational Subsidy, a subsidy that was put in place to address limited revenue-raising capacity. These regional councils are operating with pre-COVID levels of the Operational Subsidy, and this is particularly impacting councils where conditionally rateable land occurs. In other jurisdictions such as Western Australia, there was recently negative media attention on a proposed increase in rates from \$725,471 to \$1.74 million for a particular mining operator. This does not even bear comparing to the rates paid by mining tenements in the Territory, most of which are in the range of \$20,000, while approximately half of pastoral leases attract less than \$3,000 per annum in rates.

As per section 248 of the Act, pastoralists and mines can, just like other individuals and organisations, apply for rate concessions to alleviate financial hardship.

Unfortunately, there are multiple levers impacting the financial sustainability of Territory councils – most of which are currently outside of the control of councils and our attention to conditional rating is simply to put Territory councils in step with other jurisdictions.

LGANT has previously recommended that if the NT Government doesn't have the appetite to remove conditionally rated land provisions from the Act, then there are three other options they should consider:

1. Phased increases of conditional rating to create equity between conditional ratepayers and other rural and commercial enterprises e.g. horticulture or tourist commercial categories.
2. Allocation of a reasonable minimum amount of mining and petroleum royalties to a rejuvenation fund to support local government councils. This would follow the model recently introduced in NSW via the Royalties Rejuvenation Fund, which allocates a minimum of \$25m per year to support coal mining communities by investing in infrastructure, creating local employment opportunities and workforce development.
3. Allocation of the mining, petroleum and pastoral rent revenue that currently goes to NT Government general revenue, to local government councils.

It is also recommended that, where conditional rating is not removed, that the regulation 111 of the *Local Government (General) Regulations 2021* be amended. The requirements are unreasonable and place a heavy onus on councils to justify the charging of rates which are widely acknowledged as a fair tax (in that rate payers contribute proportionally based on the value of their property). For example, regulation 111(b) requires councils to list services that the residents of, or workers on, conditionally rateable land have the opportunity to utilise. The services available to those workers are the same services available

to every rate payer and a record of these can be found in annual reports. Further, the wording of regulation 111 (and section 219(2)) has previously led the Department to determine that a joint submission to the Minister by LGANT on conditional rating is not applicable. As the prescribed corporation, LGANT is the peak body representing local government councils in the NT and is entrusted to make submissions on behalf of the sector.

Contiguous or reasonably adjacent mining tenements

A ten-year horizon is not appropriate or necessary for the phase out of mining tenements grouped for rating purposes. LGANT understands councils should be able to immediately charge rates on each tenement separately if they have the resources to identify them using already available information.

Again, LGANT recognises that industry may be concerned about increases to rates if this occurs, but to our recommendation above, councils should receive support and guidance on implementing appropriate rating categories for different types of mining activities (e.g. operating mines versus extractive/quarry operations) to ensure fairness and equity.

Comparable valuation method for pastoral leases and mining tenements

Pastoral leases are valued under unimproved capital value principles. These principles are based on the value of the surface of the land rather than what's under it. Any changes to these principles would likely require changes to the *Valuation of Land Act 1963*. LGANT understand these principles are the reason why mining tenements are rated as they are under section 227(3) of the *Local Government Act 2019*.

LGANT doesn't see any need to make pastoral and mining tenements comparable at this time. If conditionally rateable land provisions are removed from the Act, councils will be able to apply differential rating categories to both these land types.

Rate Exemptions - Section 222.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Proposed amendments only partially address issues around rate exemptions.**
- **Supportive of the Act being explicit in stating the NTG will guarantee full rate payments for public/social housing even if management or ownership is transferred to organisations such as community housing providers or Aboriginal-controlled organisations and regardless of the land type.**

The term 'non-commercial' has a multitude of definitions including being a use or activity for which a fee is not charged. This is often not clear cut, particularly where an organisation that has a 'charitable purpose' conducts other business and in effect is only partially non-commercial. LGANT contends that rent collected deems a property commercial because it generates revenue – it is the provision of accommodation in exchange for rent. For this reason, a singular definition cannot be the determining

factor for the exemption of rates. Other considerations must include the capacity to pay and commercial advantage as a result of charitable status.

LGANT suggests consideration could be given to using the existing rate concession available through the financial hardship provision in the Act (section 248) rather than applying blanket rate exemptions (section 222).

