

## LOCAL GOVERNMENT BILL

Received from the House of Assembly and read a first time.

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I move:

*That this Bill be now read a second time.*

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The reform program

The Local Government Act Review is a key element of the Government's Local Government Reform Program, complementary to the initiatives undertaken for boundary reform. As honourable members will be aware, the amalgamation of many councils in South Australia has resulted in achievement of considerable efficiencies and wide ranging benefits to local communities.

As we move into the next century, the capacity and responsiveness of Local Government will be crucial to retaining and enhancing South Australia as a preferred location in which to live and work. The vision

The Government believes that in order for South Australia to compete in a global economy it needs the advantages of carefully controlled taxation and regulatory regimes, a sound and diverse regional economy, an efficient, effective and accountable public sector, and encouragement for individual and community enterprise.

Our vision for this State includes a stronger, more efficient Local Government sector which is able to play a key complementary role with the State in economic development and which is ready to meet the challenges of the twenty first century. To enable this challenging role to be played in the variety of ways needed in SA's diverse local communities, the new legislation must encourage an economically and socially effective system of Local Government. This system should provide a focus for personal involvement in community life, meet complex community demands for securing a better and wider range of local services and infrastructure, participate effectively in strategies for the regional economic development of the State, interact productively with other spheres of Government, and link local communities with broader resources.

Local Government has itself taken a leading role in the development of these Bills, with the dedication of significant time, energy and other resources to information sessions, workshops, and detailed discussions. The Local Government sector as a whole, through its peak representative body the Local Government Association, has welcomed the moves to rewrite the Act and has contributed very substantially to the present form of the Bills. The Government acknowledges and records that this Bill is the better for their input. The legislative strategy

At present the Local Government legislative framework consists of some 40 Acts of Parliament, including the *Local Government Act 1934*. Some are common to all public sector agencies or officers, while others are more specific and relate to particular regulatory activities. It is therefore difficult to readily find the laws they need to know about.

The Local Government Act itself sets out the framework within which councils operate. During the past 60 years there have been many changes and additions to the Act, resulting in a complex and sometimes confusing legislative framework. Although large Parts have been reviewed and rewritten, there has been no single comprehensive revision of the Act until now.

One of the objectives for the review of the Local Government Act is that remaining Local Government Act provisions concerning regulatory regimes in which both State and Local Government have a role should, if the provisions are still required, be located in the specific legislation which deals with that function. The necessary relocations or transfers will rationalise the legislation without necessarily changing the scope of Local Government responsibilities. Some of these transfers are made in this legislative package and in the *Statutes Repeal and Amendment (Local Government) Bill 1999*, while some provisions will need to be retained in the *Local Government Act 1934* until such time as they can be addressed in impending reviews of their proposed host legislation.

This rationalisation process means that the new Local Government legislation focuses more clearly on the processes which characterise the system of Local Government.

While a core aim of the Review has been to make the new Local Government legislation easy to read and understand, inevitably there

# STATUTES AMENDMENT (COMMUTATION FOR SUPERANNUATION SURCHARGE) BILL

Returned from the House of Assembly without amendment.

remains some residual complexity in Acts which set out a framework for a whole system of government. In order to ensure that the new framework is as accessible as possible the Office of Local Government will work with the Local Government Association to produce implementation materials with guides, model codes and handbooks to assist the various people and groups who use the legislation to become familiar and comfortable with it.

The design of the new legislation assumes that changes will occur in the roles of State and Local Government in relation to particular functions; in structures of Local Government and forms of community participation; and in corporate organisation for local service provision. While it seeks to provide that level of certainty which is essential to good governance, the new legislation is designed to be flexible enough to accommodate change without a wholesale re-writing of the Act.

#### The legislation package

The package of Bills before Parliament will consist of—

- new constitutional, corporate, operational, taxation, law-making, and management procedures for the Local Government system, including the management of Local Government lands, in the *Local Government Bill 1999*;
- revised and clarified provisions for Local Government elections in the *Local Government (Elections) Bill 1999*;
- provision for the staged repeal of the *Local Government Act 1934* and the relocation of regulatory functions shared by both State and Local Government to other existing specific State legislation, in the *Statutes Repeal and Amendment (Local Government) Bill 1999*.

The aim of the package as a whole is to:

- recognise the fundamental importance of Local Government to the communities of South Australia;
- provide a modern operational framework for Local Government;
- assist in clarifying the roles of State and Local Government; and
- simplify and provide a more cohesive approach to regulatory functions.

The development of the legislation has been informed by many considerations, among them the broader international, national and state context in which we find ourselves and also, importantly, what the South Australian community, including Local Government itself, expects of Local Government and its legislation.

#### Consulting the community

In 1996, shortly after the Government decided to accelerate its Local Government reform program, an invitation was extended to councils, stakeholders and the public to identify issues which should be addressed in the review of the Local Government Act. Responses to this invitation were received and analysed, previous research and relevant enquiries and reports were reviewed and some specific studies were commissioned. In addition, systems in other States and countries were considered. From all this material Consultation Draft Bills and discussion papers setting out proposals for new Local Government legislation were prepared and released in April 1998.

For three months opportunities were provided for people to share information, debate key issues and make submissions on the Drafts. Many of the consultations, especially those with councils, were conducted in close liaison with the Local Government Association, and other key peak bodies also took part. The outcome of the discussions, the submissions and other material have been assessed and considered carefully in arriving at the Bills now brought to Parliament. Indeed discussions have continued throughout the period of preparation of the Bills to ensure that as far as possible the provisions brought to Parliament are agreed.

#### Competition principles

The Competition Principles Agreement was signed by all States and Territories and the Commonwealth Government in 1995. The Agreement requires the State to review all legislation for actual or potential restriction of competition and to remove provisions which may restrict competition in the market place unless—

- they are necessary to achieve the objectives of the legislation; and
- the community benefits outweigh the costs.

A component of the Local Government Act Review has therefore been the review of proposals contained in the Bills to ensure that the only restrictions on competition retained are necessary in the public interest, and that any regulatory powers contained in the Bills include processes to consider the effect any exercise of them may have on competition.

Areas identified as having a potential to restrict competition which have been included in the Local Government Bill after careful assessment of their costs and benefits to the community are—

- approval requirements for some uses of public land
  - professional qualifications for valuers and auditors; and
  - capacity for councils to give rate rebates to encourage business.
- Processes for the adoption of by-laws in future will have to include examination of proposals for competition implications.

In each of these cases the Government is confident that the benefits to the community of engaging in the measures proposed outweigh the costs of the potential restriction on competition.

In addition, some matters proposed for transfer to other legislation are to receive further consideration in relation to their new host legislation, for competition policy implications as well as other matters. It is intended as a temporary measure that these will be held in a remnant *Local Government Act 1934*. They are—

- Provisions concerning lodging-houses;
- Provisions concerning cemeteries;
- Provisions concerning passenger transport regulation;
- Provisions concerning traffic management and parking control;
- Provisions concerning sale yards and bazaars.

#### The Local Government Bill 1999

The Local Government Bill embodies a new legal framework for the constitution and operation of the system of Local Government in South Australia.

The Bill contains fourteen chapters, covering the system and constitution of Local Government, powers of councils, the roles of elected members and chief executive officers, arrangements for council meetings, administrative and financial accountability requirements, finance, rates and charges, the care of community land, the making of by-laws, review of Local Government operations and decisions and miscellaneous matters.

#### Chapter 1—Preliminary

Chapter 1 sets out the objects of the new Local Government Act, and contains provisions relating to its interpretation including definitions of terms. The main changes from the current Act are the inclusion of objects for the Act and some new definitions.

#### Chapter 2—The system of Local Government

Chapter 2 sets out the scope of the Local Government system in South Australia. The chapter brings together and expands descriptions of councils' roles and general functions which are scattered throughout the current Act. Its aim is to provide necessarily broad but nonetheless clear statements about what part councils can be expected to play in community life and the functions they can be expected to perform.

The main changes from the current Act are:

- New provisions setting out the principal roles of a council based on statements of Local Government roles in s5A and s35 of the current Act.
- New provisions reflecting the function of councils in strategic planning at the local and regional level, in support for business and economic development; and in local environmental management and protection.
- The inclusion of common objectives for councils, including reference to councils' role in coordination and cooperation in a regional, State and national context.

#### Chapter 3—Constitution of councils

The Chapter covers the processes for making changes—

- to a council's 'external' structure, such as the creation, abolition, amalgamation, or change to the boundaries of, a council—these are defined under the Bill as 'structural reform proposals';
- to a council's 'internal' composition and representative structure, such as the number and type of members, ward structure, and ward boundaries,
- to other constitutional features, such as changes to a council's name.

An independent, representative body is retained with the functions of investigating and making recommendations on proposals for structural change put forward jointly by all affected councils or, in certain circumstances, developing proposals for boundary change or changes to the composition or representative structure of a council based on submissions from electors.

The main changes from the current Act are:

- a requirement for councils to review all aspects of their 'internal' representative structure at least once every six years, instead of seven, and to explain their reasons for not proceeding with proposals arising out of public consultation

- capacity for the Electoral Commissioner to require a council to conduct an earlier review if the number of electors represented by a councillor varies from the ward quota by more than 20 per cent
- capacity for electors to make submissions to the Panel that a proposal should be developed to bring an unincorporated area of the State within a council area, to alter council boundaries, or to alter the composition or representative structure of a council, provided they first make the submission to the council concerned to give it an opportunity to consider the matter and to initiate the necessary review or formulate the necessary proposal on behalf of the electors
- revised principles against which proposals are to be assessed, which should assist the Panel to balance the various council and community interests involved by recommending boundaries which give councils and local communities the best capacity to play a significant role in the future of an area or region in strategic terms.

