

LOCAL GOVERNMENT BILL 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the repeal of the *Local Government Act 1936* and the enactment of a new Local Government Act.

The provisions set the overall direction of Local Government well into the future and enable Councils to perform functions in accordance with community needs and expectations. The new legislative framework establishes improved standards in public accountability and Council autonomy and flexibility that provide Local Government with the capacity to meet the growing demands placed upon it.

Reasons for the Bill

The present Local Government Act which is now outdated had the prime focus of providing Local Government with the necessary legislative framework for supplying basic community infrastructure and property related services. The role of Local Government has changed significantly and there is now an expectation that Councils should play a greater part in the social, economic and environmental well-being of the community.

Estimated Cost for Government Implementation

There will be minimal costs incurred by the Government which are in addition to the normal recurrent expenditure for overseeing and administering the system of Local Government.

Consultation

In 1989 a Green Paper on a new Local Government Act was released for public comment. Draft legislative proposals that have formed the basis of this Bill were subsequently released for public comment in 1992. Extensive community, industry and inter-departmental consultation has occurred during the preparation of the Bill including public seminars throughout the State and meetings with peak industry groups and relevant Government Departments.

As a result of this comprehensive consultation process the proposed legislation reflects an integrated approach to Local Government administration that has taken into consideration the views of all sectors of the community.

NOTES ON PROVISIONS**CHAPTER 1—PRELIMINARY****PART 1—INTRODUCTION**

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the following provisions on the date of assent:—

- Chapter 1 (Preliminary)
- Chapter 4 (Local government councillors)
 - Part 1 (Membership of local governments)
- Chapter 5 (Local government elections)
- Chapter 6 (General operation of local governments)
 - Part 2 (Polls)
- Section 689 (Proof of voters roll)
- Chapter 13 (General)
 - Part 2 (Miscellaneous)
- Chapter 14 (Transitional and savings provisions, repeals and amendments)
 - Part 1 (Transitional and savings provisions)
 - Section 764 (Validation of Commissioner's recommendations)
 - Section 765 (Regulation about a reviewable local government matter)
 - Division 5 (Local government elections)
 - Section 798 (Transitional regulations)

The remaining provisions commence on 26 March 1994 except for the following:—

- Section 395 (Principles governing the making of contracts) commences on 1 July 1994.
- The amendment of the *Forestry Act 1959* made by this Act commences immediately after the amendment of section 71 of that Act made by the *Nature Conservation Act 1992* or on 26 March 1994 (whichever is the later).
- The amendments of section 6.17 of the *Transport Infrastructure (Railways) Act 1991* made by this Act commence immediately after the amendment of that section made by the *Transport Infrastructure (Railways) Amendment Act 1993* or on 26 March 1994 (whichever is the later).

Essentially, all the provisions that facilitate the holding of the 1994 Local Government triennial elections in March 1994 commence on Assent.

PART 2—OBJECTS

Clause 3 sets out the objects of the Act. The objects reflect a modern, dynamic and accountable legislative framework for Local Government.

PART 3—INTERPRETATION

Clause 4 provides for the meaning of various terms used in the Act.

Clause 5 provides for the meaning of “owner of land” for the purpose of establishing the rightful person responsible for properties with which local governments must deal.

Clause 6 provides for the meaning of “conclusion of the election of a councillor”. For the purpose of this clause an election includes a triennial election (the compulsory election of all elected members to be held in March every 3 years), a fresh election (the election for all elected members where a new local government is created or where a Council is to be

reformed following dissolution) and a by-election (e.g. an election of a replacement Councillor due to the office becoming vacant at least 12 months prior to a triennial election).

Clause 7 provides for the meaning of “material personal interest” in relation to persons who have an official capacity under the Act and in relation to certain relatives and business associates of those persons. The provisions also describe those matters which would not be taken to be a material personal interest.

The intent of the provisions is to clarify those personal financial and material matters that are required to be recognised or made public and which limit or preclude officials (elected members, employees of State or local governments) from taking part in the decision making process where there could be a potential conflict of interest.

Clause 8 provides for the meaning of “open to inspection” of a document of a local government or of other bodies referred to under the Act. The provisions also specify those persons who are authorised to inspect and make copies of documents open to inspection. Generally, all persons are able to inspect and take copies of documents open to inspection.

PART 4—APPLICATION OF ACT TO BRISBANE CITY COUNCIL

Clauses 9-10 clarify that unless the legislative provisions under this Act or any other Act expressly state that they apply to Brisbane City Council or the City of Brisbane, the provisions exclude application to Brisbane. However, where the Brisbane City Council is a component local government in a joint local government, the provisions of this Act apply as if the Council were a local government established under this Act.

The *City of Brisbane Act 1924* provides for the administration and operation of the Brisbane City Council.

Where that Act is lacking in legislative jurisdiction, the provisions of other Acts can be applied to Brisbane City Council and its area. Generally, in these cases, the term “local government” is expressed to include

Brisbane City Council and the term “area” is expressed to include the City of Brisbane.

PART 5—APPLICATION OF ACT TO JOINT LOCAL GOVERNMENTS

Clauses 11-12 clarify those provisions in this Act which apply to “joint local governments” (as established under clause 43) and areas of joint local governments. A regulation making power has been provided for that enables certain provisions of the Act to be applied to joint local governments. In this respect, some provisions may be designed for application to local governments and not joint local governments. It therefore may be desirable for those provisions to have limited application to joint local governments.

PART 6—APPLICATION OF ACT TO ABORIGINAL AND TORRES STRAIT ISLANDER LOCAL GOVERNMENTS

Clauses 13-14 clarify those provisions in this Act which apply to Aboriginal and Torres Strait Islander local governments (as defined in clause 4) and their areas.

CHAPTER 2—THE LOCAL GOVERNMENT SYSTEM

The intent of this chapter is to specify the various entities empowered to perform the jurisdictional responsibilities of Local Government and to allow for joint co-operation for the carrying out of Local Government jurisdiction and powers.

PART 1—LOCAL GOVERNMENTS

Division 1—Local government areas

Clause 15 identifies the local government area as the geographical basis of the local government system.

Clause 16 provides a regulation making power for creating local government areas. The determination of the external boundaries of a local government is a “reviewable local government matter” under the provisions of clause 64 and requires independent examination, report and recommendation to the Minister by the Local Government Commissioner prior to being implemented by regulation.

Clause 17 makes it mandatory to have a local government for each local government area. For this purpose, “local government” could be an administrator appointed where a Council has been dissolved.

Clause 18 provides a regulation making power for classifying local government areas into cities, towns or shires.

It is intended that areas meet certain criteria set by regulation (e.g. population density, mandatory urban centre, recognised place of commerce and business) to be declared a city or town.

Once again, the classification of local government areas is a reviewable local government matter under clause 64.

Division 2—Roles of local governments

Clause 19 applies the provisions of this Division to Brisbane City Council.

Clause 20 specifies the jurisdictional role of local government. In this respect, a local government is given wide law making and decision making powers in relation to carrying out the function of Local Government in places under its control.

Division 3—Jurisdiction of local governments

Clause 21 applies the provisions of this Division to Brisbane City Council.

Clause 22 empowers a local government to exercise its jurisdiction in its area, i.e. its basic territorial unit.

Clause 23 empowers a local government to exercise its jurisdiction in places outside its “basic territorial unit”, i.e. outside the external boundaries of its area (e.g. a refuse tip in a neighbouring local government area for which the local government is responsible).

Where a local government exercises its jurisdiction in an area outside its “basic territorial unit” it is termed the “additional territorial unit”.

Clause 24 provides for the term “territorial unit”. The term includes the “basic territorial unit” (that area within its external boundaries) and any “additional territorial unit” (that area outside its external boundaries) for which a local government is responsible.

Clause 25 empowers local governments with law making jurisdiction over its area and those additional areas outside its area under its responsibility and control.

Clause 26 ensures that local governments have the necessary law making power and jurisdiction to carry out their responsibilities under the Act or other legislation conferring responsibilities upon local governments. In this respect, this power would be carried out by specific provision in a State Act or regulation, or by the making of local laws under Chapter 8 of this Act.

Clause 27 limits the exercise of local government jurisdiction to that which is not carried out by another local government. The provisions are designed to eliminate duplication of responsibilities leading to conflicting control mechanisms.

Clause 28 limits a local government’s jurisdiction in an “additional territorial unit” (an area outside the external boundaries of a local government) to the purpose for which it uses that area.

Clause 29 limits the application of a local government’s local law to an additional territorial unit to the extent that the local law states it applies to the additional territorial unit.

Clause 30 clarifies that a local government's law making power can not go beyond the law making powers of the State nor can it interfere with (i.e. exclude or limit) the law making powers of a subsequent local government of its area.

Clause 31 specifies that a State law overrides a local law where any conflict arises.

Division 4—Composition of local governments

Clause 32 specifies that a local government comprises of a mayor and other councillors. In this respect, the mayor is also a councillor and is the chairperson of the Council.

Clause 33 provides that a local government must consist of at least 5 councillors or such other number prescribed by regulation. The composition of councillors for a local government is a reviewable local government matter under clause 64.

Division 5—Names, legal status and general powers of local governments

Clause 34 provides for the recognised title for local governments, e.g. Council of the Shire of Cooloola or Cooloola Shire Council.

Clause 35 confers the legal status of body corporate upon a local government, with a common seal and the power to sue and be sued in its name. In this respect, the shield of the Crown is not extended to local government.

Clause 36 clarifies the extent of the general powers of a local government.

Division 6—Other provisions about local governments

Clause 37 ensures that a local government maintains a public office for the conduct of its business.

Clause 38 provides for the keeping of the common seal by a local government and for the judicial recognition of documents imprinted with the common seal.

PART 2—JOINT LOCAL GOVERNMENTS

Joint local governments are similar to joint boards constituted under the *Local Government Act 1936*. They exercise a jurisdiction of Local Government that can go beyond the boundaries of a single local government. In this respect, Local Government functions can be conducted on a regional basis enabling a greater level of co-ordination to occur in providing services to the community. A joint local government is established to perform a function for component local governments (i.e. the local governments entitled to be represented on the joint body). Participation on a joint local government can also include Aboriginal and Torres Strait Islander local governments as well as the Brisbane City Council.

Division 1—Extended application of Part

Clauses 39-40 provide that the provisions relating to joint local governments also apply to the Brisbane City Council and those Aboriginal and Torres Strait Islander Councils that exercise the jurisdiction of Local Government.

Division 2—Consultation

Clause 41 requires the Minister to consult with relevant local governments before making any recommendations to the Governor in Council in respect of the powers which may be exercised under this Part.

Division 3—Joint local government areas

Clause 42 provides a regulation making power for establishing the jurisdictional area of a joint local government. The area can comprise the

whole or parts of 2 or more local government areas and is termed the “joint local government area”.

Division 4—Establishment of joint local governments

Clauses 43-44 provide a regulation making power for establishing and naming joint local governments and for specifying certain administrative and financial arrangements, i.e.:—

- election and appointment of a president and deputy president;
- holding of the inaugural meeting;
- funding arrangements being the amount of financial contribution to be paid by each component local government to meet the operating costs of the joint body (In this respect, unlike a local government, a joint local government has no power to make and levy rates and charges on land and is dependant upon the component local governments for a great deal of its revenue);
- budgetary matters; and
- determination of the appropriate local laws to be adopted.

More than one joint local government can be established for a joint area providing that each performs a different jurisdiction of Local Government.

Division 5—Jurisdiction of joint local governments

Clause 45 provides a regulation making power for determining the jurisdiction of a joint local government. In exercising its jurisdiction the joint local government is taken to be a local government for its joint area.

Clause 46 gives a joint local government exclusive power to exercise within its area the function of local government for which it was constituted. However, the joint body can delegate its jurisdiction to any component local government.

The provisions also clarify that the power of a component local government to make and levy rates and charges is not disrupted due to the jurisdictional area and responsibilities of the joint local government. A local government can also make and levy a rate or charge relating to the jurisdiction of the joint local government.

Division 6—Membership of joint local governments

Clause 47 provides that the members of a joint local government are drawn from the councillors of the component local governments.

Clause 48 provides a regulation making power for specifying the number and composition of a joint local government.

Division 7—Legal status and general powers of joint local governments

Clause 49 confers the legal status of body corporate upon a joint local government, with a common seal and power to sue and be sued in its name. The legal status is identical to that conferred upon a local government.

Clauses 50-52 clarify the extent of the general powers of a joint local government. A joint local government cannot make or levy a rate or charge on land and is able to delegate any of its powers to a component local government.

Division 8—Other provisions about joint local governments

Clause 53 provides for the keeping of the common seal by the joint local government and for the judicial recognition of documents imprinted with the common seal.

Clause 54 provides a regulation making power for the transfer of assets and liabilities or deciding, adjusting or settling anything in dispute between joint local governments and component local governments.

PART 3—JOINT ACTION BY LOCAL GOVERNMENTS

This part provides for a co-operative approach between State and also with inter-State local governments in performing functions of local government on boundaries abutting other local government areas or where it may be necessary for a local government to perform a function outside its area.

Division 1—Extended application of Part

Clauses 55-56 apply the provisions of this Part to Brisbane City Council and to all Aboriginal and Islander local governments.

Division 2—Joint action

Clause 57 makes it mandatory for local governments to enter into arrangements for the provision of local government services on external boundaries where they share a responsibility for providing the service (e.g. maintaining roads and bridges).

Clause 58 enables a local government to make arrangements with another local government for extending a service beyond its area, e.g. provision of water supply to another area.

Clause 59 enables local governments to enter into arrangements, make contracts and form joint standing committees for administering certain functions of local government within an area, e.g. the provision of a refuse dumping site by a local government for a neighbouring local government.

Clause 60 empowers a local government that borders another State or Territory to enter into arrangements and make contracts with inter-state bodies and persons to enable it to carry out its functions. This can include the acquiring of and constructing on land outside the State e.g. the constructing of a pumping station on land in another State for the provision of water in its area.

CHAPTER 3—INTERACTION WITH THE STATE**PART 1—REVIEW OF LOCAL GOVERNMENT
MATTERS**

The intent of this Part is to establish an independent process for the ongoing review of Local Government areas and their electoral arrangements as well as other Local Government matters.

Division 1—Preliminary

Clause 61 applies the provisions relating to “reviewable local government matters” to the Brisbane City Council. “Reviewable local government matters” are defined in clause 64.

Clause 62 provides for the provisions not to apply to joint local governments.

Clause 63 clarifies that a “local government matter” can include a “reviewable local government matter” or a “referable local government matter” or a combination of both such matters.

The purpose of this clause is to provide the Minister with flexibility in referring matters to the Local Government Commissioner for examination and report. In these instances, the Minister is not required to distinguish between “reviewable” and “referable” local government matters.

Clause 64 provides for the meaning of “reviewable local government matters”. Reviewable local government matters are those matters subject to compulsory independent review, report and recommendation to the Minister by the Local Government Commissioner prior to implementation by regulation and deal with a range of electoral and constitutional issues relating to local government.

Clause 65 provides for the meaning of “referable local government matter”. It is discretionary for the Minister to refer a “referable local government matter” to the Local Government Commissioner prior to implementation.

Division 2—The Local Government Commissioner***Subdivision A—Establishment***

Clause 66 requires there be a Local Government Commissioner. In this respect, it is mandatory that the office of Commissioner exist to enable the independent examination, report and recommendation on reviewable local government matters.

Subdivision B—Functions of Commissioner

Clause 67 requires the Local Government Commissioner to examine, report and make recommendations to the Minister on references to the Commissioner by the Minister on reviewable local government matters.

Under clause 107 the recommendations by the Commissioner can be wholly rejected, implemented in full or implemented without substantial variation.

Clause 68 requires the Local Government Commissioner to examine, report and make recommendations to the Minister on referable local government matters. In this respect, it is discretionary as to how the Minister treats any recommendations.

Subdivision C—References to Commissioner

Clause 69 enables the Minister to refer any local government matter (as defined by clause 63) to the Local Government Commissioner.

Clause 70 clarifies the types and content of references that can be made to the Local Government Commissioner by the Minister.

Clause 71 requires the Minister to table any reference to the Local Government Commissioner on a reviewable local government matter in Parliament and to provide a copy to each local government mentioned in the reference. These provisions enhance the independence of the Commissioner by making such references open to public scrutiny.

Clause 72 clarifies that the Minister may table in Parliament a reference to the Local Government Commissioner on a referable local government matter. A copy of the reference may be provided by the Minister to any local governments.

Clause 73 enables the Local Government Commissioner to seek a reference on a reviewable local government matter from the Minister. The Minister can either support or refuse the making of the reference. The Commissioner's request and the Minister's response (i.e. the reference or the refusal) is to be tabled in Parliament. The provisions requiring tabling

enhances the accountability of the Minister in making decisions on reference to be made to the Commissioner. The provisions also preserve the independence of the Commissioner by allowing requests for examination to be made to the Minister.

Division 3—Reports on reviewable local government matters

Subdivision A—Report necessary before implementation

Clause 74 makes it mandatory for the Minister to receive a report and recommendation from the Local Government Commissioner prior to implementing a reviewable local government matter. This ensures that independent review of reviewable local government matters occurs prior to any implementation by regulation.

Subdivision B—Making of reports by Commissioner

Clause 75 provides a regulation making power for prescribing principles and criteria which the Commissioner must consider when dealing with any reference. In this respect, it is intended to set standards in relation to certain local government matters to act as a guide for the Commissioner (e.g. a Local Government Area should have regard to existing and future population growth; a Local Government Area should generally have a centre or centres of administration and service that are easily accessible to its population.) If a reference relates to the external boundaries of an area, the Commissioner is compelled to consider the need for efficient and effective local government.

Clause 76 requires the Commissioner to make recommendations rationalising certain administrative and financial matters (e.g. apportionment of assets and liabilities) where the Commissioner intends to recommend that an external boundary alteration occur.

As these matters are not reviewable local government matters but are the resultant impact of implementing a reviewable local government matter, it is within the Minister's discretion as to how the recommendations are treated in this regard. For the purposes of this clause a local law includes a planning scheme and interim development control provisions.

Clauses 77-78 give the public the opportunity to object to or support a proposal by the Local Government Commissioner to recommend the implementation of a reviewable local government matter. In this respect, the Commissioner must give public notice before making recommendations to the Minister on the implementation of a reviewable local government matter. The Commissioner must consider all submissions and can only make minor changes to proposed recommendations without having to again give public notice of proposed recommendations.

Clause 79 requires the Local Government Commissioner to support views and recommendations contained in a report on a reviewable local government matter with reasons. To allow the Minister to fully consider a report, a summary and copies of all submissions made to the Commissioner are to also accompany a report.

Division 4—Inquiries by Commissioner

Subdivision A—General

Clauses 80-81 provide the Local Government Commissioner with formal powers of public inquiry when conducting investigations into reviewable local government matters. Where an inquiry is to be held, the Commissioner is to give public notice outlining the procedures to be followed for the inquiry.

Subdivision B—Conduct of inquiries

Clauses 82-90 specify the duties and powers of the Local Government Commissioner in holding an inquiry into a reviewable local government matter. The provisions also specify the obligations of persons attending an inquiry. More specifically, the provisions:—

- require the Commissioner to observe natural justice and to proceed expeditiously;
- do not bind the Commissioner by the rules of evidence;

- devolve upon the Commissioner powers that are normally associated with a commission of inquiry;
- create offence provisions where witnesses do not comply with the Commissioner's proceedings (liable to a maximum of 35 penalty units—currently equating to \$2,100);
- make it an offence where a person purposely disrupts the proceedings of an inquiry (liable to a maximum of 50 penalty units—currently equating to \$3,000).