Criteria for financial hardship application could be legislated and include:

- Consideration for the most appropriate form of rate relief based on the type of organisation, the extent of its commercial or for-profit operations, demonstrated capacity to pay, etc.
- 'parent' company of charitable organisation considered as part of capacity to pay.
- A time limit on the backdating of exemption applications.
- A limit on the number of rateable properties that can attract a rebate or exemption.

The community housing sector in the NT is a growing sector, eight providers manage over 1,000 dwellings and the number of providers and dwellings is expected to grow, consistent with the objectives of the Community Housing Growth Strategy 2022-32. A key policy objective of NT Shelter is that up to 50% of public housing is owned by CHPs by 2036.

While councils Territory-wide support and acknowledge the benefits of public/ social housing, the financial sustainability of councils must also be considered to determine a fair outcome that doesn't lead to unintended consequences such as councils having to place additional pressures on other rate payers or reducing council services.

One of the primary sources of revenue for local government is rates – the condoning of not paying rates for public housing by the Territory Government is cost shifting to local government to try and address a cost of living and housing crisis. This simply puts the Territory Government in a position to mine from an already meagre revenue base that councils are increasingly having to spread thinly across a growing number of services. The legislative amendments must provide certainty to enable housing to be provided at the volume required, as well as certainty for councils to continue to operate.

Noting also that the Discussion Paper proposes that a clarification be made in legislation that the CEO Housing will continue to pay rates where it continues to own it – this offers little comfort or security considering the aforementioned key policy objective of the Territory Government's Community Housing Growth Strategy which outlines the plan for almost half of the 5,500 dwellings owned and leased by the Territory Government across Greater Darwin, Alice Springs, Katherine and Tennant Creek to be transferred to CHPs. This 'urban' approach is being replicated in regional and remote areas of the NT with plans for the Territory Government to transition public housing to Aboriginal control.

In City of Darwin and Katherine Town Council, the percentage of housing owned by the Territory Government represents 4.1% and 8.4% respectively, while in regional councils such as Central Desert Regional Council and Tiwi Islands Regional Council, 88% of housing is owned by the Territory Government. A decline in rateable properties (on top of conditional rating) via transfer to CHP/Aboriginal Controlled Community Organisations (ACCOs) will have a significant impact on municipal councils and will almost decimate the rate base of regional councils. If the Territory Government wants to go down this path, modelling must be done to identify the impacts to all councils and the impact this will have on other

rate payers. Increases in rates resulting from such a policy would be a hard pill to swallow for anyone in the NT, particularly in the current cost of living crisis.

To this, the Territory Government must not attempt to renege on its responsibility to pay rates in the context of public housing by transferring housing stock to CHPs or Aboriginal-control, including housing assets ownership transferred to ACCOs (i.e. Anindilyakwa Housing Aboriginal Corporation). The bottom line is that the transfer of assets with no current measures in place to compensate councils for revenue loss will seriously impact the ongoing sustainability of councils.

The decision in *Venture Housing Company Ltd v City of Palmerston 2024* set a concerning precedent for local government in the NT. In that case, housing that was once rateable as a result of ownership by the Territory Government became exempt from rates upon transfer to a CHP. The use of the housing remained the same, but as a result of an incentive provided by Territory legislation for non-government organisations to fill a gap in government provided services, costs are shifted with the loss borne by local government councils. The incentive addresses the difficulty faced by CHPs to raise capital as a result of their charitable purpose, while reducing councils' capacity to collect rates for services that continue to be provided.

Appointment of Principal Member - Sections 60-62.

Keep as is (no change required)

Agree with proposed change

Other

LGANT position:

- **Not supportive of the proposed amendments.**

LGANT is concerned about these proposed amendments and strongly opposes them. The proposed amendments represent a significant shift in process while lacking compelling (or otherwise) evidence to support the change. The jurisdictional analysis provided in the Discussion Paper is incorrect and misleading. The ambiguity brings the risk of negative interpretation, leading to distrust in the local government sector, or equally distrust in the Territory Government via the perception that it is attempting to politicise councils.

The proposal to delay the appointment of a principal member until the fourth ordinary council meeting is risky given that council meeting cadence varies and councils may be without a principal member for up to 8 months – we would suggest that the Department hasn't considered some of these key factors in drafting these proposals and recommend that no change is required.