#### Chapter 4—The Council as a Body Corporate

Chapter 4 brings together the features of councils which enable them to operate as Local Government corporations. Its aim is to confer on councils the powers, capacity and tools to perform council functions in a framework of strategic and prudent management with clear accountabilities.

Councils will continue to have broad powers to act for the benefit of their areas, including undertaking commercial activity, and can act outside the area to the extent necessary to perform their functions within the boundaries.

It is intended that committees will be able to be used with greater flexibility and clearer accountability requirements than in the past, with members drawn from non-council members as well as councillors. It is anticipated that most of the existing section 199 controlling authorities will continue as council committees under these reshaped provisions.

In other changes directed at the twin aims of flexibility and accountability,

- councils are required to separate regulatory from other activities wherever possible;
- councils are required to prepare and adopt policies on contracts and tenders and on consulting their communities;
- prudential requirements replace the former Ministerial approval requirement for major projects and also cover all commercial activities regarded as important by a council;
- councils are able, alone or in groups, to establish separately incorporated subsidiaries. A completely new tool is created for councils in the form of single council subsidiaries. The current 'controlling authorities' provisions of Sections 200 are replaced with updated provisions for regional subsidiaries. These provisions incorporate current standards of accountability in public sector enterprise, paralleling the *Public Corporations Act 1993*. They are intended to provide councils with a simple flexible tool for organising those activities which they believe should be managed separately, while securing appropriate management of any risks involved and ultimate control by elected bodies.

As a matter of public policy a general prohibition against councils forming or participating in companies established under the *Corporations Law* is retained.

#### Chapter 5—Members of council

Chapter 5 contains the provisions relating to the roles and responsibilities of elected members of councils. Its aims are to clarify the roles of principal and other elected members in relation to policy development, resource allocation and performance management; and to revise provisions relating to professional conduct so that these reflect best practice in the public sector.

Other accountability measures in this chapter include clarification of the right of access of elected members to council documents and a requirement for each council to develop a code of conduct covering such matters as standards of behaviour, which will be available to the public.

Provisions have been retained for payment of an annual allowance within prescribed limits, and reimbursement of expenses to elected members. The constraints of prescribed limits will extend to Mayors and their deputies.

Registers of Interest of elected members are open to public access, and provisions are included to protect against the misuse of information. These provisions reflect those applied to Members of Parliament.

#### Chapter 6—Meetings

Arrangements for council meetings contained in Chapter 6 include the frequency and timing of meetings, notices of meetings, agendas, the number of elected members that constitute a quorum, circumstances where the public can be excluded from meetings, and meeting and recording procedures to be observed. The aim is to consolidate provisions relating to meetings.

Provisions about the right of members of the public to attend council meetings, and to have access to relevant meeting documents, have recently been strengthened by the *Local Government (Miscellaneous Provisions) Amendment Act 1996*. The right of access to decision making processes is a very important factor in maintaining public confidence in councils, but the limited basis upon which the public may be excluded from meetings is retained in the Bill.

#### Chapter 7—Council Staff

Chapter 7 sets out the duties, powers and responsibilities of council employees. Its aim is to clarify the responsibility of the chief executive officer for personnel management, require senior officers to be engaged under performance-based contracts, and make appropriate provisions relating to conflict of interest of employees.

The provisions in the Bill are more detailed than in the current Act with the aim of helping to distinguish between the different roles of elected members, and the chief executive officer and council staff.

The role of the chief executive officer includes exercising responsibility for appointment, dismissal and determining salary and conditions of all other council employees, in accordance with the human resource policies, budgets, organisational structures approved by council and any relevant awards and industrial agreements.

Consistent with practice elsewhere in the public sector new appointments of senior council officers are to be on fixed term, performance based contracts.

A new provision in the Bill requires councils to prepare or adopt a Code of Conduct to be observed by employees of the council, in similar terms to the Code of Conduct applying to elected members.

The register of interests completed by the Chief Executive Officer and other selected employees is to be available to elected members, who have ultimate responsibility for all council decisions.

#### Chapter 8—Administrative and Financial Accountability

Chapter 8 sets out a clearly defined accountability framework and management cycle for councils, to facilitate both short and long term planning. Its aim is to set out clearly defined expectations of council management and to enable access to information by the community about what a council does and how its resources are used.

The Consultation Draft Local Government Bill proposed that councils implement a system of corporate planning based on prescribed documents.

This Bill achieves that aim without the imposition on councils of unnecessarily detailed provisions.

The Bill now includes provision for long term (3 to 5 years) and short term (annual) planning and budgeting by councils in ways that are suitable to their individual circumstances; for internal controls and external audit; for an annual report with a minimum set of contents (set out in schedule 3) and for access to information by the community.

The chapter captures current best practice in Local Government and sets new minimum standards for management accountability, in line with community expectations.

#### Chapter 9—Finances

This Chapter contains provisions relating to how councils may raise and spend money, and how money can be invested. Its aim is to update councils' investment powers and to optimise the capacity for councils to exercise prudent financial management, by allowing use of new financial products under specified conditions.

Revised powers of investment for councils reflect the approach of the recently revised Trustee Act, adapted to the Local Government environment.

A provision excluding the State Government from liability for the debts or liabilities of councils implements a recommendation of the Parliamentary Select Committee inquiring into the Stirling Bushfires.

#### Chapter 10—Rates and Charges

This Chapter sets out the provisions under which councils impose rates and charges. Its aim is to provide a clear and consistent legal framework with flexibility to enable councils to work out a rating system that encourages business and sustainable development and, at the same time, is fair for all ratepayers.

The system of rating set up by the Bill provides for the use of a rate based on land value, a fixed charge, or a combination of the two as the basis of the council's general rates declaration. There is no limit on the amount of rate revenue able to be obtained from the fixed charge.

The current range of rates and charges on land which councils may impose is retained, including general rates, separate rates, service rates and service charges. Councils are enabled to impose a service rate or charge for the collection and management of waste.

Councils are required to make a range of information about rates and charges, including their rating policy and its impact on business, available to the public, and to include a summary of the information with annual rate notices.

These are radical moves intended to locate the responsibility for decisions about the distribution of the rate burden more clearly with those who understand their local areas best, councils themselves, and to require these decisions to be clearly explained and justified locally.

A new basis is set out for the rebate of rates for land used by eligible community services organisations. These provisions too aim to provide flexibility for councils to respond to the needs of their local communities, but at the same time seek to achieve a measure of consistency across all council areas, especially for those charitable organisations operating on land in more than one council area. Councils will also continue to have discretionary powers to grant rate rebates in certain circumstances, including where it is considered there would be a benefit to the community, or where the rebate secures proper development of the area, or is related to preserving sites or items of historic significance.

Power to determine prices for services and works supplied by the council for purchase may be delegated by the council in future. Decisions about fees and charges for copies of documents and for regulatory activities will remain decisions for the elected body and must be fixed by reference to the cost to the council.

By the year 2001-2002 all councils will be required to provide ratepayers with the option of quarterly instalments for the payment of rates.

#### Chapter 11—Land

Chapter 11 contains provisions to replace the oldest parts of the 1934 Act. These measures form an innovative, streamlined scheme for Local Government lands administration which recognises and acts upon the importance of public land to the whole community.

The manner in which such land is currently classified is full of ambiguities and anomalies. The present Act makes a distinction between 'park lands' and 'reserves' but leaves it unclear whether the meanings of the terms overlap. The Act does not specify how a council goes about declaring or dedicating land as park land, and the question of whether a park or other land used for community purposes can be developed or disposed of may be answered differently depending on an examination of the history of the land. The method of acquisition of ownership or control of an area of land usually determines its legal classification. For example, freehold land which the council has developed as a park may not necessarily be subject to any legal restrictions on its use or alienation.

The Bill introduces the concept of classifying certain land owned or under a council's care, control and management as 'community land' which is to be retained and managed for the benefit of the community.

Land classified as community land cannot be sold unless the classification is revoked, and must be managed in accordance with the provisions in Chapter 11. On the commencement of the new Act most Local Government land is classified as community land and the council, in consultation with the community, has 3 years to exclude from this classification land which is not appropriate for that purpose. Land acquired after the commencement of the Bill is classified as community land unless the council specifically resolves otherwise prior to taking possession or control of it. The Bill enables a council to subsequently revoke the classification (with exceptions) subject to public consultation in accordance with the council's consultation policy and Ministerial approval.

The intention is to create a system which protects the interests of the community in the land, for which councils are the custodians, for current and future generations and builds community consensus about the future management and use of such land.

Particular attention has been paid to the special status of the Adelaide park lands and other lands protected by statute, to ensure their protection as community land in perpetuity.

A non-legislative program is planned, through the Local Government Association, to help smaller councils to bring the new

scheme for community land into operation without excessive expenditure of resources.

This Chapter also comprehensively revises provisions relating to the management of roads under the control of councils to ensure that activities on roads are adequately controlled without unnecessary restrictions.