A Deputy Local Government Commissioner (refer clause 92) can hold an inquiry at the direction of the Local Government Commissioner and the process of an inquiry is not affected where there is a change of Commissioner (i.e. Local Government Commissioner or Deputy Local Government Commissioner) during the conduct of the inquiry.

Division 5—Provisions about Commissioner and Deputy Commissioners

Clauses 91-92 provide for the discretionary establishment of one or more offices of Deputy Local Government Commissioner and for the duties of a Deputy Local Government Commissioner. In this respect, a Deputy Commissioner can act as Commissioner under certain circumstances.

Clauses 93-97 provide for the appointment by the Governor in Council of the Local Government Commissioner and Deputy Local Government Commissioners and for the terms, conditions and entitlements attached to the appointments.

Clause 98 restricts the Local Government Commissioner or a Deputy Local Government Commissioner from dealing with matters in which they have a pecuniary interest or which could reasonably be regarded as a conflict of interest.

Clause 99 specifies the circumstances upon which the Governor in Council may or must terminate the appointment of the Local Government Commissioner or a Deputy Local Government Commissioner.

Clause 100 provides the Governor in Council with discretion to appoint an Acting Deputy Local Government Commissioner where a Deputy Local

Government Commissioner is absent, acting as Local Government Commissioner or cannot perform the duties of office.

Clause 101 requires an appointment notice to be published in the Government Gazette when a person is appointed or acts as a Local Government Commissioner or a Deputy Local Government Commissioner.

Division 6—General

Clause 102 attaches the office of Local Government Commissioner to the Electoral Commission of Queensland for the purpose of providing staff and administrative support. The arrangement also assists in preserving the independence of the Commissioner as the office is not within the portfolio of the Minister in charge of the administration of this Act.

Clause 103 requires the Commissioner to provide the Minister with an annual report of the Commissioner's operations for the year and for the Minister to table the report in Parliament.

Clause 104 requires the Minister to table all reports on reviewable local government matters in Parliament and to ensure that copies are open for public inspection and purchase at the administering Department (currently the Department of Housing, Local Government and Planning) and at the public office of each local government affected by the report's implementation.

These reporting arrangements are intended to enhance the public accountability process in considering and implementing reviewable local government matters.

Clause 105 makes it discretionary for the Minister to table and make available any reports by the Local Government Commissioner on referable local government matters.

Division 7—Implementing reviewable local government matters

Clause 106 provides a regulation making power for implementing reviewable local government matters. In accordance with the *Statutory Instruments Act 1992* all regulations are to be tabled in Parliament and are

subject to debate and disallowance. Once again, the accountability in the implementation process is enhanced under these provisions.

Clause 107 adds to the accountability of the review process by compelling certain legislative requirements to be complied with prior to implementing a reviewable local government matter. The provisions also give the Governor in Council discretionary power to implement or substantially implement the recommendations of the Commissioner in a report on a reviewable local government matter.

Clause 108 clarifies a local government's State taxation liability in respect of arrangements made as a result of the implementation of a reviewable local government matter e.g. a new local government will not be required to pay stamp duty on transfer documents between a local government and a new local government entity resulting from amalgamation.

PART 2—INTERVENTION BY THE STATE

Where the operations of a local government are not in the public interest or in conflict with statutory requirements it may be desirable for the State to intervene to ensure that an area has an effective Local Government system in place in accordance with community expectations.

Division 1—Powers of intervention

Clause 109 requires the Minister to give written notice to a local government where it is proposed to intervene in its operations. The notice is to give reasons for the intervention and allow time for the local government to respond to the Minister prior to a decision being made as to whether or not to proceed with the intervention.

If circumstances exist that render it useless or impracticable for the Minister to serve the written notice, the notice procedure can be dispensed with.

A proposed intervention need not be proceeded with if the Minister considers that valid reasons exist for a local government taking the action

that lead to the giving of the notice. The provisions are therefore designed to allow a local government the opportunity to justify its actions.

Clauses 110-111 provide a regulation making power for overriding or suspending decisions of a local government. This provision also excludes the State from liability in respect of loss or expense incurred as a result of a revocation or suspension of a local government's resolution or order.

Clause 112 provides a regulation making power for repealing or suspending a local law or local law policy of a local government.

Clause 113 provides a regulation making power for dissolving a local government in the circumstances where the Minister is satisfied that the dissolution should occur and where the regulation is in accordance with the *Constitution Act 1867*.

When dissolved, an administrator must be appointed (refer clause 127) as the local government for the area.

Clause 114 provides a regulation making power for exempting a part of a local government area from the application of this Act or local laws e.g. if a specified site was set apart for a space station, it may not be desirable to apply local government jurisdiction to the site.

Clause 115 provides a regulation making power for abolishing a joint local government and its area. Where abolished, the regulation may rationalise any administrative and financial matters as a result of the abolition (e.g. apportionment of assets and liabilities between the component local governments).

Division 2—Inquiries, investigations and inspections

Clauses 116-117 empower the chief executive of the department (currently the Director-General of the Department of Housing, Local Government and Planning) to appoint an appropriately qualified person to conduct an inquiry, investigation or inspection on Local Government matters (other than "reviewable local government matters" under clause 64 which fall within the exclusive inquiry powers of the Local Government Commissioner).

Following the conduct of the inquiry, investigation or inspection, the person appointed by the Director-General must provide a written report which if considered desirable can be tabled by Minister in Parliament.

Traditionally, the authorised person under these provisions would be the person who holds the statutory office of Director of Local Government under the *Local Government Act 1936*. However, the statutory office of the Director of Local Government has not been retained under the proposed new legislative provisions.

Clause 118 makes it mandatory for a local government to comply with a request for information by the Director-General. Should the local government fail to comply within the reasonable time determined by the Director-General it becomes subject to a maximum penalty of 35 penalty units (currently \$2100).

Division 3—Conduct of inquiries

Clauses 119-126 provide for the conduct of inquiries by an authorised person. In particular, in conducting the inquiry the authorised person must observe natural justice, is not bound by the rules of evidence and must open the inquiry to the public.

Division 4—Administrators

Clause 127 requires the Governor in Council to appoint an Administrator when a local government is dissolved.

Clause 128 provides an Administrator with the jurisdiction of a local government or jurisdiction to the extent determined by regulation. The powers normally conferred upon a Mayor of a local government are conferred upon the Administrator.

Clause 129 provides for the title of an Administrator, e.g. “Administrator of the Council of the Shire of Widgee”.

Clause 130 provides the Minister with discretion to establish a committee to assist the Administrator where the Administrator requires additional assistance, expertise or advice in performing the jurisdiction of a local government.

Clause 131 provides that the Administrator and committee members are entitled to such remuneration and reimbursement of expenses as determined by the Governor in Council and payable by the local government concerned.

A Queensland Public Servant can be appointed Administrator or committee member and therefore, can hold dual office.

Clause 132 provides the Governor in Council with discretion to recover the costs incurred by an Administrator from the local government whose area is the subject of the administration.

Clauses 133-134 provide for the implementation of committee decisions by the Administrator. Where the Administrator and the committee disagree on a decision, the matter must be referred to the Minister for a determination. The Minister's decision is then final and binding on both the Administrator and the committee.

Ministerial direction in this respect is essential to the orderly Local Government of the area. It also assists in promoting cooperative decision making between the Administrator and the committee.

Clause 135 applies certain legislative provisions in the Act to the committee assisting the Administrator.

Clauses 136-137 provide for the termination of the appointments of Administrator and the committee assisting the Administrator. The appointments also automatically cease at the conclusion of a fresh local government election for the area.

PART 3—LOCAL GOVERNMENT GRANTS COMMISSION

This Part establishes the Local Government Grants Commission, previously provided for by the *Local Government Grants Commission Act 1976*.

The Commission's functions will continue to include making recommendations concerning the distribution of certain financial assistance to local governing bodies (particularly general purpose grants made available by the Commonwealth) and to hold inquiries and make investigations in that regard.

Division 1—Extended application of Part

Clause 138 applies this Part to the Brisbane City Council.

Division 2—Commission membership

Clauses 139-143 provide that the composition of the Commission includes 4 persons with a knowledge of local government as well as an officer of the administering department (currently the Department of Housing, Local Government and Planning).

These provisions also provide for the method and terms of appointment, remuneration of members and vacation of and removal from office.

Division 3—Role of Commission

Clause 144 enables the Commission to make recommendations to the Minister about financial assistance grant allocations received from the Commonwealth for local government purposes. Any recommendations must be made in accordance with the *Local Government (Financial Assistance) Act 1986* (Cwlth).

This provision also requires the Commission to respond to the Minister's request for information about the finances of any local governing body.

Division 4—Recommendations, allocation and distribution

Clause 145 provides for the preparation of recommendations by the Commission which must include proper consideration of any submissions received from a local governing body.

Clauses 146-147 provide the process whereby the Minister is required to consider recommendations made by the Commission.

These provisions require the Minister to have regard to the Commission's recommendations and compliance with the Commonwealth Act in making a decision on the allocation of the amount of the financial assistance to a local governing body.

Clauses 148-149 provide for the tabling of the Commission's recommendations and details of the allocation of the financial assistance amount. The provisions also provide for distribution of the financial assistance.

Division 5—Inquiries by Commission

Subdivision A—General

Clauses 150-151 establish the Commission's power to conduct an inquiry and to make the details of the inquiry publicly known.

Subdivision B—Conduct of inquiries

Clauses 152-160 provide for the conduct of inquiries by the Commission including its duties and powers on inquiry.

These provisions also allow members of the public to attend an inquiry and provide for the calling of witnesses and includes their obligations at an inquiry.

Division 6—Commission proceedings

Clauses 161-165 provide for the conduct of meetings of the Commission.

Division 7—Miscellaneous

Clauses 166-167 provide for necessary assistance to be given to the Commission in order to carry out its functions effectively.

CHAPTER 4—LOCAL GOVERNMENT COUNCILLORS

The intent of this Chapter is to establish the framework for providing effective Local Government representation on behalf of their communities and to provide for the efficient and accountable implementation of the operational functions of Local Government.

PART 1—MEMBERSHIP OF LOCAL GOVERNMENTS

Division 1—Extended application of Part

Clause 168 applies the provisions of this Part to Brisbane City Council.

Division 2—Qualifications and disqualifications

Clauses 169-174 provide the criteria for becoming and continuing as an elected member (councillor) of Local Government. The criteria is modelled off the qualification and disqualification provisions applying to State elected members and reflects the necessity to have competent representatives who are capable of providing a service in accordance with community expectations and the public interest.

The provisions also clarify that an elector of a local government can apply for review under the *Judicial Review Act 1991* in relation to the lawfulness of an election, the appointment of a councillor, or the eligibility of a person to act as a councillor. The intention of this clause is to ensure that electors are given the opportunity to receive legal standing under the *Judicial Review Act 1991* for certain local government electoral matters.

Division 3—Term of office

Clause 175 clarifies the term of office of a councillor when elected at a triennial election, a fresh election, a by-election, or when appointed to fill a vacancy.

Clause 176 enables a councillor to resign from office by signed notice to the chief executive officer of the local government.

PART 2—COUNCILLORS’ ROLES

Division 1—Councillors’ roles generally

Clause 177 provides a role statement for councillors. The roles are expressed in broad terms and provide councillors with a legislative framework within which to work and therefore clarifies their jurisdictional responsibilities. The intent of the role statement is to divorce councillors from the internal administrative operations of a local government (which is more the concern of the chief executive officer) and to have them focus on the policy directions of the local government and the strategic delivery of services in the public interest.

Clause 178 constrains councillors from exercising any of the mayor’s role without the mayor’s authority to do so. The provisions also clarify that councillors cannot exercise direction over the way an employee carries out duties. In accordance with modern management practices in the public sector it is considered that the control of staff is the function of the chief executive officer and not an elected member. The arrangement also assists in eliminating conflicting directions being given to staff members and avoids accusations of nepotism, patronism, discrimination and political interference towards staff.

Clause 179 provides a role statement for the mayor which is in addition to the role also required of a councillor. In particular, the provisions clarify that the mayor is the only councillor who can identify to the chief executive officer, the required duties in implementing the local government’s policies and decisions.

Division 2—Deputy mayor and acting mayor

Clause 180 requires a local government to appoint a deputy mayor from its councillors.

Clause 181 provides the mechanism for a local government to remove and replace the deputy mayor with another councillor.

Clause 182 provides a role statement for the deputy mayor which is in addition to the role also required of a councillor. In this respect, the deputy mayor acts in the office and performs the role of mayor when the office is vacant or the mayor is absent.

Clause 183 provides for the appointment of an acting mayor where both the mayor and deputy mayor are not available to perform the duties of the office.

Clause 184 provides a role statement for an acting mayor which is in addition to the role also required of a councillor.

PART 3—ENTITLEMENTS AND OBLIGATIONS

Division 1—Entitlements of councillors and committee members

Clause 185 provides a flexible but accountable framework for remunerating councillors and members of a local government advisory committee (established under clause 366) who are not councillors. In resolving to set remuneration (e.g. fees, allowances and expenses) the local government must specify the purpose of the remuneration, the persons entitled to payment, the amount or basis of the payment, the principles or remuneration system used and the reasons for adopting the principles or system.

To enhance the accountability of the process, meetings at which remuneration is considered are open to the public (after public notice is given of the meeting) and particulars of the remuneration paid to each councillor are to be detailed in the Annual Report.

Clause 186 provides the framework for extending superannuation benefits to councillors. An equitable measure has been included by restricting local governments from making employer subsidised contributions greater than those afforded to their employees.

Clause 187 enables a local government to extend insurance within the meaning of the *Workers' Compensation Act 1990* to its councillors when they perform their duties of office.

Clause 188 restricts the liability of a councillor in relation to any act or omission done honestly and without negligence so that liability under those circumstances is incurred by the local government.

Division 2—Obligations of councillors

Clause 189 applies the provisions of this Division to Brisbane City Council.

Clause 190 requires a person to make a declaration of office when taking up the office of councillor. Failure to do so within one month of taking up the office results in the automatic ceasing of the person holding the office unless the Minister has allowed an extension of time.

Clause 191 is a penalty clause that makes it an offence to act as a councillor where the person is not qualified or has vacated office as a councillor. (Maximum penalty is 85 penalty units—currently equating to \$5,100).

Clause 192 restricts a councillor who has a material personal interest (as defined by clause 7) in an issue from taking part in any consideration or decision making concerning the issue at local government or committee meetings. In this respect, the councillor has to disclose the interest to the meeting and is banned from the chamber and any area set apart for public viewing.

The provisions are designed to eliminate the likelihood of a councillor influencing deliberations on an issue where there could be a potential conflict of interest or of questions arising as to the integrity of the local government decision making process.

Clause 193 enables the Minister to relieve a councillor of the material personal interest disability under clause 192. This relief only occurs where the decision making process would be adversely affected by too many councillors being subjected to the disability or the disability is not in the public interest.

Clause 194 provides for maximum penalties to apply to councillors who are convicted of not complying with the provisions of clause 192, i.e. 200 penalty units maximum (currently equating to \$12,000) where a councillor with a material personal interest votes at a meeting. In all other cases (i.e.

where a councillor fails to declare a material personal interest) a maximum penalty of 85 penalty units applies (currently equating to \$5,100).

The severity of the penalties reflect the importance of the local government decision making process, particularly when dealing with pecuniary matters such as tenders and contracts.

Clause 195 requires the chief executive officer to maintain a register of each councillor's interests and also a register of interests of other persons (relatives of a councillor). In this regard the provision also places an obligation on a councillor to advise the chief executive officer if the councillor knows of an interest that should be recorded in the register.

A regulation making power exists for prescribing the particulars to be registered (i.e. pecuniary interests and other interests), for defining which relatives' interests are to be registered and for specifying the times when the interests are to be registered. A maximum penalty of 85 penalty units (\$5,100) applies to those councillors convicted of failing to provide the chief executive officer with the required information within the specified times and any councillor so convicted ceases to hold office.

Clause 196 enables a member of the public to inspect the councillors' register and for a councillor of the relevant local government or a person authorised by law to inspect the other persons' register. In this respect, it is considered that a relative of a council should not be subjected to the same level of public scrutiny as that applying to a councillor. The clause also specifies a maximum penalty of 85 penalty units (\$5,100) to be applied to those persons convicted of disclosing unfair or inaccurate information from a register or disclosing information in the other persons' register to a person not authorised to receive it.

Clause 197 requires a councillor to confirm the accuracy of information contained in a register where a person has informed the chief executive officer of a suspicion that the details are inaccurate.

Clause 198 subjects a present and past councillor to a maximum penalty of 35 penalty units (\$2,100) for certain misuses of official information. In this respect, a councillor for example, must not use information gained through holding office for anyone's pecuniary gain or for causing undue detriment.

PART 4—VACANCIES IN MEMBERSHIP OF LOCAL GOVERNMENTS

Clause 199 applies the provisions of this Part to Brisbane City Council.

Clause 200 specifies the circumstances where an office of a councillor becomes vacant e.g. a person is no longer qualified to become a councillor or, the person becomes a local government employee.

Clause 201 requires a by-election to be held where an office of councillor becomes vacant before 1 March in the year before the year of the next triennial elections for the local government. In this respect, local government elections are to be held every 3 years.

Clause 202 provides for the filling of a vacancy in the office of the mayor, deputy mayor and other councillors where the vacancy occurs on or after 1 March in the year before the year of the next triennial election. The provisions enable a nominee of a political party to fill a vacancy where the councillor (including the mayor) who has vacated the office was a nominee or candidate of that political party. Where no political party affiliation exists the vacancy is to be filled by the local government with a qualified person. That qualified person can be a councillor if the vacancy occurs in the office of mayor. The provisions also empower the Governor in Council to fill the vacancy with a qualified person if a local government fails to fill the vacancy within 2 months after the vacancy occurring.

Clause 203 makes it a requirement for the chief executive officer to seek a political party's nominee for filling a vacancy in the office of councillor where the office has been vacated by a candidate or nominee of that political party.

Clause 204 provides for the process of filling a vacancy in the office of councillor where the vacancy is to be filled by a qualified person who is not a nominee of a political party. In this respect, the councillor who vacated the office would have had no political party endorsement or candidature when elected or appointed to office.

PART 5—MEMBERSHIP OF JOINT LOCAL GOVERNMENTS

Clauses 205-209 require that the members of a joint local government are to be drawn from the councillors of the component local governments. More specifically, the provisions provide for:—

- the election of members;
- the election of delegate members to represent members in their absence;
- the filling of vacancies in the offices of member or delegate member; and
- the appointment of a returning officer for holding an election of a member or delegate member.

Members are elected as representatives of their component local governments when the joint body is created and are re-elected following a triennial election of local governments.

Clause 210 provides the Governor in Council with a reserve power to appoint councillors as members of a joint local government where a component local government or group thereof (as the case may be) has failed to elect a representative by the required time.

Clause 211 requires the members of a joint local government to elect a president and a deputy president from amongst them, at their first meeting following establishment and after each triennial election.

Clause 212 specifies that the president or the deputy president (in the absence of the president) is to preside at meetings of the joint local government.

Clause 213 requires all members of a joint local government to act in the best interests of the joint body. The intent is to have members act in the interests of the regional community rather than a component local government.

CHAPTER 5—LOCAL GOVERNMENT ELECTIONS

PART 1—GENERAL

Clauses 214-217 specify the types of local government elections (i.e. triennial, fresh and by-elections). The times when triennial and by-elections are to be held are also provided for. More specifically:—

- A triennial election of the mayor and other councillors is to be held every 3 years on the last Saturday in March (or such other Saturday fixed by regulation);
- A by-election to fill a vacancy in the office of councillor is to be held on a Saturday within 2 months after the vacancy occurring.

Clauses 218-219 provide for the frequency of triennial elections after 26 March 1994 and for setting the date of a by-election to fill a vacancy in the office of councillor.