Flexibility in the process by which councils elect or appoint principal members enables councils to do what is best for their community. These decisions are made based on a deep understanding of their communities and represents a core component of self-determination so that governance processes can accommodate cultural implications or sensitivities in decision-making. The Territory Government can be quoted in multiple sources (recently in Hansard, describing the Government's approach to the local government amendments on 22 May 2025) as avoiding a one-size-fits-all model; 'recognising that one

model does not fit all and that small community-led councils can better serve unique local needs' – removing the existing flexibility runs contrary to this and restricts councils unnecessarily.

The Discussion Paper makes a brief comment about how the proposed amendments may act to reduce conflicts between elected members – this throwaway comment that is not supported by any context unnecessarily raises negative implications about elected members. If this statement is alluding to issues of Code of Conduct, this should be dealt with as part of the Code of Conduct framework review which has been repeatedly requested by LGANT.

Discussion Paper – Part C

Proposed Code of Conduct Framework

LGANT is supportive of work progressing to address our repeated calls to reform the existing code of conduct framework but is critical of the extensive delays and the impact these have had on the reputation of the sector and the psychopathy of elected members and staff both in councils and LGANT.

As part of this work, Schedule 1 of the Act (Code of Conduct) must be reviewed and updated to reflect best practice. The manner in which the framework is proposed to the sector is appreciated – providing options and multiple levers for consideration and referring to the recommendations from the Management Consulting Alliance (MCA) 'Review of the Code of Conduct Framework' provides a strong basis.

It is important to highlight Recommendation 3 of the MCA review: 'Recognise the Department of Housing, Local Government and Community Development Unit (DHLGCD) as the support agency for the code of conduct system. It supports our view that DHLGCD, as the regulator, must regulate and this includes by being the 'single point of contact for code of conduct advice' (Recommendation 4), and adequately resourcing the Framework across its lifecycle. As the support agency, the Department should also be proactively supporting councils (e.g. prevention) as opposed to focusing almost entirely on an intervention approach. For example, the Local Government Association of Tasmania recently launched the 'Lift the Tone' campaign to address increasing instances of abuse towards elected members by the public, as well as internally amongst elected members. The campaign involves a pledge to maintain respectful dialogue, be inclusive, and stand up against abuse. The campaign was supported by the Tasmanian Minister for Local Government who engaged in media and signed a physical pledge to demonstrate his commitment to a positive culture within the sector and towards elected members.

In LGANT's most recent letter to the Minister for Housing, Local Government and Community Development on the Code of Conduct Framework (13 January 2025) we repeated our request to the government to review the framework which was a key election ask that was initially sent to the Minister on 30 July 2024, and further discussed on 19 December 2024 with the Minister (building on earlier requests to the previous Territory Government from as far back as July 2023). On all of those occasions we stressed the importance of prioritising these changes, particularly in light of the upcoming local government elections to be held on August 2025. We asked for increased funding for elected member governance training; and increasing funding for the NT Government's Local Government Unit to enable proactive compliance support and timely responses to misconduct complaints. We will repeat those again here and hope to see a final Code of Conduct Framework that is resourced as per our asks.

We would like to highlight the high risk of further psychosocial hazards faced by elected members, council and LGANT staff if this framework is not delivered, wholly or partially, ahead of the 2025 local government elections. The Department must take responsibility and act to eliminate or minimise those risks so far as is reasonably practicable. Inaction will lead to further increases in code of conduct complaints, vexatious and time-consuming complaints, and act as a deterrent to Territorians who may be considering nominating for the upcoming elections.

LGANT recommendation:

- Schedule 1 of the Act (Code of Conduct) must be reviewed and updated to reflect best practice and integration with relevant bodies such as the Independent Commission Against Corruption (ICAC).

1.1 Raising awareness of Councillor roles and responsibilities

As noted in the Discussion Paper, a lack of candidates nominating for election has been a consistent issue in the Northern Territory, in part due to the limited awareness of the roles of local government councils and in part due to the low population in some local government areas eg. less than 200 voters in the Belyuen Community Government Council area.