#### Chapter 12—Regulatory Functions

This Chapter is part of a complete overhaul of councils' own regulatory powers (powers to make by-laws and powers to make orders) which is designed—

- to ensure that regulation made by Local Government complies with the principles and features of good regulation now shared by Governments at the national, State and local level, including the avoidance of unnecessary restriction of competition
- to clarify the regulatory responsibilities of councils, particularly in areas in which other government bodies also have a regulatory role.

Chapter 12 provides councils with by-law making processes which apply to the making of by-laws under Chapter 11 in relation to Local Government land, and to the exercise of other more specific by-law making powers for other regulatory functions found in the Acts which cover those fields.

The current principles for by-law making are divided into principles and rules. Inconsistency with a principle will not form the basis for challenging a by-law in the courts, whereas a breach of a rule will. By-laws, like other subordinate legislation, are subject to being disallowed by the Legislative Review Committee of Parliament.

Rather than providing councils with extensive powers to make by-laws regulating activity on private land not covered by other State Acts, which might have the potential to encourage over-regulation of local activities or local restrictions of private rights which are not consistent with established public policy, councils are provided with the power to make specified orders which can target and resolve particular cases of local nuisance when they arise.

Procedures for developing policies for the making of orders, and providing rights of review, are included. A right of appeal against an order is also provided.

#### Chapter 13—Review Of Local Government Acts, Decisions and Operations

Chapter 13 establishes new methods for the review of the conduct of elected members and brings together provisions affecting review of actions, decisions and operations of councils, including a requirement for councils to put in place internal grievance procedures. There is no intention that the latter provision should impede in any way the right of citizens to approach other sources of remedy for illegal actions on the part of councils, whether the Ombudsman, under the Ombudsman Act, or the courts under their various jurisdictions, or the Minister responsible to Parliament for the administration of the Local Government Act. Nonetheless it is the intention of this legislation that councils should make every effort to deal with problems locally, including those arising from their own decisions and operations.

Provisions are included for disciplining members in certain circumstances, in the District Court's Civil Administrative and Disciplinary Division. In particular, those conflict of interest matters which do not fall within the public offences defined as criminal matters under the Criminal Law Consolidation Act are intended to be addressed in this way. At law the burden of proof to be applied in such disciplinary jurisdictions must be related to the seriousness of the offence and the penalty to be imposed, and the general law has therefore been left to take care of this matter. It is not the Government's intention to allow council members to be exposed to unnecessary criticism or unwarranted punishment and the power of the Court to dismiss frivolous, vexatious, or trivial complaints is made very clear. However the Court's power to apply penalties ranging from reprimands and required training to fines and disqualification will provide a wider range of remedies appropriate for breaches of different levels of seriousness and lead to an improved understanding of the standard of conduct required.

Following the expression of significant unease during the consultations about the scope of redrafted powers of Ministerial investigation into councils for alleged irregular or illegal activity under the Act, these provisions have been restored to their present formulation with the reasonable addition of a power for the Minister, on the basis of a report following an investigation, to direct that a council rectify an illegal or irregular matter. At present the Minister may only give directions to a council designed to prevent the recurrence of such a failure or irregularity.

## Chapter 14—Miscellaneous

Chapter 14, the final chapter of the Local Government Bill, contains formal provisions that are necessary for the administration of councils but do not fit readily into other sections of the Bill. They largely mirror and update provisions of the current *Local Government Act 1934*.

The Government is aware of local government's desire to obtain statutory easements over existing septic tank effluent drainage scheme infrastructure and stormwater drains which are owned and managed by councils and located in private property. This Bill takes up an option from the Local Government Lands Legislation Review Report of 1996 which, commenting that providing statutory easements for stormwater drains was not a viable option, suggested that the 'powers of entry' provisions of the Act could be expanded. Clause 297 amends the powers of a council to enter private land as necessary for carrying out a function or responsibility of the council by incorporating the power to carry out work on infrastructure, equipment, connections, structures, works and other facilities located on or in the land. The Government recognises the difficulties faced by local government in this area and is committed to continuing work on the problems associated with this issue.

A general provision in relation to the making of regulations requires the Minister of the day to consult with the Local Government Association as far as is reasonably practicable, before a regulation is made under the Act.

Explanation of Clauses  
CHAPTER 1  
PRELIMINARY

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

The measure will be brought into operation by proclamation.

*Clause 3: Objects*

This clause sets out the objects of the legislation.

*Clause 4: Interpretation*

This clause sets out the definitions required for the purposes of the measure.

*Clause 5: Business purposes*

This clause makes it clear for the purposes of the Act that land maybe used for a business purpose even if it is not intended to make a profit.

CHAPTER 2  
THE SYSTEM OF LOCAL GOVERNMENT

*Clause 6: Principal role of a council*

A council is established under the system of local government under this measure to provide for the government and management of its area at the local level.

*Clause 7: Functions of a council*

This clause sets out the primary functions of a council.

*Clause 8: Objectives of a council*

A council must fulfil various objectives in the performance of its roles and functions under the Act.

## CHAPTER 3

CONSTITUTION OF COUNCILS  
PART 1 CREATION, STRUCTURING AND  
RESTRUCTURING OF COUNCILS  
DIVISION 1—POWERS OF THE GOVERNOR

*Clause 9: Governor may act by proclamation*

This clause sets out various matters relating to the creation, constitution and structure of councils in respect of which proclamations can be made under the Act.

*Clause 10: Matters that may be included in a proclamation*

This clause sets out various associated matters in respect of which proclamations can be made.

*Clause 11: General provisions relating to proclamations*

The Governor will not be able to make a proclamation under a preceding clause except in pursuance of an address from both Houses of Parliament, or in pursuance of a proposal recommended by the Panel, or in pursuance of a proposal recommended by the Minister.

DIVISION 2—POWERS OF COUNCILS AND  
REPRESENTATION REVIEWS

*Clause 12: Composition and wards*

A council will be able to take steps to alter its composition or ward structure. This provision is based on the review scheme presently applying to councils.

*Clause 13: Status of a council or change of various names*

A council will be able to alter its status as a municipal or district council, its name, or the name of its area or ward or wards, after taking steps set out in this provision.

## PART 2

THE BOUNDARY ADJUSTMENT FACILITATION PANEL  
AND REFORM PROPOSALS  
DIVISION 1—THE BOUNDARY ADJUSTMENT  
FACILITATION PANEL

*Clause 14: The Panel*

The *Boundary Adjustment Facilitation Panel* continues in existence.

*Clause 15: Composition of Panel*

The Panel will be constituted by two members nominated by the Minister and two persons selected from a panel nominated by the LGA.

*Clause 16: Conditions of membership*

A member of the Panel is appointed on terms and conditions determined by the Governor. A member will not be able to act in a matter involving a council connected with the member.

*Clause 17: Fees and expenses*

A member of the Panel is entitled to receive fees and expenses determined by the Governor.

*Clause 18: Protection of information, etc.*

A member or former member of the Panel cannot use the position to gain a personal advantage or to cause detriment to the Panel.

*Clause 19: Validity of acts and immunity*

An act or proceedings of the Panel is not invalid by reason only of a defect in appointment or a vacancy in office.

*Clause 20: Proceedings*

This clause sets out the procedures to be followed by the Panel. Meetings will be open to the public unless the Panel is dealing with a matter that, in the opinion of the Panel, should be dealt with on a confidential basis.

*Clause 21: Staffing arrangements*

The Minister will determine the staffing arrangements of the Panel after consultation with the presiding member.

## DIVISION 2—FUNCTIONS AND POWERS OF PANEL

*Clause 22: Functions of Panel*

This clause describes the functions of the Panel under this Chapter.

*Clause 23: Powers of Panel*

The Panel will be able to hold inquiries, receive evidence and submissions, and require a person's attendance. The Panel should seek to deal with a matter as expeditiously as possible.

*Clause 24: Committees*

The Panel will be able to establish committees after consultation with the Minister and the LGA.

*Clause 25: Delegation*

The Panel will be able to delegate its functions and powers. A delegation does not prevent the Panel from acting in a matter.

## DIVISION 3—PRINCIPLES

*Clause 26: Principles*

This clause sets out various matters and principles that the Panel must take into account when formulating its recommendations under this Chapter.

## DIVISION 4—COUNCIL INITIATED PROPOSALS

*Clause 27: Council initiated proposals*

Councils will be able to continue to submit proposals to the Panel for the making of proclamations under this Chapter.

## DIVISION 5—PUBLIC INITIATED SUBMISSIONS

*Clause 28: Public initiated submissions*

This clause sets out a scheme for the formulation of proposals based on submissions made by eligible electors.

## DIVISION 6—REPORTS TO THE MINISTER;

## SUBMISSIONS OF PROPOSALS TO THE GOVERNOR

*Clause 29: Reference of proposals to Minister and Governor*

This clause continues the scheme for the submission of proposals to the Governor for the making of proclamations under this Chapter, following consideration by the Panel and the Minister.

## DIVISION 7—RELATED MATTERS

*Clause 30: Report if proposal rejected*

The Minister will be required to report to Parliament if a proposal of the Panel does not proceed to proclamation after the completion of all relevant procedures under this Act.

*Clause 31: Report if proposal submitted to poll*

The Minister will be required to report to Parliament if a proposal is submitted to a poll under this Chapter.