PART 2—RETURNING OFFICERS

Clause 220 provides that the returning officer for every local government election is the chief executive officer of the local government.

Clause 221 provides for the appointment of another returning officer where the chief executive officer is unable to perform the duties of returning officer.

Clause 222 specifies the duties of a returning officer when a by-election is to be held. More specifically, the returning officer is required to publicly advertise the day of the election and the day for closing the voters roll.

PART 3—VOTERS ROLL

Clauses 223-225 requires the returning officer to compile a voters roll for each triennial election and by-election. The provisions specify practical cut-off dates for compiling the roll and enables anyone who is an elector under the *Electoral Act 1992* (State) to enrol on the voters roll.

Clause 226 enables a returning officer to utilise and modify the State electoral roll for compiling the voters roll.

Clause 227 specifies the format for the voters roll, e.g. correct alphabetical order of names, same form as the State roll.

Clause 228 makes the voters roll open to public inspection and purchase.

Clause 229 assists the returning officer in compiling the voters roll by requiring a State electoral registrar to provide information and assistance when compiling a roll.

PART 4—VOTING

Clause 230 makes it compulsory to vote at local government elections and specifies that each elector is entitled to only one vote.

Clause 231 specifies the system of voting to apply to an election for councillor, i.e. where an area is divided into single member divisions, optional preferential voting is to apply. In all other cases, first past the post voting is to apply.

PART 5—DIVISION OF LOCAL GOVERNMENT AREAS

Clauses 232-235 require the equitable division and assignment of councillors of local government areas. In this respect, a local government area can be divided or undivided for electoral purposes. Where an area is divided, a triennial election is held for each division of the area. A quota of

electors is to be determined for each councillor so that electors receive comparable representation on a Council. Where an area is divided, the voter to councillor ratio must not vary by more than 20% from the quota when the number of voters is less than 10,000 or, 10% when the number of voters exceeds 10,000.

The representation is reviewed periodically by requiring applicable local governments to advise the Minister on or about 1 March in the year preceding a triennial election whether, based on the latest available electoral roll, each division complies with the voter to councillor ratio.

Should a division not comply with the councillor to elector ratio requirements, the Minister must refer the matter to the Local Government Commissioner. In these cases the referral would be treated as a reviewable local government matter.

PART 6—CONDUCT OF ELECTIONS

Division 1—Preliminary

Clause 236 provides for an election to be conducted in accordance with the provisions of this Part.

Clause 237 empowers the chief executive of the Department responsible for the administration of this Act to approve forms for use in an election.

Division 2—Electoral officers

Clause 238 places the responsibility of the proper conduct of an election on the Returning Officer.

Clause 239 allows the returning officer to appoint persons who are capable of being responsible for the conduct of the election at a polling booth other than the polling booth at which the returning officer is presiding.

Clause 240 allows for the returning officer to appoint adults to assist in the efficient running of an election (issuing officer). A presiding officer, with the approval of the returning officer may also appoint such adults.

Clause 241 requires a declaration to be made by an issuing officer before that person can carry out the duties of the position.

Clause 242 provides for an issuing officer to carry out duties authorised by a returning officer.

Clause 243 requires the returning officer to provide sufficient copies of the certified voters' roll for use in an election and that issuing officers must use a certified copy of the voters' roll in an election.

Division 3—Candidates for election or appointment

Clause 244 specifies who can nominate for election as a councillor of a local government. In effect, any resident who is also an elector can nominate unless disqualified under the Act.

Clause 245 prohibits a person from nominating as candidate for the office of councillor and mayor.

Clause 246 makes arrangement for a local government employee to contest a local government election. In this respect, the employee is entitled to either paid (if accrued) or unpaid leave for up to two months.

Clause 247 requires a person who nominates as a candidate at a local government election to advise on the nomination form, of any endorsement by a political party.

Division 4—Nominations of candidates for election

Clause 248 requires the returning officer to publish a notice of an election in a newspaper. The notice must specify the date of the election, a day and place of nomination and invite nominations of candidates.

Clause 249 requires a candidate for election to be qualified under clause 244.

Clause 250 requires a candidate for election to be nominated by at least 6 electors of the local government area if the election is for the whole area. If the local government is divided into divisions then the 6 electors must be from the division for which the candidate has nominated. Nominations are to be given to the Returning Officer after nominations have been invited and before noon on nomination day.

Clause 251 provides for a nomination fee of \$150.00 unless otherwise prescribed by regulation which is to be held in trust by the local government until it is dealt with following the outcome of the election. The fee must be lodged with the returning officer before noon on nomination day to validate the candidates nomination.

Clause 252 requires the returning officer to certify the nomination of a candidate who has been properly nominated and to give the candidate a copy of the certificate. This clause also places the onus of proof on the candidate where documentary evidence is required that the candidate or a nominator is an elector for the election. A wrongly certified nomination does not validate the nomination.

Clause 253 requires the returning officer to display a copy of each nomination received at the place of nomination and the public office of the local government if the public office is not the place of nomination.

Clause 254 allows a candidate who has nominated for the election to withdraw the nomination before noon on nomination day and to receive a refund of the nomination fee.

Clause 255 provides that if a candidate who has nominated for the election dies before noon on nomination day then the persons nomination has no effect and a refund of the nomination fee is to be made to the person's personal representative.

Clause 256 provides for candidates who have nominated for the election to be taken to have been elected if the number of candidates does not exceed the number required to be elected. The returning officer must publish a notice in a newspaper advising that the nominees are taken to have been elected. The clause also allows the Governor in Council, where no-one has nominated as a candidate for the election, to appoint as Councillors of a local government the number of persons necessary to constitute the local government.

Clause 257 requires the returning officer to give public notice that a poll will be conducted when the number of candidates nominated for the election exceeds the number required. The notice must specify the day of the poll, names of all candidates in order of listing provided for in clause 273, the location of all ordinary polling booths and the ordinary voting hours. The notice is to be displayed after noon on nomination day until the close of the poll at the place of nomination and the public office of the local government if not the place of nomination.

Clause 258 requires the returning officer to provide a copy of the voters' roll to each candidate for an election.

Clause 259 provides for proceedings in an election to start again, where a properly nominated candidate dies after close of nominations and before polling day. Nomination deposits of all candidates for the particular election must be refunded. The Governor in Council may by Gazette notice direct that all elections for the local government be held anew and if so must, by Gazette notice, fix a new polling day.

Clause 260 requires nomination deposits to be refunded if the person is elected or the person receives more than 4% of the total number of formal first preference votes cast in the election in respect of optional preferential system of voting or the person receives more than 4% of the total number of formal votes cast in respect of first past the post system of voting. Deposits of candidates who do not meet this criteria must be paid to the local government's operating fund.

Clause 261 provides for a candidate who is successful at the election but who dies prior to the final result of the poll being declared, to be declared elected to the relevant office.

Clause 262 empowers the Governor in Council, if considered necessary, to fix a later date for nomination day or polling day by Gazette notice. The returning officer is required to publish details contained in the notice and any necessary directions in relation to procedures to be followed.

Division 5—Ballots

Clause 263 provides that a poll is to be conducted in accordance with the provisions of this Part.

Clause 264 allows the Governor in Council to direct that a poll be conducted by postal ballot instead of ordinary ballot.

Division 6—Polling booths

Clause 265 provides that a place where liquor may be sold cannot be appointed as a polling booth. An exception to this is where a civic or cultural centre, community hall or similar place under the local government's control is to be used. Certain restrictions apply in this case

before the place can be used as a polling booth. This clause also allows the returning officer to arrange for booths either inside or outside the local government area, more than one booth in the same place and that each polling booth is provided with sufficient materials to allow electors to vote on polling day.

Clause 266 allows for a returning officer to arrange for places to be used as ordinary polling booths on polling day. Public notice must be given of the location of the booth and the ordinary voting hours. Public notice of any change of arrangements must be given by the returning officer.

Clause 267 provides for mobile polling booths to be declared if a part of a local government area does not have enough electors to justify the appointment of an ordinary polling booth or the returning officer is satisfied that residents in an institution should be able to vote at the institution. Public notice must be given declaring the relevant institution or place and specifying the times at which votes may be cast at the booth. Candidates for the election must be given written notice of the declaration of mobile polling booths and the times at which votes may be cast at the booth.

Clause 268 requires the person in charge of an institution to allow residents in the institution and issuing officers to have access to the booth during the declared voting hours.

Clause 269 provides for privacy of voting at a polling booth.

Division 7—Ballot boxes, papers and other documents

Clause 270 requires ballot boxes used in the election to be under the scrutiny and effective control of an issuing officer. This clause also requires the opening in a ballot box to be of a size sufficient to allow folded ballot papers and declaration envelopes to pass through and allows various persons to inspect a ballot box prior to completed ballot papers being placed in the box.

Clause 271 requires the returning officer to arrange for the printing of ballot papers to be used in the election and details the content of the ballot paper.

Clause 272 allows for a local government to pass a resolution requiring the use of separate ballot papers in the election for mayor and another councillor of the local government.

Clause 273 sets out the procedure to be followed by the returning officer when determining the order in which candidates names appear on the ballot paper. The returning officer is required to give written notice to each candidate of the day, time and place at which the order is to be determined and shall allow the candidate or their representative to be present.

Clause 274 requires the returning officer to ensure that all polling booths have sufficient numbers of ballot papers available. This clause also details the content of the delivery note forwarded with each parcel of ballot papers to the presiding officers. Each presiding officer is required to check the contents of the parcel upon receipt for any discrepancies. If a discrepancy is found the presiding officer must confirm the discrepancy by a countercheck made by another person and note such in a form of acknowledgment which is returned to the returning officer following preliminary counting.

Clause 275 empowers the Governor in Council by Gazette notice to correct any error or omission in documentation used in a poll.

Division 8—Scrutineers

Clause 276 allows scrutineers to be present during voting at a polling booth before and at all times during examination or counting of votes. A candidate is entitled to have 1 scrutineer for each issuing officer.

Clause 277 allows a candidate to appoint adults as scrutineers for the election and requires that each scrutineer make a declaration before a returning officer or presiding officer.

Clause 278 requires a properly appointed scrutineer to carry evidence of identification of such appointment.

Clause 279 provides for scrutineers to be present in a polling booth at various times before, during and after the poll and specifies what a scrutineer is entitled to do.

Division 9—Voting generally

Clause 280 specifies who is entitled to vote in an election and prohibits the returning officer from voting at the election. This does not apply to the returning officer when there is a tied vote.

Clause 281 provides for the times when voting may take place at an ordinary polling booth and a mobile polling booth and allows those electors who are in a polling booth at the close of voting to cast a vote.

Clause 282 details the procedure for an elector wishing to vote at a polling booth. The procedure amongst other things requires the issuing officer to keep a record of an objection made by a scrutineer to the entitlement of a person to vote.

Clause 283 specifies the duties of an issuing officer at a polling booth when a ballot paper and declaration envelope are returned by an elector who does not wish to cast a declaration vote.

Clause 284 provides for disabled electors to vote at a voting place close to a polling booth. The provisions enable an issuing officer's functions to be performed at the voting place as if it were a polling booth. Scrutineers if they wish may accompany the issuing officer to the voting place.

Clause 285 allows an issuing officer to visit electors resident in an institution for the purpose of enabling them to vote when the institution or part thereof is declared a polling booth. This clause also details the procedure for voting in such circumstances.

Clause 286 enables electors who are ill, disabled or in advanced pregnancy or those persons caring for them to make application for an electoral visitor vote. This clause also sets out the procedure an issuing officer must follow when visiting an elector.

Clause 287 provides for another person chosen by an elector to help the elector cast a vote. The elector who requires help to vote must first satisfy an issuing officer that they are unable to vote without assistance and must follow the procedures set out in this clause.

Clause 288 allows the returning officer to adjourn the conduct of a poll generally or at a particular polling booth when the conduct of the poll is likely to be obstructed or interrupted for any cause. A presiding officer may adjourn the conduct of a poll at a polling booth under the circumstances previously mentioned. If a poll is adjourned for any reason the returning

officer must fix a day within a certain period for conducting the adjourned poll. Public notice must be given by the returning officer.

Division 10—Declaration voting

Clause 289 specifies persons who may cast a declaration vote e.g. persons who will be absent from the area or because of illness will not be able to vote at a polling booth.

Clause 290 specifies persons who must cast a declaration vote e.g. persons not on the roll because of official mistake or who appear to have already voted.

Clause 291 specifies that an elector in a postal ballot election must cast a vote by declaration.

Clause 292 provides for the ways in which an elector who may or must cast a declaration vote to cast the vote. An elector may—

- go to a place close to a polling booth;
 - go to an ordinary polling booth on polling day;
 - go to the public office of the local government before polling day;
- and
- use the ballot paper and declaration envelope given to them by the returning officer.

Clause 293 provides for the distribution of ballot papers to electors who may or must cast a declaration vote. An elector must make application for a declaration vote not later than 6.00 pm on the Thursday before polling day. If the elector is one who may cast a declaration vote the returning officer gives a ballot paper and declaration envelope to the elector. If the elector is one who must cast a declaration vote the returning officer gives the elector a declaration form to be completed before the elector is given a ballot paper and declaration envelope.

Clause 294 sets out the procedures an elector must follow to cast a declaration vote at an ordinary polling booth.

Clause 295 requires the returning officer, for a postal ballot election, to post a ballot paper and declaration envelope to each elector for the postal ballot election.

Clause 296 requires an issuing officer to keep a record of electors given a ballot paper and declaration envelope given to electors.

Clause 297 requires an elector who intends casting a declaration vote by post to—

- complete the declaration envelope in the presence of an adult and have that adult witness the declaration;
- complete the ballot paper and seal it inside the declaration envelope; and
- post or deliver the declaration envelope to the returning officer.

This process must be completed by 6.00 pm on polling day.

Clause 298 requires the returning officer to declare the public office of the local government or part thereof, or another of the Council's offices or some other convenient place, as a polling booth to allow electors, who may cast a declaration vote, to vote prior to polling day. The electors may vote during normal business hours in the period which commences 14 days before polling day and not later than 6.00pm the day before polling day. The returning officer is empowered to fix a longer period and if so is required to notify the fact in a newspaper circulating in the area.

Division 11—Marking of ballot papers

Clause 299 provides that an elector residing in a local government area which is divided into single member divisions (optional preferential system of voting) must vote by marking the numeral 1 or a tick or a cross in the square opposite the name of the candidate whom the elector prefers. Alternatively the elector may mark the numeral 1 or a tick or a cross in the square opposite the name of a candidate to record the electors first preference and mark the numerals 2, 3, 4, and so on in the other squares to indicate other preferences.

Clause 300 provides that an elector voting by the first-past-the-post system of voting must, for election of mayor, mark the numeral 1 or a tick or a cross in the square opposite the name of the candidate whom the elector

prefers. For an election of other councillors the elector is required to mark, in the case of 1 candidate to be elected, the numeral 1 or a tick or a cross in the square opposite the name of the candidate for whom the elector prefers or in the case of more than 1 candidate to be elected the numeral 1 or a tick or a cross in the square opposite the name of 1 candidate for whom the elector wishes to vote and the numerals 2, 3, 4 and so on in the squares opposite the names of the other candidate the elector wishes to vote up to the number of candidates to be elected.

Division 12—Replacement ballot papers

Clause 301 provides for the issue of a second ballot paper in the case where the original ballot paper has been accidentally destroyed or defaced or lost in transit. An issuing officer must set all defaced or destroyed ballot papers aside for separate identification. The returning officer must record the name and place of residence of each person to whom a second ballot paper is given.

Division 13—Effect of ballot papers

Clause 302 provides the criteria in assessing whether a vote cast under the optional preferential system of voting is formal or informal.

Clause 303 provides the criteria in assessing whether a vote cast under the first-past-the-post system of voting is formal or informal.

Clause 304 provides that if a declaration envelope and ballot paper is received by the returning officer by post then it must be presumed that the requirements for declaration voting by post have been complied with until the contrary is proved.

Clause 305 allows a formal vote to have effect in the election and an informal vote to have no effect in the election.

Clause 306 allows for the formal part of a combined ballot paper (mayor and councillors) to be counted in the election and the informal part of the ballot paper to be rejected.

Division 14—Counting of votes

Clause 307 requires votes in an election to be counted in accordance with this Division.

Clause 308 provides for a preliminary count by a presiding officer of all formal votes cast in respect of an election.

Clause 309 allows a returning officer to commence processing of declaration envelopes at 8.00am on polling day but does not allow counting of ballot papers until after 6.00pm on polling day.

Clause 310 provides for the procedure for processing declaration envelopes. All candidates for the election are advised by the returning officer of the times and places where declaration envelopes will be examined.

Clause 311 provides for the procedure to be followed by the returning officer at the official counting of votes.

Clause 312 provides that when a scrutineer objects to the treatment of a ballot paper as informal during a preliminary count or the official count the officer must mark on the back of the ballot paper “formal” or “informal” depending on the officers decision to treat it as formal or informal. If a scrutineer objects to the counting of a vote for a particular candidate the officer must mark on the back of the ballot paper the name of the candidate for whom the vote is counted.

Clause 313 details the procedure a returning officer must follow when carrying out the official count when the optional preferential system of voting has been used.

Clause 314 details the procedure a returning officer must follow when carrying out the official count when the first-past-the-post system of voting is used.

Clause 315 details the duty of the returning officer after counting of votes which includes amongst other things the parcelling up and identification of material used in the election and examination of the voters’ roll to ascertain those electors who appear to have voted more than once in the election. The returning officer gives a list of those electors to each candidate in the election.

Division 15—Actions following poll

Clause 316 requires the returning officer to declare the result of the poll and the names of the candidates who have been elected. This is done when the result of the election is clear, even though, all votes that may count in the election have not been received by the returning officer.

Clause 317 requires the returning officer to give notice of the final result of the poll. A copy of the notice is given to each candidate in the election.

Clause 318 requires the returning officer to compile a list of electors who have not been issued with a ballot paper or have not returned their ballot papers. A copy of the list is to be given to the local government, to candidates in the election and to persons who apply within 28 days after the final result of the poll is notified.

Clause 319 provides for the local government if they wish to cause a notice to be given to a person who appears not to have voted in the election. The local government utilises the list provided by the returning officer under clause 318. This clause also provides details of the requirements of the notice.

Clause 320 requires the local government to record against the name of an elector who has been served a notice under clause 319 if the elector has complied with the notice and if the elector had a valid and sufficient reason for failing to vote.

Clause 321 provides that the list made under clause 318 or copies or extracts therefrom which has been certified by the chief executive officer of the local government is evidence of the matters contained in the document.

Clause 322 allows the returning officer to destroy all unused ballot papers. The returning officer must also seal in packets all parcels previously sealed by the returning officer and endorse the contents of each packet.

This clause requires that the returning officer dispose of the packets after a period of one year. Councillors of the local government may attend during the destruction of the material.

Clause 323 provides that a ballot paper used at an election and identified by evidence as one of the ballot papers given to or held by the chief

executive officer of the local government is evidence of the vote or votes cast in the election.

Clause 324 requires the returning officer to provide the State Electoral Commission with the names and addresses of persons who voted by declaration because their name was left off the voters' roll apparently because of official error.

Division 16—Enforcement

Subdivision A—Offences in general

Clause 325 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who makes a false or misleading statement.

Clause 326 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who knowingly gives a document, for the purposes of this Act, which contains false or misleading or incomplete information. This clause does not apply to a person who indicates that the document is false etc. or gives the correct information.

Clause 327 provides a maximum penalty of 85 units or 2 years imprisonment for any person who bribes or attempts to bribe a person so as to affect the way in which that person votes at an election or the nomination of a person or the person's support of or opposition to a candidate or political party.

Clause 328 provides a maximum penalty of 85 penalty units or 2 years imprisonment for any person who knowingly provides or replaces any money for any payment that is contrary to law relating to elections.