The lack of candidate nominees is a threat to the democratic structure of local government councils. In the 2021 local government elections only 303 nominations were received for 159 vacancies, 13 wards were uncontested and there were 2 failed elections. It is vital that an effective solution is implemented to ensure that voters have the option to elect council representatives from a number of high-quality candidates.

LGANT position:

- **Supportive of:**
 - **The MCA report recommendation 6 including the development of targeted activities to attract suitable candidates to stand as councillors at council elections.**
 - **The promotion of a culture of collective leadership within councils.**
 - **A consistent approach to explaining the expectations of the Code of Conduct within orientation and induction processes and ensuring the signed agreement of every elected member to adhere to the Code.**
 - **The Department supporting councils to engage with potential candidates and further developing tools and resources.**
 - **A new provision in the Act requiring candidates complete pre-nomination training as in other jurisdictions (eg. Victoria and Queensland).**
 - **Rolling out the changes prior to the 2025 Local Government Elections**

The development of candidate pre-nomination training will need to be tailored to NT audiences and does not create a barrier to increasing candidate nominations.

1.2 Councillor induction, professional development training and commitment to the Code;

LGANT position:

- **Supportive of:**
 - **A consistent approach to induction, orientation and training across the sector to set clear expectations and improve councillor conduct over their full term.**
 - **Professional development training that emphasises the need for councillors to work together in the interests of the whole council area to be held early in the first term.**
 - **The provision for regional councils to be adequately resourced to off-set the significant additional costs they face to provide training for their members.**
The provision by the Department of a structured face-to-face orientation program to each council to enable elected members to develop working relationships outside the formality of a council meeting.
- **Not supportive of any form of fee for service for the delivery of mandated training.**

The delivery of mandated training is the responsibility of the regulator. If local government councils are expected to contribute to training costs, then the financial sustainability of councils needs to be reviewed, as without increased funding a requirement to pay for mandatory training will take funds way from the broader services councils provide to their communities.

LGANT recommendations:

- LGANT supports face-to-face group training as the method of delivery for the mandated foundational training in the Act. Face-to-face training should be supported by printed learner guides to allow for differences in learning styles and to enable independent study or later review of training materials.
- Amending section 45(3) of the Act to state that a member of a council must complete mandatory foundational training within 6 months of each general election and other training as required. It is beyond belief that under the current legislation a council is able to operate for a full year without completing any training, including code of conduct training. How are elected members, who may not be from business backgrounds, be expected to fully understand their roles and responsibilities; the code of conduct; conflicts of interest; decision making and meeting procedures; and council finances without training? It has been well documented that the lack of training is a major contributing factor in code of conduct issues and the failure of councils.
- Participation by all elected members in the mandatory training even if they have been elected members previously. Their presence enforces the culture of collective leadership.
- Adding provisions into the Act for consequences for elected members who fail to complete training (in line with other jurisdictions, such as Western Australia, South Australia and Victoria).
- Delivery of mandatory and other training by the Department be standardised by either the Department or a contracted trainer. Currently, the Department designed mandatory training can be delivered by a Department staff member (who may or may not be a qualified trainer), or the training resources can be download and delivered by anyone from the council (again who may or may not be a qualified trainer). This leads to inconsistency in the training received by elected members.
- The introduction of mandated refresher code of conduct training. Currently code of conduct training is delivered within the first 12 months of the four-year term of a council, usually at the same time as the other five training modules. This requires elected members to process and retain a significant amount of information usually within two days of intensive training and then no further training is required during the remainder of the four-year term. To minimize code of

conduct issues, by ensuring that knowledge is refreshed and retained, refresher code of conduct training should be designed and mandated for completion annually.