*Clause 32: Provision of reports to councils*

The Panel must provide a copy of any report to each council affected by a proposal to which the report relates.

## PART 3

## GENERAL PROVISIONS

*Clause 33: Ward quotas*



This clause sets out additional matters that must be specifically considered when considering a proposal that relates to the boundaries of a ward or wards.

*Clause 34: Error or deficiency in an address, recommendation, notice or proclamation*

This clause allows the Governor to address or correct certain matters, as is the case under section 29 of the current Act.

#### CHAPTER 4

### THE COUNCIL AS A BODY CORPORATE

#### PART 1

#### FUNDAMENTAL FEATURES

##### DIVISION 1—COUNCIL TO BE A BODY CORPORATE

###### *Clause 35: Corporate status*

A council is a body corporate with perpetual succession and a common seal. A council consists of the members appointed or elected under this Act or the *Local Government (Elections) Act 1999*.

###### *Clause 36: General powers and capacities*

A council has the legal capacity of a natural person, and the powers and capacities conferred by this or another Act.

###### *Clause 37: Provision relating to contracts and transactions*

A council may enter into a contract under this common seal, or an officer, employee or agent may enter into a contract on behalf of a council if authorised by the council to do so.

###### *Clause 38: The common seal*

The common seal of a council must not be affixed to a document except to give effect to a resolution of the council.

###### *Clause 39: Protection of members*

No civil liability attaches to the member of a council when so acting. Any liability attaches instead to the council.

###### *Clause 40: Saving provision*

An act or proceeding of a council is not invalid because of a vacancy in the membership of the council, a defect in the election or appointment of a member, or the fact that the election of a member is subsequently declared void.

##### DIVISION 2—COMMITTEES

###### *Clause 41: Committees*

A council may constitute committees for various purposes. A committee may (at the determination of the council) consist of or include persons who are not members of the council.

##### DIVISION 3—SUBSIDIARIES

###### *Clause 42: Ability of council to establish a subsidiary*

A council may establish subsidiaries for various specified purposes. The establishment of a subsidiary under this provision is subject to obtaining the approval of the Minister to the incorporation of the subsidiary. Schedule 2 also contains provisions relating to council subsidiaries.

*Clause 43: Ability of councils to establish a regional subsidiary*  
Two or more councils may establish regional subsidiaries for specified purposes. The establishment of a subsidiary under this provision is subject to obtaining the approval of the Minister to the incorporation of the subsidiary. Schedule 2 also contains provisions relating to council subsidiaries.

##### DIVISION 4—DELEGATIONS

###### *Clause 44: Delegations*

A council may delegate a power or function under this or another Act. However, various matters cannot be delegated (*see* subclause (2)). A power or function delegated to the chief executive officer may be further delegated unless the council directs otherwise, and a power or function delegated to anyone else may be further delegated with the approval of the council. Delegations are to be reviewed on an annual basis.

##### DIVISION 5—PRINCIPAL OFFICE

###### *Clause 45: Principal office*

A council must maintain a principal office for the purposes of the Act.

#### PART 2

### COMMERCIAL ACTIVITIES AND RESTRICTIONS

###### *Clause 46: Commercial activities*

A council is able to engage in a commercial activity or enterprise (subject to the operation of various provisions—*see* especially clauses 47 and 48).

###### *Clause 47: Interests in companies*

A council must not participate in the formation of a company or acquire shares in a company, other than for authorised investment purposes under the Act or in order to participate in the activities of a company limited by guarantee established as a national association to promote and advance the interests of an industry in which local government has an interest.

#### PART 3

### PRUDENTIAL REQUIREMENTS FOR CERTAIN ACTIVITIES

###### *Clause 48: Prudential requirements for certain activities*

A council will be required to obtain advice on various prudential issues before it enters into various projects specified by or under this clause.

#### PART 4

### CONTRACTS AND TENDERS POLICIES

###### *Clause 49: Contracts and tenders policies*

Each council will be required to prepare and adopt policies on contracts and tenders. The policies must address the contracting out of services, the use of competitive tendering, the use of local goods and services, and the sale and disposal of land or other assets. The policies will address the circumstances where various steps will occur, such as the calling for tenders.

#### PART 5

### PUBLIC CONSULTATION POLICIES

###### *Clause 50: Public consultation policies*

Each council will be required to prepare and adopt a public consultation policy. The policy must set out the steps that the council will take when required to following the policy under this Act, and may address other circumstances where public consultation will occur.

#### CHAPTER 5

### MEMBERS OF COUNCIL

#### PART 1

#### MEMBERSHIP

###### *Clause 51: Principal member of council*

A council will be constituted of a mayor appointed or elected as a representative of the area as a whole, or a person (called a 'chairperson' in this measure) chosen by the members of the council from amongst their own number. A council may decide to use a title other than 'chairperson'. The mayor or chairperson is the principal member of the council. A council may also resolve to have a deputy mayor or a deputy chairperson, chosen by the members of the council from amongst their own number.

###### *Clause 52: Councillors*

The members of a council, other than the principal member, will be known as councillors. Councillors will be representatives of the area as a whole, or of wards, depending on how the council is constituted.

#### PART 2

### TERM OF OFFICE AND RELATED ISSUES

##### DIVISION 1—GENERAL ISSUES

###### *Clause 53: Term of office*

The term of office of a member of a council is a term expiring at the end of the next general election after his or her appointment or election as a member of the council.

###### *Clause 54: Casual vacancies*

This clause sets out the various circumstances under which the office of a member of a council will become vacant. A member's office does not become vacant by reason only of the fact that, after election or appointment, he or she ceases to be an elector for the area.

###### *Clause 55: Specific requirements if member disqualified*

A member must immediately notify a council if he or she becomes aware of the existence of circumstances disqualifying the member to hold office, and must not act in the office after becoming aware of the disqualification.

##### DIVISION 2—SPECIAL PROVISIONS IF MAJORITY OF MEMBERS RESIGN ON SPECIFIED GROUNDS

###### *Clause 56: General election to be held in special case*

A general election for a council will be held if the membership of a council falls below a prescribed number (*see* subclause (3)) on account of resignations made on the express ground that the resigning members consider that relations within the membership of the council are such that the council can no longer continue to conduct its affairs in an appropriate manner.

*Clause 57: Restriction on activities during the relevant period*  
Various restrictions will apply to a council pending an election under clause 56.

#### PART 3

### ROLE OF MEMBERS

###### *Clause 58: Specific roles of principal member*

This clause describes the role of the principal member of a council. The principal member of a council is, *ex officio*, a Justice of the Peace (unless removed from that office by the Governor).

###### *Clause 59: Roles of members of councils*

This clause described the role of members of a council generally. A member of a council has no direct authority over an employee of the

council with respect to the way in which the employee performs his or her duties.

*Clause 60: Declaration to be made by members of councils*  
A member of a council must make an undertaking in the prescribed form at or before the first meeting of the council attended by the member.

*Clause 61: Access to information by members of councils*  
This clause makes specific provision relating to a member's access to relevant council documentation. The chief executive officer or other officer providing access may indicate to the member that information contained in the relevant document should be considered as confidential.

#### PART 4

### CONDUCT AND DISCLOSURE OF INTERESTS

#### DIVISION 1—GENERAL DUTIES AND CODE OF CONDUCT

*Clause 62: General duties*  
A member will have a specific duty to act honestly in the performance and discharge of official functions and duties and to act with reasonable care and diligence.

*Clause 63: Code of conduct*  
A council will be required to have a code of conduct for members. The code will be reviewed within 12 months after each general election of the council.

#### DIVISION 2—REGISTER OF INTERESTS

*Clause 64: Interpretation*  
*Clause 65: Lodging of primary returns*  
*Clause 66: Lodging of ordinary returns*  
*Clause 67: Form and content of returns*  
*Clause 68: Register of Interests*  
*Clause 69: Provision of false information*  
*Clause 70: Inspection of Register*  
*Clause 71: Restrictions on publication*  
*Clause 72: Application of Division to members of committees and subsidiaries*

There will continue to be a Register of Interests for council members. The register will be up-dated on an annual basis by members lodging returns. A person will be able to inspect the register at the principal office of the council. It will be an offence to publish information derived from the register unless it constitutes a fair and accurate summary of the information and is published in the public interest, and an offence to comment on facts in the register unless it is fair and published in the public interest and without notice. A council may resolve to extend the scheme to committees and subsidiaries.

#### DIVISION 3—CONFLICT OF INTEREST

*Clause 73: Conflict of interest*  
*Clause 74: Members to disclose interests*  
*Clause 75: Application of Division to members of committees and subsidiaries*

These clauses continue the scheme relating to the requirement for members to disclose any interest in a matter before the council. A member must make a full and accurate disclosure. A member must not participate in any process relating to a matter in which the member has an interest and must withdraw from the room. Some qualifications will apply in appropriate circumstances. A member will be able, with the permission of the council, to attend an open meeting of the council in order to ask and answer questions (but must then withdraw from the room). These provisions will extend to council committees and subsidiaries. These provisions will principally be enforced under Part 1 Chapter 13.

#### PART 5

### ALLOWANCES AND BENEFITS

*Clause 76: Allowances*  
A member of a council will be entitled to receive an annual allowance from the council for performing and discharging official functions and duties. The allowance will be set by the council within minimum and maximum amounts prescribed by the regulations, and according to any prescribed formula.