Clause 329 provides for a maximum penalty of 35 penalty units or 1 years imprisonment for any person attempting to improperly influence an electoral officer in the performance of their duties.

Clause 330 provides a maximum penalty of 20 penalty units or 6 months imprisonment for any person who hinders or interferes with the rights of another person which relate to the election.

Clause 331 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for any person who forges or knowingly utters forged electoral papers. A maximum penalty of 20 penalty units is also provided for a person who forges someone else's signature on an electoral paper.

Clause 332 provides for a maximum penalty of 10 penalty units for an electoral officer who wilfully neglects or fails to perform their duties under the Act.

Clause 333 provides a maximum penalty of 10 penalty units for an issuing officer or scrutineer who makes a mark or memorandum or notation which would enable the officer or scrutineer to ascertain the candidate for whom an elector has voted.

Subdivision B—Offences about electoral advertising and information

Clause 334 provides for a maximum penalty of 20 penalty units for a person who, during the election period, does or permits a person to print, publish, distribute or broadcast any thing containing election matter unless it complies with the provisions of this clause.

Clause 335 provides for a maximum penalty of 10 penalty units if the proprietor of a newspaper prints in a newspaper an article or paragraph containing matter about an election and receives or is to receive a reward or compensation for the insertion of the article or paragraph or the proprietor does not cause the word “advertisement” to be printed as a headline to the article or paragraph in letters not smaller than 10 point or longer primer.

Clause 336 provides for a maximum penalty of 40 penalty units for a person who, during an election period, publishes or broadcasts anything which is intended or is likely to mislead an elector about the way of voting at the election.

Subdivision C—Offences about voting

Clause 337 provides for a maximum penalty of 1 penalty unit if a person—

- fails to vote at an election without a valid reason; or
- fails to comply with a notice given under clause 319; or

- makes a false or misleading statement in relation to a notice given under clause 319.

Clause 338 provides a maximum penalty of 10 penalty units for an employer who, after an employee has requested leave of absence to vote at the election, refuses to allow the leave of absence for a reasonable period unless the absence is likely to cause danger or substantial loss to the employer or imposes any penalty or deduction of pay for such leave of absence. This clause also stipulates that an employee must not ask for leave of absence unless they are intending to vote at the election.

Clause 339 provides for a maximum penalty of 10 penalty units if a person does any of the following things inside a polling booth or within 6 metres of an entrance to a building if the building is a polling booth or part thereof—

- canvass for votes;
- induce an elector to vote in a particular way or not vote at all;
- loiter;
- obstruct the free passage of a person seeking to vote.

Clause 340 provides a maximum penalty of 10 penalty units for a person who wilfully obstructs or interrupts voting or the counting of votes at a polling booth.

Clause 341 provides a maximum penalty of 85 penalty units or 2 years imprisonment for a person who uses violence or intimidation to influence the vote of a person at an election.

Clause 342 provides for a maximum penalty of 1 penalty unit for a person wearing or displaying any badge or emblem of a political party in a polling booth.

Clause 343 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who casts a vote and is not entitled to do so or procures another person to vote who is not so entitled.

Clause 344 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who—

- wilfully fails to comply with the voting provisions of this Division;

- removes a ballot paper from a polling booth without authorisation;
- places a ballot paper in a ballot box which either has not been marked by or given to the elector;
- has in their possession a ballot paper marked by another person or a declaration form or envelope signed by another person unless the person has a lawful excuse.

Clause 345 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who fails to post or deliver documents such as declaration forms, declaration envelopes, etc. on behalf of another person.

Clause 346 provides a maximum penalty of 20 penalty units or 6 months imprisonment for a person who discloses information as to which candidate an elector has voted for other than when required by law to do so.

Clause 347 provides for a maximum penalty of 20 penalty units for a person who wilfully opens or breaks the seal of a parcel or packet sealed under this Part unless authorised to do so.

Clause 348 provides for a maximum penalty of 20 penalty units or 6 months imprisonment for a person who, acting as a witness under clause 297,—

- fails to satisfy themselves of the identity of the elector who signed the declaration;
- fails to see the elector sign the declaration;
- knows the declaration made by the elector to be untrue.

Subdivision D—Injunctions

Clause 349 allows for an application to be made to the Supreme Court for an injunction by a returning officer or a candidate against a person who has or is engaging in conduct or has failed or is failing or proposes to fail to do anything which would constitute a contravention of or an offence against this Division.

PART 7—FRESH ELECTIONS

Clause 350 provides a discretionary regulation making power for directing the holding of a fresh local government election where a Council has been dissolved or a reviewable local government matter of a certain nature is to be implemented. A fresh election is an election for the whole of the Council including the Mayor.

The implementation of certain reviewable local government matters (e.g. reassignment of members, new divisional arrangements) may necessitate the holding of a fresh election.

Clause 351 provides a regulation making power for setting a Saturday for the holding of a fresh election.

Clause 352 provides for the appointment of a returning officer for a fresh election.

Clause 353 provides for the compilation of a voters roll for a fresh election.

Clause 354 applies the relevant provisions of the Act for holding a triennial election and a by-election to the holding of a fresh election (with any necessary changes made by regulation to facilitate the application).

Clause 355 provides a discretionary regulation making power for determining that councillors elected at a fresh election are to hold office until the conclusion of the triennial election after the next scheduled triennial election. In effect, a councillor could hold office in excess of the normal term of three years. This would be practical in certain instances, e.g. if a fresh election were to be held in December 1993, it would be of little point requiring another election to be held in March 1994 which is the time of the next scheduled triennial election. Considerable unnecessary costs would be saved by the local government by not conducting the next scheduled election. It is also considered that little variation to voter preferences would occur in such a short period of time.

CHAPTER 6—GENERAL OPERATION OF LOCAL GOVERNMENTS

PART 1—PROCEEDINGS OF LOCAL GOVERNMENTS

The intent of this Part is to establish decision making structures and certain other administrative procedures. The inclusion of community members on local government advisory committees is a significant addition to the legislation which allows local government to formally recognise community expertise and the benefits to the decision making process of broad consultation on certain matters.

Division 1—What meetings are held

Clauses 356-357 provide that a local government must hold a post election meeting and specifies the business which must be included in the agenda of its first meeting.

Clause 358 provides for the holding of other local government meetings which for a city or town is to be at least once in each month and for a shire at least once every 3 months.

Division 2—Local government meetings

Clause 359 provides that all meetings of a local government be held at its public office although it may decide by resolution to hold a meeting at another place.

Clause 360 provides for a quorum at meetings which must be a majority of the number of councillors or if the number is even, one-half of the number is a quorum.

Clause 361 provides that a local government may only conduct business if a quorum is present and specifies the procedures for voting at meetings.

Clause 362 requires the local government to keep minutes of its proceedings which must be confirmed in accordance with the requirements in clause 375.

Clause 363 provides for the adjournment of a meeting of a local government to a later hour or to a later day. The provision also provides for adjournment if a quorum is not present within 30 minutes of the time appointed for a meeting.

Clause 364 provides that written notice of each meeting or an adjourned meeting must be given to each councillor at least 2 days before the day of the meeting and specifies the information which must be included in the notice.

Clause 365 provides that resolutions may be repealed or amended if a written notice of intention to do so is given to each councillor at least 5 days before the meeting at which the proposal is to be made. The provision also specifies the circumstances in which the proposed repeal or amendment is taken to be defeated when voted upon.

Division 3—Committees and their meetings

Clause 366 enables a local government to appoint from its councillors, standing committees, special committees, advisory committees and to fix a quorum and appoint a chairperson for each committee.

Clause 367 provides that an advisory committee cannot be appointed as a standing committee and may include in its members persons who are not councillors. The provision also clarifies that members who are not councillors are entitled to vote on business coming before the committee.

Clause 368 provides for the appointment of a delegate member of a committee who may attend a committee meeting in the absence of a member of the committee.

Clause 369 provides that a quorum may be fixed for a committee by the local government or by the committee.

Clause 370 provides for a committee to appoint a chairperson from among its members if the local government does not make an appointment and if the chairperson is not present at a meeting, the members present may appoint a chairperson for the meeting.

Clause 371 provides for a committee to hold its meetings at a time and location which it decides. The provision also specifies the procedures for voting at committee meetings.

Clauses 372-373 require a committee to report to the local government as directed. A committee must keep minutes of its proceedings unless the local government exempts a committee from keeping minutes if its function is to advise or make recommendations. If the committee is exempted from keeping minutes it must submit a written report of its deliberations to the local government.

Division 4—Meetings generally

Clause 374 provides for the application of this Division to a meeting of a local government or a committee.

Clause 375 provides for the keeping of minutes which must include the names of councillors or members present at the meeting and if a division is called on a question, the names of all person voting and how they voted. The chief executive officer is responsible for ensuring that the minutes of each meeting are taken under the supervision of the person presiding at the meeting. The provision also requires that minutes be confirmed.

Clauses 376-377 provide that meetings of a local government and its committees are open to the public. The provisions specify a limited number of matters where a meeting may be closed to the public. In these circumstances, the matter must be specified in the resolution closing the meeting to the public. A substantive resolution cannot be made in a closed meeting.

Clause 378 requires the local government to advertise the time and place of its ordinary meetings and meetings of its standing committees. Any changes to the times of the meetings must be advertised immediately. For ordinary meetings it must advertise in a newspaper and for special or committee meetings display a notice in its public office. The provision also provides for public inspection of items to be discussed at an ordinary or special meeting and clarifies the right to discuss or deal with items arising after the agenda for the meeting is made available to councillors.

Clause 379 requires the local government to advertise any proposal to pass a resolution authorising remuneration to councillors of a local government. The provision specifies that the notice be published between 4-6 weeks before the meeting.

Division 5—Records

Clause 380 provides that the chief executive officer is responsible for the safe custody of all records and documents of the local government.

Clause 381 provides for regulations to be made in relation to the loss or destruction of a document owned or held by a local government. The provision mentions that the regulation may, for example, allow a copy of the document to be used as if it were an original, including being admissible in evidence.

Clause 382 provides that a copy of the minutes of each meeting of the local government be available for inspection at its public office within 10 days after each meeting and when the minutes have been confirmed that they be available for purchase.

Clauses 383-384 enable a councillor to make application to the chief executive officer or under guidelines made by the chief executive officer, to inspect or make a copy of records about the operations of the local government or its committees and a committee member may inspect or copy records about the committee's operations. The provisions require that a person must not obstruct or hinder the inspection or copying of records. Maximum penalty: 10 penalty units (currently equivalent to \$600)

Division 6—Miscellaneous

Clause 385 provides for all correspondence with a local government to be addressed to the chief executive officer who is responsible for taking the appropriate action for the correspondence.

Clause 386 provides for the delegation of a local government's powers by resolution to the mayor, a standing committee, a joint standing committee or its chief executive officer. It may not delegate a power to take disciplinary action against an employee appointed by it. If an Act requires that the power must be exercised by resolution the power cannot be delegated. The provision also provides for a register of delegations to be kept by the chief executive officer which must contain particulars prescribed by regulation and is open for inspection.

Clause 387 provides that proceedings of a local government or any of its committees or the action of a councillor or committee member are not

invalid purely because of vacancies in membership, irregularities in the election or appointment or the disqualification of a councillor or committee member.

PART 2—POLLS

The intent of this Part is to establish the process for a local government to follow when conducting a poll within its area on issues of concern to the local government.

Clause 388 provides that a local government may conduct a poll in its area subject to the following clauses in this Part.

Clause 389 provides that a local government may conduct a poll of electors on issues of concern to the local government in the whole or part of its area.

Clause 390 specifies that a poll be conducted on a Saturday.

Clause 391 provides for the application of the following provisions to the conduct of a poll as if the poll were a triennial election or a by-election:—

- Chapter 5 (Local government elections)
 - Part 2 (Returning officers)
 - Part 3 (Voters roll)
 - Clause 230 (Compulsory voting)
 - Part 6 (Conduct of elections)

Clause 392 provides that in every poll, a statement of the case for and against (may be prescribed by regulation) and the question to be voted on in the poll, be open to inspection and given to each elector at a reasonable time before the day of the poll.

The clause also provides for the application of rules for the conduct of local government elections to local government polls to the extent that they can be reasonably applied to polls and so that they are not inconsistent with the rules.

Clause 393 requires the returning officer for the poll to advertise the results of a poll in a newspaper as soon as practical after the result of the poll is decided.

Clause 394 provides that a local government which conduct a poll must not conduct another poll on the same question or one substantially the same within one year of the poll. The provision also clarifies that a poll may be held on the same question or one substantially the same on the day of the next triennial election or if the poll is conducted only in part of the area, at a by-election for that part.

PART 3—CONTRACTS AND TENDERING

The intent of this Part is to establish mechanisms for local government contracting for work, goods and services necessary to carry out its functions. The contracting requirements are designed to provide flexibility to the local government while ensuring that efficiency gains arising from competition for contracts are achieved. The requirements also provide an opportunity for public scrutiny of local government decisions in this area.

Division 1—Preliminary

Clause 395 requires the local government to have regard to the following principles when entering into contracts for the carrying out of work or the supply of goods or services:—

- . open and effective competition;
- . value for money;
- . enhancement of the capabilities of local business and industry;
- . environmental protection;
- . ethical behaviour and fair dealing.

Clause 396 provides for the making, varying or discharge of a contract under the seal of the local government or by a delegate specified in clause 397.

Clause 397 enables a delegate of the local government to enter into a contract on behalf of the local government only where the local government has budgeted for the cost of the contract or where the contract needs to be made because of an emergency or hardship. The provision also specifies that this clause does not affect another law requiring a consent or sanction to be obtained or a procedure to be complied with for the making, varying or discharging of a contract.

Division 2—Purchasing

Clause 398 specifies that tenders involving a cost of more than \$100,000 (or a greater amount prescribed by regulation) are to be invited by notice published in a newspaper. The notice must specify a period of 21 days for the submission of tenders. The provisions of this clause are subject to exceptions and procedures specified in clauses 400 and 403.

Clause 399 requires the local government to invite quotations for contracts between \$10,000 and \$100,000 (or a range of amounts as prescribed by regulation) and that the invitation be extended to at least 3 persons who it considers can meet its requirement at competitive prices. The provisions of this clause are subject to exceptions specified in clause 400.

Clause 400 states that the requirements to call tenders and seek quotations do not apply in the following cases:—

- the local government resolves that it is satisfied that there is only 1 supplier, that a genuine urgency exists or that second-hand goods or goods at auction be obtained;
- where contracts are made under an exemption in the Local Government Finance Standards;
- where contracts are made between the local government and the State, another Australian government or a government entity.

The provision also states that the requirements to enter into contracts for the supply of services do not apply in the following cases:—

- the contract is made with a person on the panel of suitable providers specified in clause 401; or

- the local government resolves that the services to be supplied are of a specialised or confidential nature making it impractical or disadvantageous to invite tenders or quotations.

Clause 401 provides for the compilation of a panel or list of persons which the local government considers are qualified to provide services. It may make its selection only after inviting expressions of interest in the manner required for inviting tenders (clause 398) and after having regard to the principles governing the making of contracts (clause 395). It is intended that lists of preferred tenderers apply to the provision of services of a professional nature such as legal, town planning and architectural services.

Clause 402 enables the local government before making a decision about a contract, to invite all the persons who submitted a tender, to modify the tender so that it takes into account any change in the tender specifications.

Clause 403 provides for a local government to invite expressions of interest before inviting tenders if it resolves that it would be in the public interest and records the reasons for making the resolution. Provision is also made for the local government to invite tenders from those short-listed. If this is done the tendering process specified in clause 398 does not apply to the contract.

Clause 404 clarifies the requirement for a local government to accept or reject a tender or quotation based on the principles provided for in clause 395 governing the making of contracts.

Division 3—Disposal of land or goods

Clause 405 provides that land or goods valued at more than \$1000 or as prescribed by regulation, must be sold by tender or at a public auction and that clause 398 subclause (2) and clauses 402 and 404 subclauses (1) and (2) must apply to the tendering process subject to exceptions provided for in clause 406.

Clause 406 provides for the following exceptions to the requirements for the disposal of land or goods specified in clause 405:—

- the disposal is made to a government, government entity or community organisation;
- the land would be non-rateable after its disposal;

- the Minister approves an exemption;
- land or goods which remain unsold after being offered for disposal under clause 405.
- the disposal under this Division is exempted by Regulation.

The provision also clarifies the meaning of the term “community organisation” which is a non-profit entity or otherwise exists for a public purpose.

PART 4—ENTERPRISES

The intent of this Part is to give local governments more autonomy in widening their revenue base and maximising development opportunities. The provisions will enable a local government to undertake any business or enterprise activity that will benefit its area including joint ventures with the private sector, other local governments or other public sector agencies engaging in these activities. The enterprise provisions are very similar to those provided in the *Local Government Act 1936*.

Division 1—Preliminary

Clauses 407 provides for the application of this Part to the Brisbane City Council.

Clause 408 provides that a matter which is directed to benefiting or can reasonably be expected to benefit an area is a matter conducive to the good rule and government of the area and the well being of its inhabitants. The provision specifies that the matters may include:—

- promoting or contributing to the economic development of any part of the area;
- promoting or attracting commerce, industry or tourism in or to any part of the area;
- promoting or providing opportunities for employment in any part of the area;
- promoting or assisting the supply of services to any part of the area;

- assisting the finances of the local government; and
- assisting the performance of functions of local government in the area.

Clause 409 restricts the application of this Part to an enterprise declared by regulation to be an exempt enterprise. The provision also states that if the exempt enterprise is undertaken as a joint venture, this Part applies to the enterprise if it was authorised to do so under another law or the joint venture is with the State or a government entity or another local government.

Division 2—Enterprise powers

Clause 410 authorises a local government to engage in an enterprise, either alone or together with another entity, if it is of the opinion that the matter is directed to benefiting its area. The provision authorises the local government to do whatever is necessary or convenient in the exercise of that power.

Clause 411 provides that for the purposes of engaging in enterprises the local government may—

- form or take part in forming a permissible company, partnership or association of persons;
- be a member of a permissible company, acquire and dispose of shares, debentures and securities of a permissible company and take part in management of a permissible company;
- be a member of and take part in the management of a partnership or other association of persons;
- commercially exploit its property rights (whether tangible or intangible).

The provision also defines the term “permissible company” which is a company limited by shares that are not listed on a stock exchange and the term “association of persons” which does not include a company.

Division 3—Safeguards

Clause 412 provides that a decision to engage in enterprises must be by resolution and that before engaging in an enterprise, the local government must consult with, and have regard to the advice of persons possessing relevant competence concerning the enterprise proposed and the lawfulness of the exercise of the power.

Clause 413 specifies that a local government must not—

- engage in enterprises in a financial year whereby it commits a greater amount than that allowed under clause 414;
- borrow or provide a guarantee in relation to a borrowing;
- form, take part in forming, be a member of, or take part in the management of a company, other than a permissible company;
- be a member of a partnership other than as a limited partner;
- enter into an agreement or arrangement that does not restrict the liability of the local government to the agreed amount committed by the local government.

Clause 414 provides for the following limits to a local government's enterprise powers:—

- The amount that can be committed to enterprises includes the value of all property which is committed to the enterprise.
- A regulation may be made prescribing the components of a local government's own source revenue and the percentage that can be committed to enterprises limited by subclause 413(a).
- A local government may carry forward uncommitted enterprise funds to be committed to enterprises in a later financial year. The maximum number of years for which uncommitted enterprise funds may be carried forward may be prescribed by regulation.
- An amount carried forward may be committed to enterprises in addition to the amount of commitment permitted to the local government in a financial year by subclause 413(a).
- An amount carried forward must be held in a local government's reserve established in its operating fund until it is lawfully applied by the local government.