- The introduction of individual post training competency checks. The current 5 question verbal group quiz at the end of a training PowerPoint presentation is not a valid or reliable competency check, particularly for the mandatory foundational training.
- Signed training records must be kept by the Department for each individual participant as evidence that the mandatory training has been completed, that they agree to complete mandatory annual code of conduct refresher training and agree to conduct themselves in accordance with the Code of Conduct. Currently, when training is delivered by Department staff it is recorded as a group session delivered to XX council. No attendance list of individual attendees is kept and no signatures of acknowledgement of training are gathered. If the training is delivered by someone from the council, there is no requirement to provide evidence of training delivery to the Department.
- Update the mandatory foundational training delivered by the Department before the 2025 local government elections. The current training was designed in 2021 and last updated in 2022; the training has not been updated post the release of the Barkly Investigation Report (which identified 31 instances where lack of training was identified as a contributing factor to misconduct by elected members and council staff), nor the MCA report, nor the February 2025 Coomalie Community Government Council Investigation Report (in which several of the findings refer to the lack of understanding by elected members). It has been well documented in these reports that the training for elected members is severely lacking and contributes to the failure of council, and yet no improvements have been made to the available training. There needs to be a distinction between orientation and induction training for councils, as there is with the internal NT Government training. Orientation should be standardised training delivered by the Department, while induction training is specific to and delivered by each council.
- Updated mandatory foundational training should include a cultural awareness module consistent with Priority Reform 3 of the Closing the Gap National Agreement 2020. LGANT, together with the NT Government and other parties, is a signatory to Closing the Gap and is committed to the achievement of the priority reforms and targets.
- The Department-led orientation sessions should include provision of a checklist developed by the Department in partnership with the sector, detailing the exact policies (including the media policy) that are required to be adopted at the first meeting.

LGANT position:

- **Not supportive of any form of fee for service for the delivery of mandated training.**

The delivery of mandated training is the responsibility of the regulator. If local government councils are expected to contribute to training costs, then the financial sustainability of councils needs to be reviewed, as without increased funding a requirement to pay for mandatory training will take funds way from the broader services councils provide to their communities.

1.3 Required training for the Chair and Deputy Chair

LGANT position:

- **Supportive of mandatory training for the Chair and the Deputy Chair.**

LGANT recommendations:

- Standardised and mandatory training for the Chair and Deputy Chair be developed by the Department to ensure that all Chairs and Deputy Chairs across all councils receive the same information.
- The training be delivered by a qualified Department trainer, or an agreed contractor. While there needs to be provision to allow adaption of the delivery of the training to the varied contexts of different councils, the content needs to be standardised. The suggestion in the discussion paper to allow “councils to identify other ways to achieve the same outcome” places the onus of delivering effective mandated training on to councils when this responsibility should sit with the Department as the regulator.
- All elected members complete the Deputy Chair training. This would provide for councils that include rotating Deputy Chairs. It would also be beneficial as it would allow all elected members to fully understand the role of the Chair and the Deputy Chair which would provide a greater understanding of the requirement for those in these roles to apply behaviour management skills during meetings and therefore there is likely to be less friction when this occurs leading to a reduction in code of conduct issues.
- The training include the role of the Deputy Chair and the process for appointing a Deputy, including if the Deputy will be a rotating position.
- The training include basic media training.

1.4 Council Governance Checks

LGANT position:

- **LGANT is supportive of the proposed mandatory governance checks as part of a broader suite of education and support resources.**

LGANT recommendations:

- Council Governance Checks must be supported by guidance material that is prepared by the Department in collaboration with the local government sector. Assessment criteria must be clearly identified.
- Council Governance Checks must be risk-based and a self-assessment carried out a minimum of twice yearly. Where a self-assessment identifies any negative indicators, the process progresses to an identified next step (i.e. a tiered approach).

LGANT recognises that governance checks can represent an opportunity for continuous improvement and development, particularly where the Department provides support from drafting the guidance material to conducting governance checks in partnership with councils. This may be supported by the Governance ‘Controller’ which is discussed further at 1.7.1 where the objective of the role is to provide

support and strengthen governance capability at the invitation of the council. This would enable greater Department understanding of the risks and issues present in the sector, as well as identifying positive examples of best practice that can feed into an evolving framework that is supported by contemporary learning and development requirements and opportunities.

Considering examples in other jurisdictions, governance checks are not exclusively geared toward identifying code of conduct issues –they may consider a range of factors as part of a standard governance framework including a council’s performance against professional development commitments, complaints handling, and policies and procedures. Ensuring that the standard mechanisms are in place should be the initial starting point to ensuring that a healthy governance framework is in place and fit for purpose. This level of governance check is appropriate to be undertaken as an initial self-assessment, and if any requirements are not met and not rectified by that council in a reasonable time, that should then trigger further compliance mechanisms.