*Clause 77: Reimbursement of expenses*  
A member of a council will also be entitled to reimbursement of various expenses of a prescribed kind (although certain expenses will be reimbursed on the approval of the council, with the approval either occurring specifically or under a policy of the council).

*Clause 78: Provision of facilities and support*  
A council may also provide facilities and other forms of support to its members.

*Clause 79: Register of allowances and benefits*  
There will be a Register of Allowances and Benefits kept by the chief executive officer.

#### *Clause 80: Insurance of members*

A council must hold a policy of insurance insuring the member, and any accompanying person, against risks associated with the performance or discharge of official functions and duties.

### CHAPTER 6

#### MEETINGS

##### PART 1

#### COUNCIL MEETINGS

*Clause 81: Frequency and timing of ordinary meetings*  
Ordinary meetings of a council will be held at times and places appointed by resolution of the council. A resolution that is not supported unanimously should be reviewed at least once in every six months by the council. Ordinary meetings may not be held on Sundays or public holidays.

*Clause 82: Calling of special meetings*  
Special meetings of a council must be called at the request of the principal member, at least three members of the council, or a council committee supported by at least three committee members who are also council members. Special meetings may be held at any time.

*Clause 83: Notice of ordinary or special meetings*  
At least three clear days notice must be given for an ordinary meeting, and at least four hours notice of a special meeting. Notice may be served personally, by delivery to specified places, by leaving the notice at the principal office of the council if authorised by the member, or by any other means authorised in writing by the member.

*Clause 84: Public notice of council meetings*  
Notice of a council meeting is also to be given to the public in accordance with the requirements of this clause. The chief executive officer must ensure that a reasonable number of copies of any document or report supplied to members of the council for consideration at a meeting are also available for public inspection (unless the document or report relates to a matter that is, or may be, confidential under the Act).

*Clause 85: Quorum*  
Half the number of members (ignoring any fraction resulting from the division), plus one, constitutes a quorum of the council. Provision is made for circumstances where a quorum is lost because of the operation of Division 3 Part 4 Chapter 5.

*Clause 86: Procedure at meetings*  
This clause sets out other procedural matters for council meetings.

##### PART 2

#### COMMITTEE MEETINGS

*Clause 87: Calling and timing of committee meetings*  
*Clause 88: Public notice of committee meetings*  
*Clause 89: Proceedings of council committees*  
These clauses relate to procedures for meetings of council committees. A council or committee must, in appointing the time for holding a meeting of a committee, take into account the availability and convenience of members, and the nature and purpose of the committee. Committee procedures will be determined by regulation or, if necessary, the council or, if necessary, the committee.

##### PART 3

#### PUBLIC ACCESS TO COUNCIL AND COMMITTEE MEETINGS

*Clause 90: Meetings to be held in public except in special circumstances*

A meeting of a council or council committee must, subject to this clause, be open to the public. The public can be excluded from a meeting in certain specified circumstances. The scheme is based on section 62 of the current Act. A new provision is included to make it clear that certain informal gatherings or discussions may be held in appropriate cases.

##### PART 4

#### MINUTES OF COUNCIL AND COMMITTEE MEETINGS AND RELEASE OF DOCUMENTS

*Clause 91: Minutes and release of documents*  
Minutes must be kept of the proceedings of council and council committees. The minutes, and various other documents, will be open for public inspection, subject to specified exception involving confidential documents (or parts of documents).

##### PART 5

#### CODE OF PRACTICE

*Clause 92: Access to meetings and documents—code of practice*  
A council must prepare and adopt a code of practice relating to access to meetings and documents. The code must be reviewed on an annual basis.

##### PART 6

#### MEETINGS OF ELECTORS

*Clause 93: Meetings of electors*

A council may convene a meeting of electors under this provision. The person presiding at the meeting must transmit any resolution passed at the meeting to the council.

#### PART 7

##### RELATED MATTER

###### *Clause 94: Obstructing meetings*

It will be an offence to intentionally hinder or obstruct a meeting of a council, council committee or electors.

#### CHAPTER 7

##### COUNCIL STAFF

#### PART 1

##### CHIEF EXECUTIVE OFFICER

###### *Clause 95: Council to have a chief executive officer*

Each council must have a chief executive officer.

###### *Clause 96: Terms and conditions of appointment*

A chief executive officer will be employed under a contract for a term not exceeding five years. The contract must comply with certain requirements.

###### *Clause 97: Vacancy in office*

A contract may be terminated on various grounds specified under this clause or in the contract.

###### *Clause 98: Appointment procedures*

A council must establish a panel to assist in making an appointment. The council makes the final appointment.

###### *Clause 99: Role of chief executive officer*

This clause sets out the various specific functions of a chief executive officer. The chief executive officer must consult with the council when determining, or changing to a significant degree, the organisation structure for the staff, the human resource management policies or practices for senior executive officers, the processes and conditions surrounding the appointment of senior executive officers, or the appraisal scheme for chief executive officers.

###### *Clause 100: Council may have a deputy chief executive officer*

The chief executive officer will, in determining the organisation structure for the council, in consultation with the council, determine whether to have a deputy. A deputy is appointed by the chief executive officer acting with the concurrence of the council.

###### *Clause 101: Delegation by chief executive officer*

This clause sets out the powers of delegation of a chief executive officer.

###### *Clause 102: Person to act in absence of chief executive officer*

This clause sets out a scheme for determining who will act in the absence of the chief executive officer.

#### PART 2

##### APPOINTMENT OF OTHER STAFF

###### *Clause 103: Appointment, etc., by chief executive officer*

The chief executive officer is responsible for appointing, managing, suspending and dismissing the staff of the council.

###### *Clause 104: Contract for senior executive officers*

Senior executive officers will be employed on contracts for terms not exceeding five years.

###### *Clause 105: Remuneration, etc., of other employees*

Remuneration and conditions of service of staff will be determined by the chief executive officer, subject to any relevant Act or industrial instrument.

###### *Clause 106: Register of remuneration, salaries and benefits*

The chief executive officer will keep a Register of Salaries containing certain information about employees.

###### *Clause 107: Certain periods of service to be regarded continuous*

Certain periods of service will be regarded as continuous if an employee transfers from one council to another council within 13 weeks of leaving the first council. 'Council' is defined to include a council subsidiary, or an authority or body prescribed by the regulations.

#### PART 3

##### HUMAN RESOURCE MANAGEMENT PRINCIPLES

###### *Clause 108: General principles of human resource management*

The chief executive officer must ensure that sound principles of human resource management are applied to employment with the council.

#### PART 4

##### CONDUCT OF EMPLOYEES

##### DIVISION 1—GENERAL DUTY AND CODE OF CONDUCT

###### *Clause 109: Interpretation*

###### *Clause 110: General duty*

###### *Clause 111: Code of conduct*

An employee (including a person working on a temporary basis) must act honestly in the performance of official duties and act with reasonable care and diligence. A council will prepare a code of

conduct for employees. A council must consult with relevant industrial associations when preparing or revising the code.

##### DIVISION 2—REGISTER OF INTERESTS

###### *Clause 112: Application of Division*

###### *Clause 113: Interpretation*

###### *Clause 114: Lodging of primary returns*

###### *Clause 115: Lodging of ordinary returns*

###### *Clause 116: Form and content of returns*

###### *Clause 117: Register of Interests*

###### *Clause 118: Provision of false information*

###### *Clause 119: Inspection of Register*

###### *Clause 120: Restrictions on disclosure*

There will be a Register of Interests for the chief executive officer and other officers of a council determined by the Council. Access to the register will be restricted to members. Information on the register must not be disclosed unless the disclosure is necessary for the purposes of the preparation or use of the register by the chief executive officer, or is made at a meeting of the council, a committee or a subsidiary.

##### DIVISION 3—CONFLICT OF INTEREST

###### *Clause 121: Conflict of interest*

A chief executive officer must disclose an interest in a matter to the council. Other employees must disclose any interest to the chief executive officer.

##### DIVISION 4—PROTECTION FROM PERSONAL LIABILITY

###### *Clause 122: Protection from personal liability*

An employee does not incur a personal liability in acting under an Act. The liability lies instead against the council.

#### CHAPTER 8

##### ADMINISTRATIVE AND FINANCIAL ACCOUNTABILITY

#### PART 1

##### STRATEGIC MANAGEMENT PLANS

###### *Clause 123: Strategic management plans*

A council must develop and adopt strategic management plans in accordance with the requirements of this clause. The plans must be reviewed at least once in every three years.

#### PART 2

##### BUDGETS

###### *Clause 124: Budgets*

A council must have a budget that complies with the requirements of this clause, and with standards and principles prescribed by the regulations.

#### PART 3

##### ACCOUNTS, FINANCIAL STATEMENTS AND AUDIT

##### DIVISION 1—ACCOUNTS

###### *Clause 125: Accounting records to be kept*

A council must keep proper accounting records.

##### DIVISION 2—INTERNAL CONTROL AND AUDIT

##### COMMITTEE

###### *Clause 126: Internal control policies*

A council must maintain internal control policies to ensure that activities are carried out in an efficient and orderly manner, to ensure adherence to management policies, to safeguard council assets, and to secure the reliability of council records.

###### *Clause 127: Audit committee*

A council may have an audit committee.

##### DIVISION 3—FINANCIAL STATEMENTS

###### *Clause 128: Financial statements*

A council must prepare various statements for each financial year.