Clause 415 requires enterprise activities to be recorded in a register and sets out what information should be included in the register and how the register is to be maintained. The provision also provides that a local government give notice of the establishment of an enterprise register and each entry in the register to the chief executive officer of the Department and the Auditor-General.

CHAPTER 7—FINANCIAL OPERATION AND ACCOUNTABILITY OF LOCAL GOVERNMENTS

The intent of this Chapter is to promote the concept of open, accountable Local Government on the basis that it gives the stakeholders in a council access to the council's forward planning and decision making processes. This enables an informed assessment to be made of the council's success in achieving its goals and meeting community expectations. Such access will not only assure the community that due processes are being followed, but it will also encourage community contribution and participation.

The improved systems of management performance include an openness of strategic direction which will assist accountability. Councils will be required to prepare, regularly review and make public, corporate plans showing their future intentions for the local area. Consultation with stakeholders is an integral part of corporate planning. Annual budgets will be required to be based on the corporate plan. Councils will also be obliged to produce annual reports of their activities, for public information. Requirements will also be made of councils to conduct open meetings, so preventing them from locking the community out of the decision making process, and encouraging broad participation.

Systems of financial accounting within Local Government are in need of reform to allow councils to properly manage their funds. The Local Government Finance Standards proposed under the new Local Government Act will provide for accrual accounting, which is accepted as being more useful to staff, elected representatives and the community in showing the financial position of a council. Accrual accounting recognises incomes and expenditures when they become due rather than when the cash transaction takes place, and it also reflects the changing value of assets. The Regulations will contain principles to be followed rather than prescribing the

detailed format for presentation of accounts, and will make reference to established Australian Accounting Standards, thereby bringing local government in line with modern practices.

PART 1—LOCAL GOVERNMENT FINANCE STANDARDS

Clauses 416-417 provide that the Minister may issue a Local Government Finance Standard to local governments, after consultation about any local government finance matter with the Auditor-General. These standards must be complied with by local governments and trustees of a superannuation scheme established by a local government.

PART 2—CORPORATE AND OPERATIONAL PLANS

Clause 418 requires a local government to prepare and adopt by resolution a corporate plan within a time frame that allows the budget to reflect the provisions of the plan.

Clause 419 provides that a local government's corporate plan remains in force for a time specified in the plan with the specified period for the corporate plan being at least 3 years.

Clause 420 provides that a local government may by resolution amend its corporate plan at any time.

Clause 421 provides that a corporate plan or an amendment to its corporate plan must comply with the Local Government Finance Standards and be open to public inspection prior to either its amendment or adoption.

Clause 422 requires a local government by resolution for each financial year, to prepare, and adopt an operational plan that is prepared in time to allow local government's budget to be consistent with the the plan.

Clause 423 provides that a local government may by resolution amend its operational plan prior to the end of the financial year to which it applies.

Clause 424 provides that a local government's operational plan must comply with Local Government Finance Standards and its corporate plan.

Clause 425 requires that the local government in exercising its jurisdiction must be consistent with its corporate plan and operational plan.

Clause 426 provides that a local government must assess its performance towards implementing its corporate and operational plan and the Chief Executive Officer must submit a report on its achievements to the local government at regular intervals not exceeding 3 months.

Clause 427 provides for public inspection and purchase of a local government's corporate and operational plans.

PART 3—FUNDS AND ACCOUNTING PROCEDURES

Clause 428 requires a local government to establish an operating fund and a trust fund.

Clause 429 provides that a local government may establish specific reserves in its operating fund, must keep separate accounting records for each reserve and allows a local government, where funds held in a reserve are no longer required, to apply those funds to any other purpose.

Clause 430:—

Subclause (1) specifies that monies paid to the local government by way of deposit or in trust and monies required by law to be paid to the Trust Fund, must be credited to the Trust Fund.

Subclause (2) requires amounts in the Trust Fund to be applied in payment to persons entitled thereto or as prescribed by law.

Subclause (3) enables amounts in the Trust Fund to be transferred to the operating fund (with the Minister's prior approval), if the purpose for which they were credited has ceased to exist.

Subclause (4) requires a local government to keep a separate bank account for its trust fund.

Clause 431:—

Subclause (1) requires the local government to observe sound accounting principles and procedures.

Subclauses (2)-(3) require a local government to establish a system for the management of its finances in terms of reporting requirements that comply with the Local Government Finance Standards.

PART 4—BUDGET

Clause 432 requires the local government to adopt its budget for a financial year after 31 May (before the financial year) and before 1 September in the financial year or a later date fixed by the Minister.

Clause 433:—

Subclause (1) provides that the adoption of or amendment of a budget that does not comply with this clause, the budget is void.

Subclause (2) requires the budget to be consistent with the corporate and operational plan, clearly linked with the matters in those plans and comply with Local Government Finance Standard.

Subclause (3) allows a local government to amend its budget for a financial year prior to the end of that financial year.

Subclause (4) allows a local government to make expenditure that is not authorised by the budget provided a genuine emergency exists.

Clause 434:—

Subclause (1) specifies that a local government budget for its operating fund must include cost estimates for its significant activities, the source of funds necessary for that aim and the local governments revenue policy.

Subclause (2) provides that the budget must give general detail of the matters mentioned in subclause (1) for the next 2 financial years.

Subclause (3) specifies that the budget of a local government is the basis on which rates are to be made and levied.

Clause 435:—

Subclause (1) requires the Chief Executive Officer of a local government to present to the budget meeting the financial position of the local government for the previous financial year.

Subclause (2) provides for the procedure where the budget meeting is held in June of a financial year.

Subclause (3) requires that the report of the Chief Executive Officer must comply with Local Government Finance Standards.

Clause 436 enables a local government to incur expenditure prior to the adoption of a budget, however this expenditure must be provided for in the adopted budget.

Clause 437:—

Subclauses (1)-(2) provide that if councillors knowingly consent to expenditure (other than in an emergency) which is not authorised by the approved budget they are jointly and severally liable to pay to the local government the amount expended and interest from the day of that expenditure.

Subclause (3) provides that subclauses (1) and (2) do not apply where the expenditure was of an emergent nature.

Subclauses (4)-(5) provide that any unlawful expenditure is able to be recovered as a debt to the local government and is payable immediately to the local government.

PART 5—BORROWING AND INVESTMENT

Clause 439 defines a local government as a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 440 allows a local government to enter into financial arrangements in compliance with the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 441 allows a local government to invest monies in compliance with the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 442:—

Subclause (1) provides that where unlawful borrowing has occurred the councillors who knowingly agreed to entering into those arrangements are jointly and severally liable for those borrowings, and that the amount borrowed and interest is recoverable as a debt to the local government.

Subclauses (2)-(3) specify who can recover the debt and that a debt recovered is immediately payable to the local government.

Subclause (4) provides that the requirements of the subclauses (2) and (3) are applicable despite the issue of a security by the local government and in accordance with the provisions of the *Statutory Bodies Financial Arrangements Act 1982*.

PART 6—ACCOUNTS

Clause 443 requires a local government to keep accounting records that represent the local governments operations in a financial year and give a comparison with its budget for the year. The Accounts must comply with the Local Government Finance Standards.

Clause 444 requires the Chief Executive Officer to present statements of account to the local government at its ordinary meetings.

Clause 445 provides that the statements under section 444 are open to public inspection.

PART 7—AUDIT

Clause 446 provides that the Auditor-General may prepare a report on any audit performed by that office. Any report must be provided to the Minister, the Mayor and the Chief Executive Officer of the local government and where any audit is performed on a superannuation scheme for councillors of a local government, must be supplied to the trustees of the scheme.

PART 8—ANNUAL REPORT

Clause 447:—

Subclause (1) requires the local government to prepare an annual report on its operation for the year, as soon as practicable after the end of the financial year that is evidenced by its corporate and operational plan and

outlines the form and content of the annual report in terms of activities, targets and costs of the local governments expenditure.

Subclauses (2)-(3) require the annual report for a financial year to be adopted no later than the end of the following November or within such further period as the Minister approves.

Clause 448 provides that the annual report must contain copies of the Local Government financial statements certified as correct by the Auditor General and a certificate from the Auditor General certifying that an audit is complete.

Clause 449-450 specifies the matters that must be included in its annual report including matters relating to the implementation of corporate and operational plans and various issues of public interest.

Clause 451 provides and sets the terms and conditions in which the annual report is available to the public.

PART 9—DUTIES ABOUT PROPERTY STOLEN OR UNACCOUNTED FOR

Clause 452 provides for the notification procedures by which a local government must comply when property of the local government is either lost and or stolen.

Clause 453 provides that a local government must not obstruct in any way or fail to take part in any prosecution action as a result of any property theft or loss.

PART 10—JOINT LOCAL GOVERNMENTS

Clause 454 provides that component local governments must pay to a joint local government, prescribed by regulation, an annual levy for the operation of a joint local government.

Clause 455 provides that a joint local government must issue a contribution notice to the component local governments specifying the

amount to be contributed, and the component local government must pay the prescribed fee within the timeframe indicated on the notice.

Clause 456 provides the procedure for a joint local government to recover an unpaid debt where a component local government fails to pay its contribution to the joint local government.

Clause 457 provides for the establishment of a joint local government's budget for a part of a financial year (i.e. at its formation), and its adoption.

Clause 458 provides for the procedure by which the disposal and disbursement of surplus cash from the joint local government's operating fund may occur subject to the agreement of all component local governments.

CHAPTER 8—LOCAL LAWS AND LOCAL LAW POLICIES

PART 1—PRELIMINARY

Division 1—Object and application

Clause 459 clarifies a local government's jurisdiction to make laws and provides for the establishment of a common law making process for all laws made by local government. This provision also provides for the making of local law policies designed to assist the implementation of the objectives of local laws.

Clause 460 provides for the application of this Chapter to the Brisbane City Council.

Division 2—Local laws and related concepts

Clause 461 provides for the meaning of the term "local law" which is a law made by a local government.

Clause 462 provides for the meaning of the term "model local law" which is a law that is gazetted by the Minister as suitable for adoption by local governments.

Clause 463 provides for the meaning of the term “interim local law” which is a law which because of the nature of the law the Minister and the local government have agreed that it be made using the process specified in Division 2 of Part 2.

Clause 464 provides for the meaning of the term “local law policy” which is made if a local law provides for the making of a policy about a matter and the policy is made using the process described in Part 2, Division 4. For example, a local law regulating road-side vending may provide for a policy specifying the distance that a road-side vendor can legitimately operate from the location of a retail establishment selling similar goods.

PART 2—MAKING LOCAL LAWS AND POLICIES

Division 1—Making model local laws

Clause 465 specifies that a model local law be made in accordance with the process described in this division or Division 3 otherwise it has no effect.

Clause 466 provides for the adoption of the proposed law by resolution and certification of the required number of copies by the Chief Executive Officer.

Clause 467 provides for the final step in the procedure by requiring that a notice be published in the Gazette indicating that a local law has been made, and specifies the type of information which must be included in the notification. The provision also specifies that a local law receive notification within one year of the date of the local government’s resolution otherwise the local law making process must recommence. A copy of the notice and the required number of certified copies of the local law must be given to the Minister as soon as practical after the date of notification.

Division 2—Making interim local laws

Clause 468 provides that the process stated in this Division is to be used in making an interim local law and that the interim law has no effect unless it is made in accordance with the prescribed process.

Clause 469 requires the local government to resolve to make an interim law and to seek the Minister's agreement to the law being made. The proposal for an interim law must include a sunset provision stating that the law will expire 6 months after its commencement or a longer period as notified by the Minister in the Gazette.

Clause 470 provides for Step 2 in the process which requires the local government to obtain the agreement of the Minister to use the process for making an interim law. The local government must provide the Minister with the reasons why it considers that an interim law should be made on an interim basis and any other information required by the Minister or prescribed by regulation. The local government must receive an advice from the Minister confirming whether it may proceed to Step 3 and setting out any conditions which the local government must satisfy. The Local Government must also agree that as soon as the interim local law is in place, it must immediately commence to make a replacement local law by the normal process that involves community consultation as specified in Division 3.

Clause 471 provides for Step 3 of the process which requires that the proposed law be adopted by resolution of the local government and certification of the required number of copies by the Chief Executive Officer.

Clause 472 provides for Step 4 in the process which requires a notice to be published in the Gazette indicating that a local law has been made and specifies the type of information which must be included in the notification, including the date of expiration. A copy of the notice and the required number of certified copies of the local law must be given to the Minister as soon as practical after the date of notification.

Division 3—Making other local laws

Clause 473 provides for the process stated in this Division to be used in making a law which is not a model or interim local law and that the law has no effect unless it is made in accordance with the process described in this division.

Clause 474 provides for the local government to resolve to propose to make a law.

Clause 475 provides for Step 2 in the process allowing the State Government to ensure that the proposed law satisfactorily deals with State interests. The local government must advise the Minister of its proposal and any other information about the proposal required by the Minister or prescribed by regulation. The local government must receive an advice from the Minister confirming that it may proceed to Step 3 and setting out any conditions which the local government must satisfy. The provision also allows the Minister to give an advice to a local government that proposes to make a minor amendment to an existing law, that it may proceed to Step 8 without satisfying Steps 3 to 7.

Clause 476 provides for Step 3 in the process that requires the local government to make the proposed law known to the public by advertising in a newspaper and displaying a notice in its public office. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed law and make written submissions.

Clause 477 provides for Step 4 in the process allowing for public access to and sale of the proposed law at the local government's public office at a price specified in the notice of the proposed law.

Clause 478 provides for Step 5 in the process which requires the local government to properly consider each written submission made that includes the grounds and relevant facts and circumstances relating to a stated position on the proposed law.

Clause 479 provides for Step 6 in the process which requires the local government to make a resolution as to whether to proceed with the law making process. The local government may proceed with the law as advertised or with amendment.

Clause 480 provides for Step 7 in the process which gives the Minister a further opportunity ensure the proposed law satisfactorily deals with any State interest. The provision requires the local government to advise the Minister of the resolution made at Step 6 and include any other information required by the Minister or prescribed by regulation. If the local government advises the Minister that it wishes to proceed with making the law it must receive an advice from the Minister that it may proceed to the next Step subject to any condition which may be stated in the advice.

Clause 481 provides for Step 8 in the process which requires that the proposed law be adopted by resolution of the local government and certification of the required number of copies by the Chief Executive Officer.

Clause 482 provides for Step 9 in the process which requires a notice to be published in the Gazette that a local law has been made and specifies the type of information which must be included in the notice. The clause also specifies that a local law be notified within one year of the date of the local government's resolution otherwise the law making process must recommence. A copy of the notice and the required number of certified copies of the local law must be given to the Minister as soon as practical after the date of notification.

Division 4—Making local law policies

Clause 483 provides that the process stated in this Division is to be used in making a local law policy and that the policy has no effect unless it is made in accordance with the prescribed process.

Clause 484 provides that Step 1 in the process is the local government must resolve to propose to make a local law policy.

Clause 485 provides for Step 2 in the process that the local government must make the proposed policy known to the public by advertising in a newspaper and displaying a notice in its public office. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed policy and make written submissions.

Clause 486 provides for Step 3 in the process allowing for public access to and sale of the proposed policy at the local government's public office at a price specified in a notice of the proposed policy.

Clause 487 provides for Step 4 in the process which requires the local government to properly consider each written submission made which includes the grounds and relevant facts and circumstances relating to a stated position on the proposed policy.

Clause 488 provides for Step 5 in the process which requires the local government to make a resolution as to whether to make the proposed policy (as advertised or amended) as a policy of the local government. If the proposed policy is substantially modified from the advertised policy, it is required to be re-advertised.

Clause 489 provides for Step 6 in the process which requires a notice to be published in a newspaper indicating that a local law policy has been made and specifies the type of information which must be included in the notice. A copy of the notice and the required number of certified copies of the policy must be given to the Minister as soon as practical after the date of notification. The provision also provides for the commencement of a local law policy.

PART 3—PUBLIC ACCESS TO LOCAL LAWS AND LOCAL LAW POLICIES

The intent of this Part is to ensure that the public is given an opportunity to make themselves aware of local laws and associated policies operating in an area.

Clause 490 provides that the local government and the Department ensure that the public has access to a certified copy of a local law or local law policy, and that copies be available from the Local Government at a cost no more than that required to cover printing and postage.

Clause 491 provides for the keeping of a register of local law policies.

PART 4—STATUS OF LOCAL LAWS AND LOCAL LAW POLICIES

The intent of this Part is to establish the legal status of local laws and local law policies properly made by a local government.

Clause 492 provides that following its commencement a local law has the force of law in the local government's area.

Clause 493 clarifies that a local government is bound by its local law policy.

Clause 494 specifies that a certified copy of a local law or local law policy provides evidence of the content of a local law or policy and that judicial notice be given to the certified copy in any proceedings. A copy of a notification regarding the local law as published in the Gazette and of a local law policy as published in a newspaper, may also be used as evidence in any proceedings.

Clause 495 clarifies a local government's competence in respect of the making of a local law or local law policy.

CHAPTER 9—LOCAL GOVERNMENT INFRASTRUCTURE

PART 1—EXTENDED APPLICATION OF CHAPTER

Clause 496 applies this Chapter to the Brisbane City Council.

PART 2—ROADS

The intent of this part is to provide local government with certain powers as they relate to the management, control, and maintenance of roads in its area.

Division 1—Control of roads

Clause 497:—

Subclause (1) provides for the control of all roads in a local government area.

Subclauses (2)-(3) provide for the survey, construction, maintenance, regulation and enforcement of parking, and control of traffic movements over a road in which the local government has jurisdiction and is subject to the provisions of the *Traffic Act 1949*.

Subclause (4) provides for an owner of land adjoining a road to fence that land to prevent animals straying onto that road and requires a local government to specify by local law the obligations and responsibilities of owners of land which abut a road.

Division 2—Realignment and widening of roads

Clause 498 provides that a local government may realign a road to widen it, and where realignment is required acquire any land to give effect to that realignment, and where a structure is likely to be affected by that realignment, provide a notice of realignment.

The clause also requires a local government to serve a notice of realignment on an owner of land affected by a proposed realignment and requires a local government to specify on the notice of realignment of the provisions of this clause and those of clause 500 of the Bill (which provides for compensation to the owner of land affected by that realignment). A copy of the notice must also be lodged with the Registrar of Titles for registration on the certificate of title.

Clause 499:—

Subclause (1) requires that the owner of land affected by a notice of realignment may not erect any structure over the affected land except with the permission of the local government.

Subclause (2) provides that a notice of realignment does not confer ownership of the affected land on a local government until the land is acquired by that local government and dedicated for public use as a road.

Subclause (3) does not require the production of an instrument of title for the registrar of titles to register a notice of realignment over the affected land.

Clause 500:—

Subclause (1) provides that the owner of land affected by a notice of re-alignment is entitled to compensation by virtue of either the service of notice or permission being denied by the local government for the owner to erect a structure over the proposed realignment.

Subclause (2) provides that compensation is not payable until the land is first sold after the issue of a notice of realignment or if the land is put up for sale and a fair market price is not obtained as a result of the service of the notice of realignment.

Clause 501:—

Subclause (1) provides that a claim for compensation must be made by the affected landowner within 3 years of the notice of re-alignment and in a manner prescribed by the Chief Executive Officer. The claim for compensation must also be made to the Chief Executive Officer.

Subclause (2) provides that a claim has been made when all the information needed by the local government to assess the claim, has been provided by the affected land-holder.

Subclause (3) provides that if within 40 days of a claim being lodged, and no written notice is given to the affected land holder of the local governments decision, on the 41st day after which the claim was lodged, the local government is deemed to have refused an offer of compensation.

Clause 502 provides that where a claimant is aggrieved by a decision that person may appeal to the Planning and Environment Court within 30 days of notification of the local governments decision.