1.5 Early intervention – Standing Council Governance and Code Committee

LGANT position:

- **Not supportive. Issues are better addressed through training of Chairs/Deputy Chairs; triaging by an Independent Assessor holding appropriate powers, and the ability to escalate to a Code of Conduct if the need arises**

LGANT considers the proposed Standing Council Governance and Code Committee duplicative of the role of the council panel as set out in Part 7.4, Division 2, Subdivision 1 of the Act. This enables a council panel to decide a complaint and to recommend certain rectification measures (or not). The establishment of such a committee merely introduces an independent third party as the Chair of a group otherwise made up of council employees. While councils have and will continue to handle issues internally to an extent, councils should not be relied on to investigate themselves and are not qualified to decide on councillor behaviour – and a number have chosen not to do this and instead refer complaints to the Code of Conduct Panel.

There is an opportunity for bias where councillors are placed in such a decision-making capacity, compounded by the pressure to maintain healthy workplace relations and to carry on business as usual in councils that are already dealing with resourcing issues.

The establishment of this Committee does not address an existing gap in the Code of Conduct framework given existing mechanisms enabled by the Act (as highlighted above) and therefore should not be a priority as part of this current review.

1.6 Independent Assessor

LGANT position:

- **Supportive of an Independent Assessor at a particular stage of conflict resolution, with the assessor requiring a particular set of skills and qualifications, however, reservations around the extent of powers.**

LGANT recommendations:

- The prescribed corporation must not be tasked with the responsibility of the Independent Assessor.
- The panel of independent assessors be appropriately skilled (in workplace/industrial relations law, for example) and qualified to conduct investigations, carry out governance examinations and be well-versed in local government to the extent that they can make recommendations for improvements to policies and procedures, learning and development, and appropriately empowered by legislation to make decisions.
- Given the size of the Territory, a shared services or mutual recognition model with another jurisdiction where an 'integrity agency' already exists to perform this function, for example Victoria's Local Government Inspectorate, or Queensland's Office of the Independent Assessor, should be considered. This approach would also ensure less conflicts and unconscious biases.
- The legislation be clear that complainants cannot 'skip' the Independent Assessor and go straight to the Code of Conduct Panel.
- The Department be responsible for ensuring enforcement of any decisions/recommendations made by the Assessor.

LGANT is supportive of the establishment of the role of Independent Assessor who can be appointed at a certain phase of conflict resolution and selected from a department-endorsed panel.

The role of the Independent Assessor should come in to play when there is a complaint that has not been able to be resolved internally, or where it is decided that it cannot be resolved internally due to the particulars of the complaint. These trigger points should be identified collaboratively with the sector before the legislation is finalised and form part of the Code of Conduct Framework enabling councils to navigate the conflict resolution process and have a clear understanding of their responsibilities.

The powers of the Independent Assessor will be discussed at 1.7.1.

1.7 Escalation to Code of Conduct Panel

LGANT position:

- **Supportive of the Code of Conduct Panel as skilled/qualified independent individuals.**

LGANT recommendations:

- The prescribed corporation not be tasked with responsibility of managing/coordinating the Code of Conduct Panel.
- Consider a shared services or mutual recognition model with another jurisdiction where there is an established code of conduct panel, for example Victoria's independent Councillor Conduct Panel.
- The Department be responsible for ensuring enforcement or any decisions/recommendations made by the Panel.

LGANT is supportive of the Code of Conduct Panel structure proposed, whereby the panel is made up of independent members who are appointed by the Department based on their expertise with the subject matter of the complaint.

The panel should be completely independent of the council and be appropriately empowered to hand down decisions to council and dismiss vexatious complaints, while making recommendations to the Minister for suspension, or referring to ICAC or police where appropriate.

1.7.1. Code of Conduct Panel Findings Implemented

LGANT position:

- **Supportive of sanctions and the creation of offences, infringements to deter breaches.**

LGANT recommendations:

- Remove reference to the Standing Council Governance and Code Committee from the Code of Conduct Framework.
- Add a fourth column to the 'escalation in available sanctions' table (page 18) to show what the Minister's powers are (eg. suspension of individual only after a recommendation from the code of conduct panel).
- Remove from available sanctions the power to withhold allowance. It is common industrial relations practice, and consistent with Fair Work principles, that suspension of pay can only occur after a full investigation has occurred. We highlighted this in our response to Tranche 1 amendments in March as part of our commentary on Clause 28 – Official management of councils, and we take the opportunity to repeat that recommendation here. Withholding allowance should only be available to the Minister upon recommendation, following an investigation.