##### DIVISION 4—AUDIT

###### *Clause 129: The auditor*

A council must have an auditor appointed by the council under this clause.

###### *Clause 130: Conduct of annual audit*

An annual audit will be undertaken. The auditor must specify in a report any irregularity in accounting practices or the management of the council's financial affairs identified by the auditor during the course of an audit.

###### *Clause 131: CEO to assist auditor*

The chief executive officer must assist the auditor.

#### PART 4

##### ANNUAL REPORTS

###### *Clause 132: Annual report to be prepared and adopted*

A council must have an annual report. A copy of an annual report must be provided to the Presiding Members of both Houses of Parliament.

#### PART 5

##### ACCESS TO DOCUMENTS

###### *Clause 133: Access to documents*



This clause deals specifically with access to council documents, as specified in schedule 4.

## CHAPTER 9 FINANCES

### PART 1

#### SOURCES OF FUNDS

##### *Clause 134: Sources of funds*

A council may obtain funds from various sources according to what may be appropriate in order to carry out its functions.

### PART 2

#### FINANCIAL ARRANGEMENTS

##### *Clause 135: Borrowing and related financial arrangements*

A council may borrow and obtain other forms of financial accommodation. A council will require independent advice before it enters into certain financial arrangements.

##### *Clause 136: Ability of a council to give security*

A council may give various forms of security in accordance with this clause.

##### *Clause 137: State Government not liable for debts of a council*

The Crown is not liable for the debts or liabilities of a council. However, this provision does not affect a liability or claim that may arise by operation of the law.

### PART 3

#### EXPENDITURE OF FUNDS

##### *Clause 138: Expenditure of funds*

A council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties.

##### *Clause 139: Council not obliged to expend rate revenue in a particular financial year*

Revenue raised from rates in one financial year need not be expended in that year.

### PART 4

#### INVESTMENT

##### *Clause 140: Investment powers*

A council must exercise prudent care, diligence and skill in making its investments and avoid investments that are speculative or hazardous in nature.

##### *Clause 141: Review of investments*

A council must review the performance of its investments at least annually.

### PART 5

#### MISCELLANEOUS

##### *Clause 142: Gifts to a council*

A council may receive gifts and, if a gift is affected by a trust, a council is empowered to carry out the terms of the trust.

##### *Clause 143: Duty to insure against liability*

A council must maintain insurance to cover civil liabilities to the extent prescribed by regulations made after consultation with the GA.

##### *Clause 144: Writing off bad debts*

A council may write off bad debts in appropriate cases.

##### *Clause 145: Recovery of amounts due to council*

A council may recover fees, charges, expenses and other amounts due in a court of competent jurisdiction. A fee, charge, expense or other amount payable on account of something done in respect of property may, in certain circumstances, be recoverable as a rate.

##### *Clause 146: Payment of fees, etc., to council*

All fines, penalties and forfeitures recovered in proceedings commenced by a council before a court for an offence committed within an area must be paid to the council for the area.

## CHAPTER 10

### RATES AND CHARGES

#### PART 1

#### RATES AND CHARGES ON LAND

##### DIVISION 1—PRELIMINARY

*Clause 147: Rates and charges that a council may impose*  
A council may impose various rates and charges.

##### *Clause 148: Rateability of land*

Land within an area is rateable, unless otherwise exempted. Subclause (2) provides various exemptions. Subclause (3) to (7) relate to strata and community units, lots and other land.

##### *Clause 149: Land against which rates may be assessed*

Rates may be assessed against any piece or section of land subject to separate ownership or occupation, and any aggregation of contiguous land subject to the same ownership or occupation. However, decisions about the division or aggregation of land must be made fairly and in accordance with principles and practices that apply on a uniform basis across the area of the council.

##### *Clause 150: Contiguous land*

This clause defines contiguous land for the purposes of this Part of the measure.

#### DIVISION 2—BASIS OF RATING

##### *Clause 151: General principles*

Councils must take into account the fact that rates constitutes a system of taxation for local government purposes.

##### *Clause 152: Basis of rating*

A rate may be based on various factors in accordance with the provisions of the Act.

#### DIVISION 3—SPECIFIC CHARACTERISTICS OF RATES AND CHARGES

##### *Clause 153: General rates*

Subject to this clause, a general rate may be based on the value of land, a fixed charge, or a combination of both.

##### *Clause 154: Declaration of general rate (including differential general rates)*

A council may declare differential general rates (unless the council has based its general rates on a fixed charge).

##### *Clause 155: Separate rates*

A council may declare a separate rate on rateable land within a part of its area for the purpose of an activity that is or is intended to be, of particular benefit to the land, or the occupiers of land, within the relevant part of the area, or to visitors to that part. A separate rate may be based on the value of land or, under or with the approval of the Minister, according to some other proportional method or an estimate of benefit. A separate rate may be declared for a period exceeding one year. A council may declare differential separate rates.

##### *Clause 156: Service rates and service charges*

A council may impose a service rate, an annual service charge, or a combination of both, for the provision of a specified or prescribed service.

#### DIVISION 4—DIFFERENTIAL RATING AND SPECIAL ADJUSTMENTS

##### *Clause 157: Basis of differential rates*

This clause set out the basis for differential rating by a council.

##### *Clause 158: Notice of differentiating factors*

A rates notice must specify any differentiating factor or combination of factors.

##### *Clause 159: Minimum rates and special adjustments for specified values*

Subject to this clause, a council may impose a minimum rate or adjust rates within a range of values determined by the council. However, these arrangements must not be applied to more than 35 per cent of assessments in a council area, or if rates have been based on a fixed charge or have included a fixed charge component.

#### DIVISION 5—REBATES OF RATES

##### *Clause 160: Preliminary*

##### *Clause 161: Rebate of rates—health services*

##### *Clause 162: Rebate of rates—community services*

##### *Clause 163: Rebate of rates—religious purposes*

##### *Clause 164: Rebate of rates—public cemeteries*

##### *Clause 165: Rebate of rates—Royal Zoological Society of SA*

##### *Clause 166: Rebate of rates—educational purposes*

##### *Clause 167: Discretionary rebates of rates*

These clauses set out a scheme for the rebating of council rates in specified circumstances.

#### DIVISION 6—VALUATION OF LAND FOR THE PURPOSE OF RATING

##### *Clause 168: Valuation of land for the purposes of rating*

A council must, before declaring a rate, adopt valuations that are to apply to land within its area for a particular financial year. The valuations may have been made by the Valuer-General for a valuer employed or engaged by the council.

##### *Clause 169: Valuation of land*

This clause sets out procedures associated with the valuation of land for the purposes of the Act.

##### *Clause 170: Objections to valuations made by council*

A person who is dissatisfied with a valuation may object to the valuation or appeal against the valuation to the Land and Valuation Court.

#### DIVISION 7—ISSUES ASSOCIATED WITH THE DECLARATION OF RATES

##### *Clause 171: Notice of declaration of rates*

Notice of the declaration of a rate or a service charge must be

published in the *Gazette* and in a newspaper circulating in the area within 21 days after declaration.

*Clause 172: Publication of rating policy*

A council must, in conjunction with the declaration of rates, prepare and adopt a rating policy in accordance with the requirements of this clause.

#### DIVISION 8—THE ASSESSMENT RECORD

*Clause 173: Chief executive officer to keep assessment record*

This clause sets out the requirements relating to the assessment record to be kept by the chief executive officer.

*Clause 174: Alterations to assessment record*

Application may be made to the chief executive officer for an alteration of the assessment record on grounds set out in this clause. A person may apply to the council if dissatisfied with a decision on an application. A person may apply to the District Court if dissatisfied with a decision of the council.

*Clause 175: Inspection of assessment record*

A person is entitled to inspect the assessment record at the principal office of the council during ordinary office hours.

*Clause 176: Duty of Registrar-General to supply information*

The Registrar-General must notify a council if an estate in fee simple or an estate of freehold in Crown land is granted to a person, or if a Crown lease is granted or transferred.

#### DIVISION 9—IMPOSITION AND RECOVERY OF RATES AND CHARGES

*Clause 177: Preliminary*

The term 'rates' is to include service charges for recovery purposes.

*Clause 178: Rates are charges against land*

Rates are charges on land.

*Clause 179: Liability for rates*

The concept of 'principal ratepayer' is retained. Rates may be recovered as a debt.

*Clause 180: Liability for rates if land is not rateable for the whole of the financial year*

There will be a proportional reduction in rates if land is not rateable for the whole year.

*Clause 181: Service of rate notice*

A council must send a rates notice to the principal ratepayer or, if relevant, the owner or occupier of land, as soon as practicable after the imposition of a rate or service charge, or a change in rates liability.

*Clause 182: Payment of rates*

This clause sets out the scheme for the payment of rates. A council must, from the beginning of the 2000/2001 financial year, offer its ratepayers the opportunity to pay rates in four equal (or approximately equal) instalments.

*Clause 183: Remission and postponement of payment*

A council may grant a postponement of payment of rates, or a remission of rates.

*Clause 184: Application of money in respect of rates*

Rates must be applied in accordance with this clause.

*Clause 185: Sale of land for non-payment of rates*

A council may take steps to sell land under this clause if rates are in arrears for three years or more.

*Clause 186: Procedure where council cannot sell land*

If land cannot be sold, the council may apply to the Minister for an order forfeiting the land to the Crown or the council (as appropriate).