Clause 503 provides for the basis in which compensation claims are assessed, namely:—

- due regard must be had of the fair market value of the affected land prior to the issue of a notice and fair market value after the issue of the notice, and the difference between the two forming the basis of the amount finally awarded
- any benefit that accrues to the affected landholder as the result of that realignment

- the amount of compensation must not be increased where the notice of realignment on the affected land has, become separate from other land.

Clause 504 provides that the Planning and Environment Court must, prior to determining and awarding an amount of compensation, be satisfied, where the land is sold, that the sale price is less than may have been expected had the notice of re-alignment not been effected, and further, the seller of the land sold it in good faith and took all reasonable steps to obtain a reasonable price for that land.

Additionally the court must be satisfied that any claim for compensation must recognise that, where refusal from the local government has occurred for permission to construct a structure over the affected land that application was submitted in good faith.

Clause 505:—

Subclause (1) provides that a local government may acquire land instead of paying compensation where land between a proposed and existing alignment has been sold.

Subclause (2) requires that after a notice is served, and all structures removed over that realignment, a local government must acquire the affected land, if so required, by the owner.

Subclause (3) requires that any land acquired must be dedicated within 3 months of that acquisition for public use as a road.

Subclause (4) provides that where no agreement for compensation between the parties has been reached upon the compulsory acquisition of land, the compensation claim must be assessed at the date of acquisition.

Clause 506:—

Subclause (1) provides that a notice of realignment is not able to be served on an owner of land where prior application to the local government has been made for subdivision, consent or permission to build a structure or has submitted a rezoning application.

Subclause (2) provides that the Court may rule in favour of issuing a notice of realignment only where the court has acknowledged a local government's application has been made in good faith for a reasonable widening of a road.

Clause 507:—

Subclause (1) provides that compensation is not payable by the local government where an alignment or realignment occurs as a result of any requirements set out in a local governments planning scheme.

Subclause (2) provides that a local government may decide not to carry out realignment after a notice of realignment has been served, if it thinks fit.

Subclause (3)(a) requires a local government to serve notice of its intention not to proceed with a realignment on all owners of land upon which the proposed realignments were notified.

Subclause (3)(b) requires a local government to serve notice of its decision, where a part-realignment has occurred, on land owners whose land abuts the realigned boundary of the road.

Subclause (4) requires a local government to inform the affected land owners of the provisions of this clause and clause 508 where a realignment is not carried out.

Subclause (5) requires the local government to withdraw and notify the registrar of titles of any realignment and part-realignment not proceeded with where notices of realignment have been lodged but not registered on the certificate of title.

Clause 508:—

Subclause (1) provides for compensation payable where a realignment is not proceeded with, and where structural improvements have been made to land abutting the proposed realignment on the presumption that a realignment would be proceeded with.

Subclause (2) requires a local government to pay the owner of land reasonable compensation where the value of land has decreased as a result of this decision.

Subclause (3) provides that the amount of compensation payable is the difference between the value of land before the decision was made and the value of the land after a decision has been made.

Subclause (4) provides that where a dispute arises between the owner of land and the local government as to the value of compensation payable, the matter shall be determined by the Land Court.

Subclause (5) provides that the provisions of the *Acquisition of Land Act 1967* apply in respect to determining compensation for land resumed under that Act.

Subclause (6) provides that, except under the circumstances outlined under this section, a decision by a local government not to proceed with a realignment does not give entitlement to lodge any claim for compensation except in compliance with the provisions of this section.

Clause 509:—

Subclause (1) provides that a local government may widen a road by acquiring land for a footpath, an owner of land, and any such land as it deems is required for a footpath.

Subclause (2) provides that where a local government acquires land for a footpath it may, in favour of previous land owner, confer certain rights on that owner (e.g. the maintenance of a cellar) however subject to any conditions the local government may determine (i.e. the right to enter and make structural adjustments or construct an awning as it thinks fit).

Division 3—Opening and closure of roads

Clause 510:—

Subclause (1) provides that if an application under the *Land Act 1962* is made for the opening or closure of a road by a person other than a local government the Minister for Lands must notify in writing the local government of that application.

Subclause (2) provides that the notice must specify a date (between 30-60 days) in which the local government may object to the opening or closure of that road.

Subclause (3) provides that the objection must state the reasons for the objection.

Subclause (4) provides that the Minister for Lands must have due regard to those objections.

Subclause (5) provides that the Minister for Lands decision to open or close a road must be communicated to the local government in writing.

Clause 511:—

Subclause (1) provides that a local government may, by public notice close temporarily or permanently all or part of a road, where there is reasonable road access nearby for road traffic.

Subclause (2) provides that a local government may by public notice close a road whilst any temporary obstruction appears on that road.

Subclause (3) provides that the publication of a notice may be done in such a way as the local government deems fit.

Subclause (4) provides that a local government may take all necessary steps to stop traffic where a permanent or temporary closure is affected.

Division 4—Miscellaneous*Clause 512:—*

Subclause (1) provides a local government may make a temporary road on land adjoining a road to effect either construction or maintenance of that road.

Subclause (2) provides that a temporary road may only be made where it is not possible to temporarily close a part of the original road to effect maintenance or construction.

Clause 513:—

Subclause (1) provides that, upon the request of an owner or occupier of land abutting a road, the local government must advise the owner or occupier of the permanent level to be fixed for the road.

Subclause (2) provides that, if after the expiration of 6 months after a written request for the level fixed for that road has not been given by the local government, the level of the road when the notice was requested is deemed to be the permanent level of the road.

Clause 514 provides that where the road level has been altered by the local government to a level other than its permanent level, the owner or occupier and any successor in title is entitled to compensation for injurious affection.

Clause 515:—

Subclause (1) provides for the meaning and definition of the expression “ancillary works and encroachments” which operate over roads, such as, gates, grids, railways, sugar tramways, viaducts, cellars etc etc.

Subclause (2) provides that a local government may by local law regulate the construction and maintenance of all ancillary works and encroachments over roads in its areas.

Clause 516 provides that the classification of roads in a local government area is classified according to the surface of the road.

Clause 517:—

Subclause (1) provides that a local government must prepare and update a road map and register of all roads in its area.

Subclause (2) requires that the map show every road in its area.

Subclause (3) requires a local government road register to show the category and alignment of every road, the level of every road and any other particulars which may be prescribed by regulation.

Subclause (4) grants a local government a discretionary power to show all such particulars as it thinks fit.

Subclause (5) requires that the register be open to public inspection.

Subclause (6) allows for any person, upon application and payment of a reasonable fee fixed by resolution to obtain from the local government a copy extract, map, or register or roads in the area, as well as a certificate from the local government stating the roads category, alignment and levels of the road, including the fact that the alignment or level of the road has not been fixed.

PART 3—MALLS

The intent of this Part is to provide local government with certain powers to construct, manage, maintain and regulate the operation of malls in its area.

Clause 518 provides for the provisions in which a mall may be established in a road.

Clause 519:—

Subclause (1) provides that the Governor in Council, in addition to a public notice placed in a newspaper of the local governments area, gazette a notice that temporarily closes a road for the purpose of allowing the construction of the mall.

Subclause (2) provides a discretionary power for the Governor in Council to amend or revoke, by Gazette notice that road closure.

Subclause (3) provides that the notice of closure or amendment of the road must nominate a date in which that notice becomes effective.

Clause 520:—

Subclause (1) provides that a local government may perform the works required for the establishment of a mall.

Subclause (2) provides that a local government may do all things incidental to providing the works required for the establishment of a mall.

Clause 521 provides that the Governor in Council may by Gazette notice specify a day when the road is to re-open as a mall, when the road has previously been closed to traffic.

Clause 522 provides that the Governor in Council may by Gazette notice specify a date on which a road ceases to be a mall.

Clause 523:—

Subclause (1) provides that a local government do all things incidental to the maintenance and operation of a mall (i.e. marketing promotion cleaning).

Subclause(2) provides that a local government do all things incidental to subclause (1).

Subclause (3) provides a local government with a discretionary power to use a mall (including structures) as it thinks fit, and on any conditions it deems appropriate.

Subclause (4) provides that a local government may exercise all or any of its powers in relation to a mall prior to its Gazetted opening day provided that these powers are exercised for the malls benefit.

Clause 524 provides a local law making power in respect of the presence of vehicles and animals in malls.

Clause 525 provides that no person is entitled to any compensation from a local government as a result of the establishment of a mall or any powers exercised under this part by a local government.

PART 4—MARINE AND AQUATIC MATTERS

The intent of this Part is to devolve the ownership and management of marine and aquatic infrastructure on local governments. For example, ferries and harbours.

Clause 526 provides a local government with the exclusive right to operate a ferry where both banks of the watercourse fall within its area.

Clause 527 provides that where a watercourse forms a common boundary between local governments the Governor in Council may by regulation declare which local government has exclusive control over the ferry and direct that all necessary works are undertaken for the construction and operation of that ferry.

Clause 528:—

Subclause (1) provides that a local government may lease a ferry service and all lands associated with that service on any terms and conditions it thinks fit.

Subclause (2) indemnifies a local government from any liability as a result of a lessees actions or omissions.

Clause 529 provides that a local government may make local laws for managing or regulating ferries that are either operated by the local government or a lessee.

Clause 530:—

Subclause (1) provides that a local government may construct, maintain, manage and regulate for the use of harbours for small vessels and jetties, breakwaters and ramps over waters within its area.

Subclause (2) provides that any power exercised under subclause (1) are also subject to the provisions of the *Harbours Act 1966*.

Subclause (3) provides that a local government may use any foreshore or waters when exercising its powers under subclause (1).

Subclause (4) provides that where a local government is occupying any foreshores, tidal lands and tidal waters are deemed to be in the local governments area.

Subclause (5) provides that this section is subject to the provisions of the *Harbours Act 1966*.

Clause 531:—

Subclause (1) provides for the meaning of various terms used for the management and regulation of bathing reserves, where by, State land is taken to mean land that is not included and subject to a licence or permit granted under another Queensland Act and “seashore” means state land above the high-water mark at ordinary spring tides or foreshores.

Subclause (2) provides that a local government may, with the consent of the Governor in Council by Gazette notice, assume control of a bathing reserve where that reserve incorporates a part of the seashore, land under the low water mark for a distance of 1 km and any sea above the seashore and land.

Subclause (3) provides that a local government may manage, regulate, construct and maintain enclosures, structures and facilities on or over a bathing reserve. Additionally a local government may authorise or provide life saving facilities over that reserve.

Subclause (4) provides that where a bathing reserve is controlled by a local government, the reserve is deemed to be in its area.

Clause 532:—

Subclause (1) provides that the Governor in Council may by Gazette notice place under the control of the local government a foreshore or lands that abut the foreshore.

Subclause (2) provides that a local government may manage and regulate the use of a foreshore in a manner it sees fit.

Subclause (3) provides that whilst a foreshore is under the control of a local government that foreshore is deemed to be in its area.

PART 4—LOCAL GOVERNMENT CONTROL OVER LEVEE BANKS

Division 1—Jurisdiction of Local Governments

Clause 533 prohibits a local government from regulating levee banks in an approved plan under the *Soil Conservation Act 1986*.

Division 2—Control of levee banks

Clause 534 specifies a local government's local law making power in respect of regulating the construction and maintenance of levee banks. In this respect, the construction of a levee bank is subject to the permission of the relevant local government.

Clause 535 enables a local government to attach conditions to its permission to allow the construction of a levee bank.

Clause 536 requires a local government to provide a permit when deciding that a levee bank can be constructed. The clause also specifies the circumstances when a permit can be issued.

Clause 537 enables a local government to regulate levee banks already in existence at the commencement of a local law regulating the construction and maintenance of levee banks.

Division 3—Appeals

Clauses 538-550 provide for an appeal process for persons aggrieved by a local government decision on an application for the construction of a levee bank.

In this respect, an Appeal Tribunal is formed by the chief executive (or delegate of the chief executive) of the department administered by the Minister administering the *Water Resources Act 1989*.

Division 4—Effect of Part

Clause 551 provides that a permission given by a local government for the construction of a levee bank does not affect a right or remedy a person had about that levee bank.

Division 5—Expiry of Part

Clause 552 provides for this Part to expire 1 year after it commences.

CHAPTER 10—RATES AND CHARGES

The intent of this Chapter is to provide local governments with a greater degree of flexibility as it relates to rating. This is of vital importance to Local Government finance, and of course to the ratepayers. A new Act will give greater flexibility for councils to categorise land for differential rating purposes, e.g. the council instead of the State Government's valuing authority will be able to categorise rateable land and it will also be possible to place building units or group title lots being used for different purposes in different categories. In addition, a more equitable system will apply if the valuation of land changes during the course of a year as councils will have the power to adjust rates on and from the date of such a change. It will also be possible to provide rate relief to landlords of pensioners, provided that the relief is passed on to the tenants. Other rate concessions will be possible for owners of land used for particular economic, historic or scientific purposes. There will be powers to discount rates to encourage prompt payment, to allow payment by instalment, to defer payments for pensioners, and to charge interest on arrears.

PART 1—GENERAL

Division 1—Rateable land

Clause 553:—

Subclause (1) provides for the basis of what rateable land is. All land is deemed to be rateable except:—

- vacant State land
- land occupied by the State or a Government entity (other than a non-exempt GOC) except under a lease from a private person
- State forest and timber reserves other than land under an occupation permit or a stock grazing permit granted under the *Forestry Act 1959* or under a lease under the *Land Act 1962*
- Aboriginal land under the *Aboriginal Land Act 1991*, the *Torres Strait Islander Land Act 1991* except land used for commercial or residential purposes
- land exempt from rating under any Act or regulation made under this Act

Subclause (2) provides that a regulation may exempt from rates certain lands used for example, charitable, religious, educational or public purposes.

Subclause (3) provides that where any land is subject to the jurisdiction of the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* and only part of the land is used for commercial or residential purposes, the remainder is not rateable.

Subclause (4) provides that a non-exempt Government Owned Corporation is a Government Owned Corporation within the meaning provided by the *Government Owned Corporations Act 1993*, other than a G.O.C. or a subsidiary of the G.O.C. that is exempt from rates under any Act. This subclause also defines a “private person” as any person other than the State or government entity.

Division 2—Averaging of valuations

Clause 554 provides that this Division applies to the Brisbane City Council.

Clause 555 provides that a local government may, by resolution, average valuations for a period of either 2 or 3 years.

Clauses 556-558 provide for the means by which the averaged value of land is calculated over either 2 or 3 years.

PART 2—MAKING AND LEVYING RATES AND CHARGES

Clause 559 provides that a local government may in any financial year make and levy the following rates and charges, including:—

- a general rate or differential general rates
- a minimum general rate
- separate rates and charges
- special rates and charges
- utility charges

A local government can also fix general charges.

Clause 560 provides that a local government rate or charge may only be made for a financial year, by resolution, at the local governments annual budget meeting.

Clause 561 provides that a local government must make a general rate or differential general rates for each financial year.

Clause 562:—

Subclause (1) provides that prior to determining to use differential general rates the local government must first have 2 or more categories of rateable land.

Subclause (2) provides that where differential general rates are made and levied they may be the same as or different from the differential general rate struck for a different category of land.

Subclause (3) provides that if a local government levies a differential general rate the local government must not make a general rate.

Subclause (4) provides for a local government to levy a differential general rate on a lot under the community titles Acts as if it were an individual parcel of land (i.e. *the Building Units and Group Titles Act 1980*, the *Mixed Use Development Act 1993* and the *Integrated Resort Development Act 1987* and any other Act prescribed by regulation)

Clause 563:—

Subclause (1) provides that a local government may identify land on which a minimum general rate is levied as it thinks fit.

Subclause (2) provides, when that when differential general rates are levied, a local government may apply a different minimum general rate to different categories of land in its area.

Clause 564 provides that a local government may levy rates on a complex used for a time share scheme using the formula $L \times RU$ where L is the minimum general rate which would normally apply and RU is the number of units available on a parcel of land available for exclusive occupation.

Clause 565 allows a local government to levy different minimum general rates on mining tenements according to the size and area of the tenement.

Clause 566 specifies the deemed unimproved value of a mining claim.

Clause 567:—

Subclause (1) allows a local government to levy a special rate or charge on rateable land for a service, facility or activity, where the local government is of the opinion that these works are of special benefit to the land.

Subclauses (2)-(3) allow a local government to make and levy a special rate on the bases it considers appropriate. These rates and charges are allowed to be varied to the extent the local government determines, land will benefit from these facilities, services or activities.

Subclause (4) provides that the local government's resolution making special rates or charges must identify the lands to which these special rates or charges apply.

Subclause (5) allows a local government to identify those parcels of land in which these charges apply in any way it deems fit.

Subclause (6) provides that the local governments decision to levy special rates and charges for any works or facilities for the special benefit of an area, has been complied with when the rate is levied on all rateable land that could reasonably be identified as land on which the rate or charge may be levied, notwithstanding land that has been accidentally omitted.

Clause 568:—

Subclauses (1)-(2) provide that a local government may levy a separate rate equally on rateable land for a service, facility or activity.

Clause 569:—

Subclause (1) provides that a local government may make a utility charge on any land or structure.

Subclause (2) provides that the charge may be for the supply of gas, water, sewerage or cleansing services.

Subclause (3) provides that sewerage and water charges may be levied during the construction for the provision of services.

Subclause (4) provides that the charges may be levied on any bases the local government deems appropriate.

Subclause (5) provides the amount of the utility charges levied for services may differ on the basis of the use of land or under any circumstances peculiar to the supply of that service.

Clauses 570-571 provide that a local government may fix charges for any service or facility provided by the local government (e.g. building application fees, providing information etc.). Details of general charges must be recorded in a register which may be inspected by any person.

PART 3—CATEGORISATION OF LAND FOR DIFFERENTIAL RATING

Division 1—Categorisation of land

Clause 572 provides that a local government may only make and levy differential rates in a financial year if all the land in its area has been categorised under the provisions of this Part.

Clause 573 provides that a local government must by resolution determine the categories into which land in an area is to be categorised and the criteria by which land is to be categorised.

Clause 574:—

Subclause (1) provides that after the categories of land have been determined, all rateable land in the local governments area must be categorised by the local government identifying the category in which each parcel of land is included, or the valuation authority, at the local governments request, identifying the category in which each parcel of rateable land should fall.

Subclause (2) provides that upon the valuation authority deciding which category each parcel of rateable land is included, written notice of those determinations shall be supplied to the local government.

Subclause (3) provides that where the valuation authority is unable to categorise a parcel of land written notice to that effect must be supplied to the local government.

Subclause (4) provides the category of land in which a parcel of land is included can be identified in any way the valuation authority or local government considers appropriate.

Clause 575:—

Subclause (1) provides that where the Council resolves to make and levy differential general rates the resolution must specify the categories in which lands are to be included.

Subclause (2) enables the Council to identify parcels of rateable land in any way that it considers appropriate.

Subclause (3) states that the accidental omission from categorisation does not prevent a local government from making and levying of differential general rates.

Division 2—Entry on land for categorisation

Clause 576 provides for the meaning of the term “authorised person” and includes any person authorised by the local government, the valuation authority or a member of the Land Court.

Clause 577 provides the circumstances where an authorised person may exercise their power of entry onto land.

Clause 578 clarifies the powers of an authorised person in respect of the entry onto and inspection of land.

Division 3—Notice of categorisation

Clause 579 provides that a differential general rate notice must be accompanied by a statement which specifies the various categories of land, the criteria for categorisation, the specific category in which the owners land is included, who categorised the land and other information about objections against the categorisation.

Division 4—Objections and appeals

Clause 580:—

Subclause (1) enables an owner to object to the categorisation of land that has been categorised under Division 1.