LGANT is supportive of clear sanctions as part of a tiered process of conflict resolution, including the introduction of new offences and associated infringements as deterrence measures.

In reference to the table provided in Discussion Paper C, page 18, our responses are as follows:

Standing Governance and Code Committee (SGCC) – this is not a supported intervention mechanism.

Governance Controller:

- Referring to the 'Governance Controller' Fact Sheet which provides context to the two brief mentions of the role in Discussion Paper C, LGANT considers it to be a key responsibility of the Department to provide the early support tools (such as the council governance check) described, part of which is to strengthen governance capability. The Local Government Unit is self-described as assisting and supporting councils in the NT to meet their compliance, reporting and administration requirements; and providing a range of resources to elected members including decision-making and meeting procedures.
- If the Department deems it necessary to outsource governance support, this should be done at the expense of the Department, only at the request of the council when requesting support by the Local Government Unit.

- The Department should consider changing the title of the role, given that its powers are to observe, report, advise and recommend. Also, consider the association that may be made with the Financial Controller who is appointed as a result of inappropriate management of financial responsibilities and non-compliance with the Act and the implications that may be drawn by a council bringing in a role titled 'Governance Controller'.
- LGANT have repeatedly highlighted the risks of making mention of a Governance Controller in Discussion Paper C without any further detail outside of subsequently providing a Fact Sheet on the Have Your Say website. The Discussion Paper Foreword also makes no mention of supplementary information or fact sheets that must be considered by stakeholders in responding – identifying only the three parts provided in Discussion Papers A – C as forming part of the focused consultation process. There is a high risk that stakeholders will not be in a position to provide informed feedback.

Independent Assessor:

- The powers to remove a position; declare ineligibility; suspension; disqualification from running from council are not appropriate to be held by an Independent Assessor. The role of the Independent Assessor is to triage complaints and determine if they can be dealt with at this stage, referred back to council for internal resolution, or if there is a need to escalate to the Code of Conduct Panel.

Code of Conduct Panel:

- The sanctions proposed to be available to the Code of Conduct Panel are generally appropriate other than the appointment of a Governance Controller as noted above.

1.8 Resourcing and Costs

LGANT position:

- **NTG resource the Code of Conduct Framework appropriately.**
- **Supportive of penalties for vexatious complaints.**

LGANT recommendation:

- The Department consider a shared services or mutual recognition model as recommended throughout our submission (as supported by a cost benefit analysis), whereby other jurisdictions are better resourced and already deliver many of the services/measures that are recommended here by the Department.
- Adequate resourcing be allocated to meet statutory timeframes.

LGANT supports the NTG funding the Code of Conduct Framework with new funding and not ask DHLGCD to fund from within.

If considerable resources are invested into the prevention part of the spectrum, less resources should be required for intervention.

1.9 Elected Mayors

Refer to response to proposed amendments to sections 60-62 above.

1.10 Media Policy

LGANT position:

- **Supportive of Department developing a media policy (including social media) template that can be tailored by each council and must be endorsed by each new council.**
- **Supportive of this policy being mandatory for councils and section 365 be amended accordingly.**

LGANT is supportive of the Department providing a template media and social media policy to councils (noting that most councils already have a media policy) that provides guidance around approved spokesperson.

For context, a majority of code of conduct breaches, and the most serious code of conduct breaches during 2023-24 involved social media conduct via social media posts and external communications. For the most part, code of conduct breaches occurred outside of council meetings and where they were taking place during council meetings, they involved interpersonal dynamics between councillors and were eventually dismissed.

LGANT recommendations:

- The policy identify the single spokesperson but include a process for approving alternate spokespeople and under what circumstances, how that approval is come by, and how messaging is approved.
- The media policy be endorsed by each new council and revisited as part of broader refresher training.

The Department must recognise however, that elected members are entitled to sharing their personal views and the mode by which this is done (or conversely, how council views are communicated) should be explicit in the media policy. Taking on the role of elected member cannot preclude a person from freedom of expression but there must be clear parameters embedded as part of training.