#### DIVISION 10—MISCELLANEOUS

*Clause 187: Recovery of rates not affected by an objection, review or appeal*

The right to recover rates is not suspended by an objection, review or appeal.

*Clause 188: Certificate of liabilities*

A council may issue a certificate relating to rates or charges imposed against land to a person with an appropriate interest in the land (see subclause (2)).

#### PART 2 FEES AND CHARGES

*Clause 189: Fees and charges*

A council may impose various fees and charges under this clause.

#### CHAPTER 11

#### LAND

#### PART 1

#### LOCAL GOVERNMENT LAND

#### DIVISION 1—PRELIMINARY

*Clause 190: Crown as owner of land*

The Minister will for the purposes of this Part be taken to be the 'owner' of land not granted in fee simple.

#### DIVISION 2—ACQUISITION OF LAND

*Clause 191: Acquisition of land by agreement*

A council may acquire land by agreement.

*Clause 192: Compulsory acquisition of land*

A council may acquire land compulsorily with the Minister's approval, or for an approved purpose classified by the regulation. The *Land Acquisition Act 1969* applies to the acquisition of land under this clause.

*Clause 193: Assumption of care, control and management of land*

A council may in certain circumstances assume the care, control and management of land that has been set aside for the use or enjoyment of the public or a section of the public.

#### DIVISION 3—COMMUNITY LAND

*Clause 194: Classification*

All local government land, other than roads, is to be classified as community land unless excluded by the council from this classification in accordance with this clause.

*Clause 195: Revocation of classification of land as community land*

A council may, subject to various exceptions and qualifications, revoke the classification of land as community land if it complies with the requirements of this clause. The classification of the Adelaide Park Lands, land held for the benefit of the community under schedule 7 or another Act, or are instrument of trust, or land prescribed by regulation, as community land cannot be revoked.

*Clause 196: Effect of revocation of classification*

A revocation of classification as community land frees the land from a dedication, reservation or trust, subject to certain exceptions.

#### DIVISION 4—MANAGEMENT PLANS

*Clause 197: Management plans*

A council must prepare a management plan in accordance with the requirements of this clause if the land is specifically protected under these provisions, is to be occupied under a lease or licence, or has been specifically modified or adapted for the benefit or enjoyment of the community.

*Clause 198: Public consultation on proposed management plan*

A council must consult before it adopts a management plan for community land.

*Clause 199: Amendment or revocation of management plan*

A management plan may be amended or revoked in accordance with this clause.

*Clause 200: Effect of management plan*

A council must manage community land in accordance with any management plan for the land.

#### DIVISION 5—BUSINESS USE OF COMMUNITY LAND

*Clause 201: Use of community land for business purposes*

A person must not use community land for a business purpose without the approval of the council. An approval must not be inconsistent with the provisions of a management plan.

#### DIVISION 6—DISPOSAL AND ALIENATION OF LOCAL GOVERNMENT LAND

*Clause 202: Sale or disposal of local government land*

A council may sell or otherwise dispose of an interest in land subject to the operation of this clause.

*Clause 203: Alienation of community land by lease or licence*

A council may grant a lease or licence over community land. The council must follow its consultation policy before the lease or licence is granted, unless the lease or licence is authorised by the management plan and is for a term not exceeding five years, or the regulations provide for an exemption.

#### DIVISION 7—THE ADELAIDE PARK LANDS

*Clause 204: Interpretation*

This clause provides a definition relating to The Corporation of the City of Adelaide for the purposes of Division 7 Part 1 Chapter 11.

*Clause 205: Classification to be irrevocable*

The classification of the Adelaide Park Lands as community land is irrevocable.

*Clause 206: Management plan*

The Council must have a management plan for the Adelaide Park Lands in place within three years after the commencement of this Part.

*Clause 207: Leases and licences over land in the Adelaide Park Lands*

The maximum term of a lease or licence over the Adelaide Park Lands is to be 42 years. However, a lease or licence for a term exceeding 21 years will be submitted to the Environment, Resources and Development Committee for consideration.

*Clause 208: Constitution of a land bank to protect the area of Adelaide Park Lands available for public use*

This clause establishes a scheme to preserve the amount of Park Lands that is available for unrestricted public use and enjoyment after the commencement of this clause. Essentially, the Council or the Crown will acquire credits for land that it returns to a notional 'land bank', and then will only be able to take action to restrict public use of the park lands to the extent that it holds credits. Short-term activities will not be 'caught'.

*Clause 209: Constitution of fund to benefit the Adelaide Park Lands*

This clause provides for the constitution of a fund to be called the *Adelaide Park Lands Fund*. A fee (payable to the fund) will be charged on any development undertaken on land forming part of the Adelaide Park Lands. The fee will be calculated according to total anticipated development cost, essentially at the rate of \$5 for each \$1 000 in value, with the maximum fee with respect to a particular development will not exceed \$10 000. Money standing to the credit of the fund will be able to be used by the Capital City Committee for the beautification, rehabilitation or restoration of the park lands, or for some other purposes which will benefit the park lands or improve public use and enjoyment of the park lands.

## DIVISION 8—REGISTER OF COMMUNITY LAND

*Clause 210: Register*

A council must keep a register of all community land in its area.

### PART 2 ROADS

## DIVISION 1—OWNERSHIP OF ROADS

*Clause 211: Ownership of public roads*

All public roads (as defined in clause 4) in the area of the council are vested in the council in fee simple under the *Real Property Act 1886*.

*Clause 212: Ownership of fixtures and equipment installed on public roads*

Fixture and fittings remain the property of the provider of the relevant infrastructure.

*Clause 213: Conversion of private road to public road*

A council may declare a private road to be a public road in the circumstances specified in this clause.

## DIVISION 2—HIGHWAYS

*Clause 214: Highways*

A council may only exercise its powers under this Part if the council acting with the agreement of the Commissioner of Highways or under or in accordance with a notice under the *Highways Act 1926*.

## DIVISION 3—POWER TO CARRY OUT ROADWORK

*Clause 215: Power to carry out roadwork*

A council is given specific power to carry out roadwork, subject to compliance with the provisions of this clause.

*Clause 216: Recovery of cost of roadwork*

A council carries out roadwork to repair damage to a road, the council may recover the cost of the work from the person who caused the damage or the owner of relevant infrastructure.

*Clause 217: Contribution between councils where road is on boundary between council areas*

A council that carries out roadwork on the boundary with another council is entitled to a reasonable contribution from the other council.

*Clause 218: Special provisions for certain kinds of roadwork*

Certain roadwork must comply with the requirements of this clause. For example, a change in the level of a road must still provide equitable access to an adjoining property.

## DIVISION 4—POWER TO REQUIRE OTHERS TO CARRY OUT WORK

*Clause 219: Power to order owner of private road to carry out specified roadwork*

A council may require the owner of a private road to carry out work to repair or improve the road.

*Clause 220: Power to order owner of infrastructure installed on road to carry out specified maintenance or repair work*

A council may require the owner of a structure or equipment installed on a road to carry out maintenance or repair work, or to move the structure or equipment so that the council can carry out roadwork.

*Clause 221: Power to require owner of adjoining land to carry out specified work*

A council may require the owner of land adjoining a road to construct, remove or repair a crossing place from the road to the land.

## DIVISION 5—NAMES AND NUMBERS

*Clause 222: Power to assign a name, or change the name, of a road or public place*

A council may assign a name to a public or private road, or to a public place. Before a council changes the name of a public road that runs into the area of a council, it must give the adjoining council notice of the proposed change and consider any representations made in response to the notice.

*Clause 223: Numbering of adjacent premises and allotments*

A council may adopt a numbering system for buildings and allotments adjoining a road.

## DIVISION 6—CONTROL OF WORK ON ROADS

*Clause 224: Alteration of road*

A person (other than a person authorised under this or another Act) must not alter a public road without the authority of the relevant council.

*Clause 225: Permits for business purposes*

A person must not use a public road for business purposes unless authorised to do so by a permit.

*Clause 226: Public consultation*

A proposal to grant an authorisation or permit that confers an exclusive right of occupation, restricts access, or falls within a prescribed use or activity, must first be the subject of public consultation.

*Clause 227: Conditions of authorisation or permit*

An authorisation or permit may be granted on conditions.

*Clause 228: Cancellation of authorisation or permit*

A council may cancel an authorisation or permit for breach of a condition.

## DIVISION 7—MOVEABLE SIGNS

*Clause 229: Moveable signs*

This clause regulates the placing of moveable signs on a road.

*Clause 230: Removal of moveable sign*

A council may order that a moveable sign be removed under this clause.

## DIVISION 8—GENERAL PROVISIONS REGULATING AUTHORISED WORK

*Clause 231: How work is to be carried out*

Work carried out on a road must be performed as expeditiously as possible and so as to minimise obstruction to the road and inconvenience to road users.

*Clause 232: Road to be made good*

A person who breaks up or damages a road must restore the road to its former condition.

## DIVISION 9—SURVEY MARKS

*Clause 233: Survey marks*

This clause authorises the fixing of survey marks in a public road.

## DIVISION 10—REGISTER

*Clause 234: Register*

A council must keep a register of public roads in its area.

## DIVISION 11—MISCELLANEOUS

*Clause 235: Trees*

A council must consider certain matters before vegetation is planted on a road.