Subclause (2) requires an objector to give notice of the objection to either the Council or the valuation authority, as the case may be.

Subclause (3) requires notice of objection to be in the approved form, and to be given within 30 days of the owner receiving the rate notice, nominate the category in which the land owner thinks the land should fall, and specify the grounds and circumstances in which the objection is made.

Clause 581:—

Subclauses (1)-(2) set out the procedure for considering an objection and provides that an objection may be allowed, disallowed or it can be determined that the land should be in another category.

Subclause (3) requires an objection to be determined within 60 days after the end of the objection period.

Subclause (4) requires a notice of determination of an objection to state reasons for the decision.

Clause 582:—

Subclause (1) provides that unless set aside on appeal, a determination on an objection has effect as provided by this clause.

Subclause (2) provides that if an objection is allowed land is taken to be included in the category nominated by the objector for the period in which the rate notice is issued.

Subclause (3) provides that if an objection is disallowed, land continues to be included in the category specified in the rate notice.

Subclause (4) provides that if it is determined that the land should be in another category, the land is to be included in that category for the period that the rate notice is issued.

Clauses 583-584 set out the procedures for appealing to the Land Court for the determination of an objection to the categorisation of land and set out the procedure for filing a notice in the Land Court.

Clause 585 sets out the constitution and procedure of the Land Court.

Clause 586:—

Subclauses (1)-(2) enable the Land Court on hearing an appeal, to set aside the determination and determine that the land should be included in a different category from that determined by the Council or the valuation authority, or the Court may disallow the appeal.

Subclause (3) provides that if the Land Court sets aside its decision the land is taken to be included in the category decided by the Land Court for the period in which a rate notice has been issued.

Clause 587 provides that any objection or appeal against a determination of categorisation does not affect the levy or recovery of rates.

Division 5—Late categorisation

Clause 588 requires the Council or the valuation authority, to determine that land should be included in a specified category if:

- either authority is satisfied that the land should be included in a different category to the category in which it was originally included;
- the land had not been originally categorised because of accidental omission;
- the land becomes rateable land or parcels of rateable land are amalgamated into a single parcel.

Clause 589 sets out the provisions and timeframe in which a determination of a late categorisation under clause 588 is to take effect.

PART 4—LAND RECORD OF LOCAL GOVERNMENT

Division 1—Land record

Clause 590 provides that a local government must keep a record of every parcel of rateable land in a land record which must comply with the regulations.

Clause 591 provides that the land record be open to inspection by certain persons and, in certain circumstances, allows the local government to charge a fee for persons inspecting the land record.

Clause 592:—

Subclause (1) provides that the Chief Executive Officer of a local government must ensure that the land record is amended whenever necessary to comply with the regulations.

Subclause (2) provides that where an amendment to the land record changes a rate, written notice of that change must be provided to the owner of the land.

Clause 593:—

Subclause (1) provides that a local government is able by resolution to remove valueless land from the land record in certain circumstances, and may under subclause (2) take action to acquire that land.

Clause 594 provides for the restoration to the land record of valueless land in certain circumstances.

Division 2—Appeal against amendment of land record

Clause 595 provides that a person may appeal against an amendment to the Land Record by appeal to the Magistrates Court.

Clause 596 provides for the procedure and notification of the appeal process in the Magistrates Court.

Clause 597 provides for the hearing of appeals process and is conducted according to the provisions of the *Magistrates Court Act 1921*.

Clause 598 provides for a magistrate to allow or reject an appeal.

Clause 599 provides that an appeal to the District Court may only proceed on questions of law.

Division 3—Notices of change in ownership

Clause 600 provides for the meaning of certain expressions and requires a vendor or his agent in a sale of land to notify the local government of that sale within 30 days of the sale taking place. The vendor complies if a combined form together with the instrument of transfer is given to the Registrar of Titles within 30 days.

Clause 601 requires that where land is forfeited in the right of the State, either the State instrumentality or the person surrendering the land must notify the local government, in writing, within 30 days of that surrender and must state the description of the land.

Clause 602 provides for the meaning of certain expressions and requires that where a change in the ownership of land takes place, written notification of that change must be supplied to the local government with certain prescribed details.

Clause 603 provides that where the provisions of clauses 600, 601 and 602 have not been complied with, the previous owner of the rateable land is liable for all accrued rates and charges and commits an offence and could be subject to a penalty of up to 5 penalty units (\$300).

These provisions do not apply when the State is required to give the notice.

PART 5—LEVYING AND PAYMENT OF RATES

Division 1—Levy of rates

Clause 604 provides that a local government may only levy a rate by rate notice served on the owner of rateable land. Where the rate is for a service charge on non-rateable land the notice must be served on the person who requested the service. Person can include the Commonwealth and the State.

Clause 605 provides that a local government may in any financial year adjust or levy a rate, even though the rate is in respect of an earlier financial year.

Division 2—Payment of rates

Clause 606 provides that the owner or joint owners of land are required to pay rates and or any utility charges levied on the land. Where the rate relates to non-rateable land the person who requested the supply of the service must pay the rate. Person has the same meaning as that provided for in clause 604.

Clause 607 provides that a local government may recover a rate, despite a change in ownership.

Clause 608 provides that a person who previously occupied land that has ceased to be rateable (i.e. expiration of tenure holding) is still liable to pay any rates up to the point of termination of tenure and may receive any refund of rates as though the person was still the occupier of the land.

Clause 609 provides that rates are payable at the local governments public office or any other place of business of an entity appointed by the local government to receive rate monies.

Clause 610 provides that a local government must specify on the rate notice the time within which rates are payable. The owner of land is required to pay those rates within that specified time.

Clause 611 provides that a local government may by resolution made at its budget meeting authorise the payment of rates by instalments on the conditions it determines.

Division 3—Overdue rates

Clause 612 provides for the meaning of an overdue rate with certain limitations on what constitutes an overdue rate.

Clause 613 provides that a local government may recover an overdue rate as a debt recoverable at law.

Clause 614 provides that overdue rates may bear interest at a percentage specified by the local government but limited to 15% (or such other percentage set by regulation). Interest must apply equally to all overdue rates.

Division 4—Discounts and other benefits for prompt payment of rates

Clause 615 provides that a local government may allow a discount for prompt payment of rates (i.e. within 30 days) however the discount may not exceed 15% or an amount prescribed by regulation.

Clause 616 provides that a local government may allow a discount for payment of rates between 30-60 days however the discount may only be 50% of the original discount.

Clause 617 provides that a local government may allow a discount where it is evident that circumstances beyond a person's control prevented them from paying within the specified time limits.

Clause 618 provides that there is no discount for rates when they are overdue.

Clause 619 provides that a local government may provide other benefits or inducements for the prompt payment of rates.

Division 5—Changes to land that affect rates***Subdivision A—General***

Clause 620 provides that where a change occurs, the period after the change has occurred, is taken to start on the day the change occurs.

Clause 621 provides that a local government may levy a rate on the basis of the information in relation to the land that it is aware of when the rate is levied.

Clause 622 provides that where a change has occurred under the provisions of this Division a local government must adjust the rate in accordance with this clause and either refund or recover any monies that circumstance dictates.

Subdivision B—Changes affecting rates

Clause 623 provides that where the Unimproved Value of rateable land changes, a rate levied after that change must be calculated for the period before the change and for the period after the change according to the valuation relating to each period.

Clause 624 provides that where land has become or ceased to be rateable land, a rate levied after the change must be calculated only in respect of the period for which the land was rateable land.

Clause 625:—

Subclause (1) provides that this section applies to land that is included in a rating category under the provisions of clauses 582, 586, and clause 588 of this Bill.

Subclause (2) provides that where land is included in a category as a result of clauses 582, 586 and 588, the calculation of the rate after a category changes is, for the period before the change, the old category and for the period after the change, the new category levied.

Clause 626 provides that a local government may levy a rate on land that has been forfeited or surrendered only for the time that was occupied prior to surrender or forfeiture.

PART 6—CONCESSIONS

Clause 627 provides that a local government may remit or accept a composition for unpaid rates and accept the transfer of unencumbered land in settlement of rates.

Clause 628 provides that a local government may defer the payment of unpaid rates under certain terms and on such conditions it deems appropriate.

Clause 629 provides that a local government may, by resolution, exercise the powers of clauses 627 and 628, in certain circumstances, and only when the local government resolves that the circumstances exist which warrant remission or composition.

Clause 630 provides for the remission in part or in full of rates where pensioners are occupants, but not owners, of land (e.g. retirement villages). However, the owner of the land is required to give a binding undertaking to pass on in full, the value of the rates remission to pensioners.

Clause 631:—

Subclause (1) provides the conditions by which a local government is bound in the exercise of powers under clauses 627, 628 and 630.

Subclause (2) provides that these provisions may be used only when the owner of land in which rates are outstanding makes application to the local government in the prescribed manner.

The power can be exercised for:

- a period resolved by the local government or
- without limiting the time while an owner is eligible for the continuation of the benefits conferred under clauses 627, 628 or 630.

Clause 632 provides that a local government may, by resolution limit the increase on rates for any or all classes of land in its area as it thinks fit.

PART 7—RECOVERY OF RATES

Division 1—Extended application of Part

Clause 633 applies this Part to the Brisbane City Council.

Division 2—Recovery of overdue rates

Clause 634 provides that a local government may recover a debt for unpaid rates through court action and any order made for payment is not a jailable offence, and any unsatisfied order for payment is not a bar to recovery of that debt from any other person who is also liable for that debt.

Division 3—Sale of land for overdue rates

Clause 635 provides that a local government may sell land for rate arrears where those rates remain unpaid for 3 years, or for a mining claim 3 months.

Clause 636 provides that the local government may sell land, however, it is excluded from so doing where the land is subject to pending court action or is the subject of clause 652 of this Bill.

Clause 637 provides that a local government must give written notice of its intention to sell land and that notice must contain an outline of the provisions of clauses 638 to 643 and must comply with any regulation made for the purposes of this clause.

Clause 638 provides for the timeframe in which a local government must commence proceedings for sale of land.

The clause also provides that a local government may, by resolution, end any proceedings to sell where the overdue rates and expenses are paid to it.

Clause 639 provides for the procedures that a local government must adhere to in selling land including lots under a community titles Act, namely, it must be sold at public auction, notification of intention to sell must be advertised in a newspaper circulating in the area and a notice must be displayed in the public office of the local government. Notification must

also be provided to the owner of the land, or the owner's agent with all notices specifying a date and time of the auction.

Clause 640 provides that the reserve price for a sale must be at least the amount of unpaid rates or the Unimproved Capital Value, whichever amount is greater.

Clause 641 provides that a local government may enter into an agreement of sale with the highest bidder if the reserve price is not reached, however, the sale agreement must be at a price greater than the highest bid.

Clause 642 provides that if an auction is unsuccessful and no agreement of sale is entered into the land is deemed to have been sold to the local government at the reserve price, unless the land is of a tenure that deems the local government not competent to hold. Additionally this provision is subject to clause 652 of the Bill.

Clause 643 details the procedure by which a local government administers and applies the proceeds of sale of land for non-payment of rates.

Clause 644 provides that after a sale has taken place, a proceeding for the recovery of rates for any period before the sale is to be discontinued.

Clause 645 provides for the procedures that a local government must comply with in providing a certificate of sale to the Registrar of Titles for the purposes of registration of title subsequent to a sale of land for arrears and subject to any restrictions placed on a local government by clause 652 of this Bill.

Clause 646 provides for the procedures that a local government must comply with where land is deemed to have been sold to it by virtue of an unsuccessful auction or sale agreement, and provides for the procedures that the registrar of titles must comply with in issuing an instrument of title subject.

Division 4—Acquisition by local government of valueless land

Clause 647 enables a local government to acquire valueless land it has resolved to remove from its land record.

Clause 648 provides that a local government must give written notice of its intention to acquire valueless land to the owner or the owner's agent or any person having an interest in that land.

Clause 649 provides for the procedure and conditions which the local government must comply with where the local government has made application to the registrar of titles for the issue of an instrument of title to the valueless land subject to any restrictions placed on the local government by clauses 652 and 653 of this Bill.

Division 5—Provisions about dealing with land under this Part

Clause 650 provides that the registrar of titles may issue one instrument in title for conterminous lands.

Clause 651:—

Subclause (1) provides that a dealing by a local government with land under this Part is valid, and may confer title to the land on a purchaser or local government, despite any failure to comply with a provision of this Part.

Subclause (2) provides that the purchaser of land under this Part or the registrar of titles need not inquire whether this Division has been fully complied with and is not affected by notice, of a failure to comply with a provision of this Part.

Subclause (3) provides that a claim may not be made against a fund administered by the State Government in relation to a dealing with land under this Part or a registration of title by the registrar of titles.

Subclause (4) provides that this section does not protect a person who commits fraud or wilful default and a local government that fails to comply with a provision of this Division from any liability or loss caused by fraud, default or non-compliance.

Clause 652:—

Subclause (1) provides that this clause applies to tenured land that requires the holder to have particular qualifications or requires the consent of a particular government entity before a person can lawfully hold an interest in the land.

Subclause (2) provides that a local government may only sell an interest in the land under this Part to a person who has either required qualifications or consent.

Subclause (3) provides that a local government may not acquire an interest in land held on a tenure that prohibits a corporation from holding an interest in the land.

Clause 653:—

Subclause (1) provides that this clause applies if a local government intends to deal with land under this Part, and the land is subject to an encumbrance that confers rights on the State or a government entity.

Subclause (2) provides that the local government must give written notice of its intention to deal with land, to a State or government entity, before dealing with the land under this Part.

Subclause (3) provides that a local government may only sell, or acquire, the land subject to the encumbrance, or land that is free of the encumbrance to the extent, and subject to any conditions, agreed by the State or government entity.

Clause 654:—

Subclause (1) provides that if the tenure of a holding in land is terminated for the whole or part of that land, an amount received by the State from an incoming holder of the whole or part of the land may, after deduction of any amount payable to the State, be applied by the State towards satisfaction of a liability for rates payable to a local government for the land.

Subclause (2) provides that if an amount is applied under subclause (1), the remainder of the amount received by the State is payable to the former holder of the land.

CHAPTER 11—PROVISIONS AIDING LOCAL GOVERNMENT

The intent of this Chapter is to set out the legal processes that a local government must adhere to in seeking to enforce compliance with the provisions of this Act and the legal remedies and responsibilities of a local government in this regard.

PART 1—EXTENDED APPLICATION OF CHAPTER

Clause 655 applies certain provisions of this Part to the Brisbane City Council.

PART 2—RIGHT TO TAKE MATERIALS

Clause 656:—

Subclause (1) provides that a local government, its employees or agents may enter certain rateable land which is unimproved for the purpose of retrieving any materials necessary for the exercise of a local government's jurisdiction.

Subclause (2) provides that a power exercised under clause 656(1) may be exercised only with the consent of the owner or occupier of land and only if at least 7 days notice has been given in writing to the owner or occupier of the land. If the land is outside the local government's area the approval of the Minister is required.

Subclause (3) provides that the notice supplied by the local government to the owner or occupier of land must state the local government's intention to enter the land, the purpose of entry and the days and times when entry will be effected.

Subclause (4) provides that the local government, its authorised employee or agents must cause as little inconvenience and damages as possible in the circumstances.

Subclause (5) does not authorise the exercise of subclause (1) where damage to any structure is likely to occur, or the digging or removal of materials within 50 metres of a dwelling house, bridge, dam, jetty or wharf.

Subclause (6) provides that compensation is payable where a local government exercises its powers under subclause 655(1) and a loss (defined in subclause (4)) or damage occurs as a result of exercising this power.

Subclause (7) provides that the Court may order costs as it thinks fit.

Subclause (8) clarifies the term "loss".

PART 3—EXECUTION OF LOCAL GOVERNMENT ACTS

Division 1—Compliance with requirements of local government Acts

Clause 657 provides for the procedure which must be complied with, the duties, responsibilities, and powers of entry of an owner of land where the owners land is subject to an order of the local government, and the owner of land is not the occupier.

Clause 658 provides for the procedure where entry to a premises is denied by an occupier of land for an authorised person of the local government to exercise a function or power of the local government. Additionally, determination is available from a magistrates court where entry is denied and an order is being sought for lawful entry to a premises to exercise a power or function of the local government. A maximum penalty for non-compliance of 50 penalty units applies.

Clause 659 protects the owner of land from liability where the occupier has refused entry to the land and the owner has taken all reasonable steps to effect entry and perform the work required by an order of the local government.

Clause 660 outlines the provisions for the discharge of an obligation of an owner of land by the occupier of land where the owner of land has failed to perform work required by the local government, and protects the rights of the occupier of land. If the occupier is a tenant the tenant may deduct the cost of performing the work from any rent owing and the owner cannot terminate the tenancy because of the deduction of the costs from the rent.

Clause 661:—

Subclauses (1)-(2) provide that where an owner or occupier of land has failed to perform work, a local government may enter that land and perform that work, provided that the consent of the owner and the occupier has been given or entry is effected by the use of the provisions outlined under clause 658.

Subclause (3) provides that, should emergent conditions warrant it, the power of entry to carry out work may be exercised without giving notice.

Subclause (4) provides that any work performed by a local government is a debt payable to the local government by the owner.

Subclause (5) provides that if the occupier of land in addition to the owner of land is required to perform any work, any debt payable to a local government for the performance of that work is payable by the owner and the occupier both jointly and severally.

Clause 662 provides that any debt for work performed by the local government may be recovered by a local government as if it were an overdue rate.

Clause 663:—

Subclauses (1)-(2) provide that a debt which is unpaid by the owner of land is a charge against the land.

Subclauses (3)-(4) provide that a local government may request that an unpaid amount may be registered on the certificate of title, and any such request be accompanied by a certificate from the chief executive officer of the local government stating that there is a charge outstanding against the land.

Subclause (5) provides that this charge has priority over all and any encumbrances over land, except encumbrances in favour of a State or government entity and rates payable to the local government.

Subclause (6) provides that the charge is in addition to other methods of collection which may be used by the local government.

Clause 664 provides that where any unauthorised work has not had the approval of the local government, any limitation on time imposed on a local government in initiating proceedings commences from the day the local government becomes aware of unauthorised work.

Division 2—Entry on land

Clause 665:—

Subclause (1) provides that a local government employee or agent may enter land for the purpose of the exercise of a function of local government (e.g. inspection purposes, perform work, etc.).

Subclause (2) provides that a local government must secure the consent of the owner or occupier of land or seek an order under clause 658.

Subclause (3) provides that where it is not practical to gain the consent of the owner or occupier of land, a local government may in emergent circumstances, enter land and perform work in the interest of public health and safety.

Clause 666:—

Subclauses (1)-(2) provide that an owner or occupier of land is entitled to compensation where either loss or damage has occurred as a result of entry to that land.

Subclause (3) provides that, in the event of the court deciding on the amount of compensation the court may order and award costs as it thinks fit.

Division 3—General

Clause 667:—

Subclause (1) provides that a person must not obstruct a local government in the performance of its function with a maximum penalty of 50 penalty units.

Subclause (2) provides for the procedure where proceedings are initiated against a person for hindering or obstructing a local government or its employees from exercising the powers and functions of local government.

Subclause (3) provides that a person must not destroy, deface or pull down any notice displayed by a local government with a maximum penalty of 35 penalty units.

Subclause (4) provides that an occupier of land must provide the name and address of the owner of land, and must not disclose a false name and address with a maximum penalty of 35 penalty units.

Clause 668:—

Subclause (1) enables a police officer to request the name and address of a person under certain circumstances.

Subclauses (2)-(3) require the police officer to warn the suspect that it is an offence not to disclose that persons name and address and may require

the person to provide reasonable proof of the correctness of the persons name and address.

Subclause (4) provides that a person must comply with a police officer's request unless that person has a reasonable excuse not to. A maximum penalty for an offence under this clause is 35 penalty units.