1.11 Eligibility/Disqualification

LGANT position:

- **Supportive however eligibility and disqualification need to be considered separately as part of the Code of Conduct Framework. Eligibility is an NTEC consideration under their legislation. Disqualification to be considered as part of 1.7.1.**

LGANT proposes that eligibility and disqualification as sanctions be explored in detail as part of the proposed available sanctions at 1.7.1. All of the options proposed (i.e. serious misconduct or repeated breaches, and criminal findings aligned with thresholds) should trigger consideration of the

disqualification and subsequent eligibility (to run again) consideration by the Code Panel in a recommendation to the Minister. The Minister may then consider a length of time for which the elected member is ineligible to run for re-election, if at all eg. the remainder of the term from which they're currently disqualified, and the full term of the subsequent council. This approach provides a meaningful period away from office, allowing time for reflection on the conduct that led to disqualification and encouraging a more considered approach should they seek re-election in the future.

Eligibility to run outside any misconduct findings, is not a matter for the Code of Conduct Framework so we recommend that this is inappropriate to be considered here. Further, eligibility is a consideration as part of NTEC authorising legislation. However, if the Minister deems an elected member ineligible to run, then there needs to be a mechanism in place to inform NTEC.

LGANT supports the consideration of the cultural context, and input from community, as part of a decision to disqualify (as this should occur as part of any consideration to disqualify equally among elected members as part of a full investigation) however it is important that where the breaching conduct involves physical or verbal violence, threats of violence or other criminal findings, there must be a single standard for all elected members. Violence should not be tolerated in any context.

LGANT recommendation:

- Nomination forms for local government elections at Section 8 'Candidate declaration of eligibility' should include 'have not been declared ineligible for a period of time during which this election occurs as a result of a breach of the Local Government Code of Conduct'. Make any subsequent amendments to the Act to give effect to this.

1.12 Defining Levels of Complaints

LGANT position:

- **Supportive of the development of a standard scale of complaints based on trigger points/thresholds/criteria.**

LGANT is supportive of a standard model to be applied across Territory councils, with an initial classification to be made for use by the Independent Assessor whose primary objective is to triage complaints that have been escalated by councils.

Once a complaint has been referred externally by the council, the complaint is then classified (recommend the term 'categorise' as classified has dual meanings). The trigger points should include referral directly to the Code of Conduct Panel by the Independent Assessor without extensive investigation where a matter is serious/grievous (to be defined by the criteria). It is not in the best interests of either the councils, aggrieved parties, communities or the NT Government for conflict resolution processes to be protracted through a step-by-step process unnecessarily.

The standard scale of complaints must also outline the right of reply, and include points for possible referral to NTCAT, ICAC, or the police.

Additional amendments

In addition to the amendments proposed in Discussion Papers A – C, LGANT recommends that the Department consider the following additional amendments as part of its objective to strengthen the overall framework:

- Regulation 38: Quotations and tenders not required in certain circumstances - Add public art procurement to the list of possible exemptions. The tender process does not reflect best practice for the procurement of public art.
- Section 35: Municipal, regional or shire plans - Change the public consultation period to 7 days or consider removing the requirement for public consultation following an evaluation by the Department of the number of written submissions received. The current 21-day requirement places considerable pressure on council staff with respect to budgeting.
- Section 47: Disqualification - Define principal place of residence.
- Section 90: Nature and timing of council meetings - Define 'conclusion'.
- Section 114: Conflict of interest - Amend to include 'direct interest means an interest, *financial or otherwise*, that occurs when a member is likely to be directly affected if the matter is decided in a particular way'.
- Section 165: CEO - Amend the requirement for the CEO to notify all members of the council of leave arrangements. Notification should be required to the Principal Member.
- Sections 211-213: Audits - Consider Department coordination and resourcing of audits to ensure consistency, and the standard and rigour required is met, as well as providing the Department greater insight into issues and trends. For example, the Audit Office of the NSW conducts financial and performance audits of local government entities in NSW.
- Division 5: Sales of land – Clarify if land trust land be sold to recover unpaid rates by the occupier or if land used for commercial purposes.
- Section 271: Care, control and management of roads - Amend to remove ambiguity and public liability concerns of roads.
- Section 291: Content of annual report - Amend to include the requirement of reporting on FTE as part of annual report.

Conclusion

We thank the Department for engaging with LGANT and its members as much as it was possible to do throughout a limited consultation process, and we hope to work closer together in future to refine policy options.