*Clause 236: Damage*

A person who intentionally or negligently damages a road or a structure of a council associated with a road is liable to the council in damages.

*Clause 237: Council's power to remove objects, etc., from roads*

A council may remove certain structures from a road.

### PART 3

## ANTI-POLLUTION MEASURES

*Clause 238: Deposit of rubbish, etc.*

It will be an offence under this measure to deposit rubbish on a public road or in a public place.

*Clause 239: Abandonment of vehicles and farm implements*

It will be an offence under this measure to abandon a vehicle or farm implement on a public road or public place.

*Clause 240: Removal of vehicles*

An authorised person may remove a vehicle that has been left on a public road or public place, or on local government land, for more than 24 hours. The council must then give written notice of the removal to the owner of the vehicle. If the vehicle is not claimed, the council can in due course sell the vehicle.

### PART 4

## SPECIFIC BY-LAW PROVISIONS

*Clause 241: Power to control access and use of land*

This clause empowers a council to make by-laws controlling access

to and use of local government land.

*Clause 242: By-laws about use of roads*

This clause empowers a council to make certain by-laws about the use of roads.

*Clause 243: Posting of bills, etc.,*

A council may make a by-law prohibiting the posting of bills and other items on buildings and other places without the permission of the council.

## PART 5 OTHER MATTERS

*Clause 244: Native title*

A dealing under the Act will not affect native title in land (except to the extent allowable under a law of the State or the *Native Title Act 1993* (Cwth)).

*Clause 245: Time limits for dealing with certain applications*

Certain applications to a council relating to the use of community land or a road for business purposes must be decided within two months (or will be taken to have been refused).

*Clause 246: Registrar-General to issue certificate of title*

A council must apply to the Registrar-General for the issue of a certificate of title if land is vested in it in an estate in fee simple.

*Clause 247: Liability for injury, damage or loss on community land*

A council is only liable as occupiers of community land for injury, damage or loss that is a direct consequence of a wrongful act on the part of the council (unless the matter involves the council as the occupier of a building or structure).

*Clause 248: Liability for injury, damage or loss caused by certain trees*

This clause relates to council liability for damage to property caused by a tree.

## CHAPTER 12 REGULATORY FUNCTIONS

### PART 1

#### BY-LAWS

*Clause 249: Power to make by-laws*

*Clause 250: Principles applying to by-laws*

*Clause 251: Rules relating to by-laws*

*Clause 252: Passing by-laws*

*Clause 253: Model by-laws*

*Clause 254: Expiry of by-laws*

*Clause 255: Register of by-laws and certified copies*

*Clause 256: Revocation of by-law does not affect certain resolutions*

These clauses provide a scheme for the making of by-laws by councils.

### PART 2

#### ORDERS

##### DIVISION 1—POWER TO MAKE ORDERS

*Clause 257: Power to make orders*

##### DIVISION 2—ASSOCIATED MATTERS

*Clause 258: Procedures to be followed*

*Clause 259: Rights of review*

*Clause 260: Action on non-compliance with an order*

*Clause 261: Non-compliance with an order an offence*

##### DIVISION 3—POLICIES

*Clause 262: Councils to develop policies*

These clauses provide a scheme for the making of certain orders by councils.

### PART 3

#### AUTHORISED PERSONS

*Clause 263: Appointment of authorised persons*

This clause provides for the appointment of authorised persons by councils. A member of a council cannot be appointed as an authorised person.

*Clause 264: Powers under this Act*

*Clause 265: Power of enforcement*

These clauses make specific provision for the powers of authorised persons under the Act.

## CHAPTER 13 REVIEW OF LOCAL GOVERNMENT ACTS, DECISIONS AND OPERATIONS

### PART 1

#### CONDUCT OF MEMBERS

*Clause 266: Grounds of complaint*

This clause sets out the grounds upon which a complaint may be made against a member of a council, being a contravention or failure to comply with the Act, the performance of an unlawful act as a

member of a council, or a failure to comply with a duty under this or another Act.

*Clause 267: Complaints*

A complaint may be lodged by a public official or any other person.

*Clause 268: Hearing by District Court*

The complaint is lodged with the District Court.

*Clause 269: Constitution of District Court*

The Court may, if determined by the judicial officer presiding at the sittings, be constituted with assessors selected under schedule 6.

*Clause 270: Outcome of proceedings*

This clause sets out the powers of the court if the Court is satisfied that the grounds for complaint exist and that there is proper cause for taking action against the relevant person.

*Clause 271: Application to committees and subsidiaries*

The complaint mechanism extends to members of committees and subsidiaries.

## PART 2

### INTERNAL REVIEW OF COUNCIL ACTIONS

*Clause 272: Council to establish grievance procedures*

A council must also establish a mechanism for handling complaints. Nothing in this clause will prevent a person from making a complaint to the Ombudsman.

*Clause 273: Mediation and neutral evaluation*

A council may establish a scheme for mediation or mental evaluation of a dispute between a person and the council. Nothing in this clause will prevent a person from making a complaint to the Ombudsman.

## PART 3

### REVIEWS INITIATED BY MINISTER

#### DIVISION 1—COUNCILS

*Clause 274: Investigation of a council*

*Clause 275: Action on a report*

#### DIVISION 2—SUBSIDIARIES

*Clause 276: Investigation of a subsidiary*

*Clause 277: Action on a report*

These clauses provide a scheme for the investigation of the activities of councils or subsidiaries in appropriate, specified cases.

## PART 4

### SPECIAL JURISDICTION

*Clause 278: Special jurisdiction*

Various proceedings relating to offices and decisions under the Act may be brought in the District Court.

## CHAPTER 14

### MISCELLANEOUS

#### PART 1

### MINISTERIAL DELEGATIONS AND APPROVALS

*Clause 279: Delegation by the Minister*

This clause confers a specific power of delegation on the Minister.

*Clause 280: Approval by Minister does not give rise to liability*

This clause makes express provision to the effect that no liability attaches to the Crown or the Minister on account of an approval given by the Minister under the Act.

#### PART 2

### SERVICE OF DOCUMENTS AND PROCEEDINGS

*Clause 281: Service of documents by councils, etc.*

This clause sets out a scheme for the service of documents by councils.

*Clause 282: Service of documents on councils*

This clause sets out a scheme for the service of documents on councils.

*Clause 283: Recovery of amounts from lessees or licensees*

A council may in certain cases require the lessee or licensee of land to make payments to the council instead of to the owner of the relevant land to satisfy a liability of the owner to the council.

*Clause 284: Ability of occupiers to carry out works*

The occupier of land may carry out certain works in certain cases.

#### PART 3

### EVIDENCE

*Clause 285: Evidence of proclamations*

*Clause 286: Evidence of appointments and elections*

*Clause 287: Evidence of resolutions, etc.*

*Clause 288: Evidence of making of a rate*

*Clause 289: Evidence of assessment record*

*Clause 290: Evidence of Government assessment*

*Clause 291: Evidence of registers*

*Clause 292: Evidence of by-law*

*Clause 293: Evidence of boundaries*

*Clause 294: Evidence of constitution of council, appointment of officers, etc.*

*Clause 295: Evidence of costs incurred by council*  
These clauses provide for various evidentiary matters.

PART 4

OTHER MATTERS

*Clause 296: Power to enter and occupy land in connection with an activity*

An employee or contractor of a council may enter land for the purposes of various authorised activities.

*Clause 297: Power to carry out surveys, work, etc.*

Various survey inspections, examinations and tests may be carried out on land.

*Clause 298: Reclamation of land*

If a council takes action to raise, fill in, improve or reclaim land, the owners of adjacent or adjoining land may be liable to contribute to the cost if the work has added value to the owner's land.

*Clause 299: Property in rubbish*

Any rubbish collected by the council in its area becomes the property of the council.

*Clause 300: Power of council to act in emergency*

A council may make certain orders to avert or reduce any danger from flooding.

*Clause 301: Costs of advertisements*

This clause deals with the cost of advertisements under the Act.

*Clause 302: River, stream or watercourse forming a common boundary*

If a watercourse forms the boundary of an area or ward, a line along its middle will be taken to be the actual boundary.

*Clause 303: Application to Crown*

Subject to any express provision, the measure does not bind the Crown.

*Clause 304: Regulations*

This clause relates to the regulation-making powers of the Governor under the measure.

SCHEDULE 1

*Provisions relating to organisations that provide services to the local government sector*

This schedule provides for the continuation of the LGA, the Local Government Mutual Liability Scheme and the Local Government Superannuation Scheme.

SCHEDULE 2

*Provisions applicable to subsidiaries*

This schedule makes provision in relation to council subsidiaries established under the Act.

SCHEDULE 3

*Material to be included in the annual report of a council*

This schedule makes provision for the matter that must be included in the annual report of a council.

SCHEDULE 4

*Documents to be made available by councils*

This schedule lists the matters that must be available for public inspection.

SCHEDULE 5

*Charges over land*

This schedule deals with charges over land.

SCHEDULE 6

*Selection of assessors for proceedings in the District Court*

This schedule provides for the appointment of persons who may act as assessors for the purposes of certain proceedings before the District Court under Chapter 13 of the Act.

SCHEDULE 7

*Provisions relating to specific land*

This schedule makes special provisions in relation to specific items of land.

**The Hon. P. HOLLOWAY** secured the adjournment of the debate.