Subclause (5) provides that no offence has been committed against this Act if it is proved that the person has not committed an offence against this Act.

Clause 669:—

Subclause (1) provides that a police officer may give a person who is in a mall a direction to cease doing something if the police officer believes that it is necessary to give the direction to protect either the public safety or order, or the rights of members of the public to enjoy the mall, or the rights of persons to carry on lawful business.

Subclauses (2)-(3) provides that, when giving the direction, the police officer must warn the person that it is an offence not to comply with a directive and that person must comply with the direction unless that person has a reasonable excuse for not complying with it—maximum penalty 35 penalty units (currently equivalent to \$2100).

Subclause (4) provides that this section has effect subject to the provisions of the *Peaceful Assembly Act 1992*.

Clause 670:—

Subclause (1) provides that this clause applies to an offence against either clause 668 or clause 669.

Subclause (2) provides that a police officer may arrest a person if the person commits an offence to which this section applies and the officer believes that a proceeding by way of complaint and summons against the person would be ineffective.

Clause 671:—

Subclause (1) provides that where a proceeding for an offence against this Act is taken and a court imposes a fine for the offence, the fine must be paid into the operating fund of the local government.

Subclause (2) provides that if a person other than the local government prosecutes the offence, subclause (1) does not apply to any part of the fine that the court may have ordered.

Clause 672 provides that an offence against this Act is a summary offence and that any proceedings for an offence must start within 1 year after the commission of the offence, or within 6 months of the offence coming to the local government's notice but within 2 years after the offence has been committed, whichever is the latter.

Clause 673 provides that an attempted commission of an offence against this Act is to be dealt with in the same manner as if the offence was committed.

PART 4—INFRINGEMENT NOTICE OFFENCES

Clause 674 provides that a local government may, by resolution, appoint any of its employees to be an authorised person.

Clause 675 provides that an authorised person holds office subject to the conditions specified in the instrument of that appointment, and an authorised person ceases to hold office if that person ceases to be an employee of the local government that appointed the person.

Clause 676 provides that an authorised person has the powers given under this Act and any other Act.

Clause 677 provides that a local government must issue an identify card to each authorised person appointed by it and the identity card must contain a recent photograph of the person and be signed by that person.

Clause 678:—

Subclause (1) provides that an authorised person may only exercise a power if that person first displays his or her identity card for inspection by the person.

Subclause (2) provides that if for any reason, it is not practicable to comply with subclause (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

Clause 679:—

Subclause (1) provides that this section applies if an authorised person believes that a person has just committed an infringement notice offence.

Subclauses (2)-(3) provide that the authorised person may require the person to state the person's name and address and in making this requirement, the authorised person must warn the person it is an offence not to state the person's name and address, unless that person has a reasonable excuse.

Subclause (4) provides that the authorised person may require the person to give evidence of the correctness of that person's name or address if the authorised person suspects, that the name or address given by that person is false.

Subclause (5) provides that a person must comply with all requirements under subclauses (2) or (4), unless the person has a reasonable excuse for not complying with the requirement—maximum penalty 35 penalty units (currently equivalent to \$2100).

Subclause (6) provides that a person does not commit an offence against this section if the authorised person required the person to state the person's name and address on the belief that the person has committed an offence against this Act and it is not proved that the person has committed the offence.

Clause 680 provides that a person must not abuse or insult an authorised person who is exercising a power under this Act or any other Act with a maximum penalty of 50 penalty units (currently equivalent to \$3000).

PART 5—LEGAL PROCESSES INVOLVING LOCAL GOVERNMENTS

Clause 681 provides that a document created by a local government is authenticated if it is signed for the local government by either the mayor or chief executive officer or an employee of the local government authorised by the mayor or chief executive officer to do so. However, it is not sufficiently authenticated if the signature for the local government is that of a person not being the mayor or chief executive officer or authorised employee.

Clause 682 provides that a document required to be served on a local government is served if it is given in a way authorised by law to the chief executive officer of the local government.

Clause 683:—

Subclause (1) provides that if an owner of land is known to be absent from the State, a document may be served on that person's agent in the State.

Subclause (2) provides that if a local government does not know the current address of a person, a document may be served on that person's agent where:—

- the identity of the person is known, and sending the document to that person and by publishing a notice in the Gazette and once in a newspaper circulating generally throughout the State or
- if the identity of the person is not known, sending the document to the 'owner' or the 'occupier' of the land or premises identified in the address, and publishing a notice in the Gazette and once in a newspaper circulating generally throughout the State.

Clause 684:—

Subclause (1) provides that where a provision of this Act requires a document served on any person to contain a statement of any relevant provision of law, the process is taken to be complied with despite the absence of the statement if the document is served in a way permitted under subclauses 683(2) or (3) and subclause (2) is complied with.

Subclause (2) provides that a document served in circumstances under subclause (1) must contain a statement that the particulars of the relevant provision of law may be obtained, free of charge, on application to the local government.

Clause 685 provides that a document is taken to be served under this Act on the owners of a time share scheme, if it is addressed to the 'owners' of the land in a way authorised by law—

- on the person named in the notice given to the local government under clause 698 as the person responsible for administration of the scheme and
- at the address for service specified in the notice.

Clause 686:—

Subclause (1) provides that in any legal proceeding, the chief executive officer of a local government or other employee authorised by a local government may give instructions and act as an agent for the local government and may sign all documents for the local government.

Subclause (2) provides that a local government must pay the costs incurred by the chief executive officer or other employee in a legal proceeding.

Subclause (3) provides that if the Attorney-General is able to initiate proceedings on behalf of a local government to secure compliance with an Act, the local government is representing the public interest and may take the proceeding in its own name.

Clause 687 provides that a Judge, Magistrate or justice is not disqualified from hearing a proceeding in which a local government is a party because the Judge, Magistrate or justice is a ratepayer of the local government.

PART 6—EVIDENTIARY MATTERS

Clause 688 provides that it is not necessary for the plaintiff in a proceeding started by, or against a local government to prove—

- the local government's constitution
- the limits of the local government's area
- the limits of a division of the local government's area.

Clause 689 provides that in a proceeding, a document purporting to be a copy of the voters roll for a local government's area and to be certified by the chief executive officer, is evidence of the roll.

Clause 690 provides for the acceptance as evidence of records kept by the Chief Executive Officer which purport to record the proceedings of a local government on its committees.

Clause 691 provides that in a proceeding in which liability for rates is relevant, an entry in the land record kept by a local government, or an

extract from the entry certified under the local government's seal by the local government's chief executive officer is evidence -

- of the matters contained in the entry;
- that the valuation and rate recorded in the entry were properly recorded; and
- that the person recorded as the owner of the land mentioned is liable for payment of the rates levied against that land.

Clause 692:—

Subclause (1) provides that a copy of a document purporting to be made under the authority of a local government or its mayor and to be verified by the mayor or an employee authorised by it, is taken to be a document made under the local government's authority or its mayor in the absence of evidence to the contrary.

Subclause (2) provides that the copy of the document is evidence in a proceeding as if it were the original.

Subclause (3) provides that a certificate signed by the chief executive officer about the state of, or a fact appearing from, a record of the local government is evidence in a proceeding of the matters contained in the certificate.

Clause 693:—

Subclause (1) provides that the term "appropriate officer" of a local government means an employee of the local government responsible for a road register kept by the local government.

Subclause (2) provides that in a proceeding, a road register kept by a local government or an extract from an entry in the register is evidence of the categorisation and levels of a road, and a certificate from the local government that a level of a road has not been fixed, is evidence of the matters contained in the certificate.

Clause 694 provides that in a proceeding, a document certified by the Minister as a copy of a direction given to a local government by the Governor in Council or the Minister is evidence of that direction.

Clause 695 gives legal recognition to a copy of a document relating to an order for payment of costs made by the appeal tribunal under this Act, if that document purports to be certified by the person who constitutes an

appeal tribunal or a responsible person associated with the conduct of an appeal.

PART 7—GENERAL ADMINISTRATIVE MATTERS

Clause 696:—

Subclauses (1)-(3) provide that all structures constructed by a local government including jetties and wharves, roadways on a dedicated road, and structures or works on someone else's land remain the property of the local government.

Subclause (4) provides that these provisions do not apply to materials in an open drain other than its lining, or any soil or drain pipe that falls within the meaning provided by the Standard Sewerage Law.

Clause 697 requires a local government to have public liability and professional indemnity insurance to the minimum level prescribed by regulation.

Clause 698:—

Subclause (1) provides that if a time share scheme is implemented the owner of the land must, within 30 days, notify the local government of its implementation.

Subclause (2) provides that this notice must—

- include information about the number of units that are at any time occupied for residential purposes by a person to the exclusion of other occupants of the building
- specify the name and address for service of notices on the person responsible for administration of the scheme
- be signed by or for the owner and person mentioned above

Subclause (3) provides that a time share scheme is taken to be implemented when any person becomes or agrees to become a participant in the scheme.

Clause 699 provides for the giving of notice to a local government where changes occur in the previous information supplied under clause 698 about the time share scheme.

Clause 700:—

Subclause (1) provides that this section applies to the following persons—

- the chief executive officer of a local government;
- an employee of a local government who is authorised by the chief executive officer;
- a solicitor or agent of a local government; and
- an employee of a solicitor or agent who is authorised by the solicitor or agent.

Subclause (2) provides that these persons may conduct searches of registers and documents about land, in the land registry in accordance with the practices of the registry.

CHAPTER 12—LOCAL GOVERNMENT STAFF

PART 1—CORPORATE STRUCTURE AND STAFF RESOURCES

The intent of this Part is to provide for the establishment of an organisational framework for local government to effectively carry out its business according to its stated goals. The Part also extends and clarifies the statutory obligation of members and employees and establishes an appeal mechanism for local government employees.

Clauses 701-702 provide for a local government to adopt a corporate structure and to decide on the amount of resources which will be allocated to staff employment. This provision aims to facilitate the implementation of a local government's corporate plan.

PART 2—EMPLOYMENT OF STAFF AND PERSONNEL PRACTICES

Clause 703 provides for the appointment of a chief executive office and the employment of other employees which the local government considers necessary to carry out its business. The local government may appoint persons to fill senior executive positions or delegate that responsibility to the chief executive officer. The local government must also determine the terms of employment of all staff consistent with relevant industrial awards or agreements.

Clause 704 provides for personnel management principles to be followed by local government. Merit is the basis for appointment of staff. The principles also deal with fair and equitable treatment of staff and enables a regulation to be made to require local governments to adopt and implement a plan for equal opportunity in employment.

PART 3—CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES

Clause 705 provides for the role of a local government's chief executive officer which is to implement the policies and decisions of the local government including the management of its affairs on a day-to-day basis. The provision also confers powers to the chief executive officer necessary in performing the duties of the position.

Clause 706 provides for the delegation of the chief executive officer's powers (including those delegated by the local government) to another employee of the local government. The chief executive officer cannot delegate a power that the local government has directed not be further delegated or a power under clauses 195 and 713 dealing with registers of interest. The provision also provides for the keeping of a register of all delegations made by the chief executive officer. In addition the provision also clarifies the term 'employee' includes a person who contracts with the local government to provide services.

Clauses 707-708 provide for the selection of a person for the position of chief executive officer of a local government and for appointment of a

person to act in the position during a vacancy or a period when the chief executive officer is absent from duty.

Clause 709 enables a councillor to ask the chief executive officer, or, under guidelines set down by the chief executive officer, ask an employee, for help or advice. The mayor may ask for reasonable help or advice from any employee.

Clause 710 provides for an employee of a local government to assist the chief executive officer in performing the duties of that position.

Clause 711 provides the circumstances where a local government employee may be employed concurrently by more than one local government or hold more than one position under a local government.

PART 4—OBLIGATIONS OF LOCAL GOVERNMENT EMPLOYEES

Clause 712 provides for the general manner in which local government employees are expected to conduct themselves.

Clause 713 provides for the keeping of registers of interest of the chief executive officer and other specified local government employees and related persons. A regulation will prescribe the financial and non-financial particulars to be contained in the register.

Clause 714 provides for access to the registers of interest by the chief executive officer, a councillor of the local government or a person permitted by law to have access to information in the register. The provision also requires that a person must not knowingly disclose information from a register to a person other than a person allowed access to the register. Maximum penalty: 85 penalty units (currently equivalent to \$5100).

Clause 715 provides for queries on the content of registers of interest and non-disclosure of information.

Clause 716 provides that if an employee (including a contractor) has a material personal interest in an issue to be dealt with in the course of the employee's duties, the chief executive officer must be informed. If that employee is the chief executive officer, the Mayor must be informed. Maximum penalty: 35 penalty units (currently equivalent to \$2100).

Clause 717 deals with the proper conduct of an employee (including a contractor), specifically in relation to the use of information, property and records held by the local government and in accepting gifts and other benefits as a local government employee. The provision also provides that a current or previous employee must not release information that the employee should reasonably know is confidential to the local government.

Clause 718 provides that a local government employee is not liable for an act or omission done honestly and without negligence (by the employee) under this Act.

PART 5—DISCIPLINARY ACTION

The intent of this Part is to establish mechanisms whereby a local government may take disciplinary action against its employees and to allow an aggrieved employee to be heard by an independent tribunal.

Clauses 719-721 provide for the circumstances when a local government or the chief executive officer (whichever was the appointer) may take disciplinary action against an employee and the options available in taking disciplinary action.

Clause 722 provides if disciplinary action consists of a deduction from the salary or wages of an employee, the deduction may be made at the times specified.

Clause 723 provides for the suspension of an employee who may be liable to disciplinary action under clause 720. The provision also deals with the effect of suspension on the employee's accrued entitlements and remuneration.

Clause 724 entitles an employee of a local government to be given notice of the grounds for disciplinary action, which are the only grounds that may be referred to in any proceedings to support the disciplinary action.

PART 6—APPEALS ABOUT DISCIPLINARY ACTION

Clause 725 entitles a local government employee to lodge an appeal with an appeal tribunal where the employee is aggrieved by disciplinary action taken by the local government. Where the disciplinary action taken is

dismissal, the employee may not appeal to an appeal tribunal however the provision does not prevent the employee from taking action under the *Industrial Relations Act 1990*.

Clause 726 provides for the Minister to appoint a person who is independent of the local government and the employee to form an appeal tribunal.

Clause 727 provides for the chief executive of the department to be the secretary of each appeal tribunal formed under this Part. The functions and duties of the chief executive as secretary may be prescribed by regulation.

Clause 728 provides that a person forming an appeal tribunal is entitled to salary, fees and allowances approved by the Governor in Council. The provision also provides for the local government to meet expenses and administrative costs incurred in the conduct of the appeal tribunal.

Clause 729 specifies the grounds on which an appeal may be brought.

Clause 730 specifies the decisions available to the appeal tribunal in respect of an appeal brought before it.

Clauses 731 requires the tribunal to observe natural justice, proceed expeditiously and with minimal formality and technicality, as is consistent with a fair and proper consideration of the issues.

Clause 732 provides for the procedure to be followed in starting an appeal.

Clause 733 provides that the tribunal is not bound by the rules of evidence, can inform itself as it considers appropriate, and may decide on the procedures to be followed before and during the appeal as long as the conduct is in accordance with this Division or any procedures prescribed by regulation.

Clause 734 provides for the appeal tribunal to conduct a preliminary hearing of an appeal to decide interlocutory and other preliminary matters and specifies the action which may be taken by the tribunal in such hearing.

Clause 735 provides the tribunal with powers to proceed in the absence of a person, receive evidence on oath or by statutory declaration, adjourn proceedings, permit a document to be amended, to disregard any error, insufficiency or omissions in any document and to give a party leave to be represented by counsel or a solicitor.

Clause 736 provides that an appeal must be prosecuted diligently otherwise the tribunal may at its discretion discontinue proceedings. The appeal may also be discontinued by the appellant at any time by written notice to the tribunal and the respondent.

Clause 737 provides for a witness to attend and give evidence at an appeal at the request of the appeal tribunal. The provision also provides that a witness is entitled to be paid witness fees prescribed by regulation or if no witness fees are so prescribed, as decided by the appeal tribunal. The fees are payable by the party calling the witness to give evidence.

Clause 738 provides that without a lawful excuse, a witness appearing at an appeal must not refuse to take an oath, fail without reasonable excuse to answer a question, or fail to produce a document (required by notice under clause 737) unless the answer or document would tend to incriminate the witness. Maximum penalty: 35 penalty units (currently equivalent to \$2100).

Clause 739 requires a local government to grant leave of absence on full pay to an employee required to give evidence at an appeal or who acts as an agent of the appellant at the appeal.

Clause 740 provides for the conduct of persons in an appeal. A person must not insult a member of the tribunal, deliberately interrupt proceedings, create or continue to create a disturbance, or do anything that would constitute a contempt of court. Maximum penalty: 50 penalty units (currently equivalent to \$3,000).

Clause 741 provides that membership of the tribunal may change without affecting an appeal.

Clause 742 provides the tribunal with discretion to make an order for the payment of appeal costs. Unless stated otherwise, costs are on the scale that apply to taxation of costs in the District Court. The provision also enables the tribunal to order either the local government or the appellant to reimburse the other party for certain costs of the appeal.

Clause 743 provides for an appeal tribunal to give an order for payment of costs, in writing to the appellant, and the local government. The provision also provides that a copy of an order may be submitted to a court having jurisdiction in an action for debt in the amount stated in the order.

CHAPTER 13—GENERAL**PART 1—LOCAL GOVERNMENT ASSOCIATION***Clause 744:—*

Subclause (1) provides for the establishment of the Local Government Association of Queensland (Incorporated).

Subclause (2) provides that the Association:—

- is a body corporate with perpetual succession
- has a common seal
- may sue and be used in its name

Subclauses (3) and (4) provide the Association with the same legal privileges as an individual e.g. enter into contracts and acquire, hold, deal with and dispose of property.

Subclause (5) provides that judicial notice must be taken of the imprint of the Association's seal on a document.

Clause 745:—

Subclause (1) establishes that the Association may, by resolution, make rules in respect of all matters necessary for the management of the Association and payment of annual subscriptions to the Association by each local government that is a member.

Subclause (2) provides that a rule is not subordinate legislation.

Subclause (3) provides that a rule has effect only if approved by the Governor in Council.

Subclause (4) provides that if the Local Government Association makes a rule, it must supply the Minister a copy of its resolution making the rule and a statement of the reasons for the rule.

Subclause (5) provides that if the Governor in Council approves a rule, notice thereof must be published in the Gazette.

Clause 746 provides that a local government may make contributions to the Association towards litigation expenses where matters of common

interest are being litigated and the Association may contribute towards the expenses of litigation for matters of common interest to local governments.

Clause 747 provides that an amount payable to the Association by a local government is payable within 30 days after notice is given to the chief executive officer of the local government and any unpaid amount is a debt payable by the local government to the Association.

Clause 748 provides that the Association must keep accurate accounts of all amounts received and paid by it.

Clause 749:—

Subclause (1) provides that in each financial year, the Association must prepare an annual account and that this account must:—

- be prepared as soon as practicable after the date fixed by the Association's rules
- show a true statement of the Association's receipts and payments during the previous year
- show the balance of the account.

PART 2—MISCELLANEOUS

Clause 750 provides that the Minister may delegate powers of the Minister under this Act or another local government Act to an officer of the department.

Clause 751 provides that the chief executive of the department may delegate powers of the chief executive under this Act or another local government Act to an officer of the department.

Clause 752 provides that the Governor in Council may make regulations for the purposes of this Act.

CHAPTER 14—TRANSITIONAL AND SAVINGS PROVISIONS, REPEALS AND AMENDMENTS

PART 1—TRANSITIONAL AND SAVINGS PROVISIONS

The provisions contained in this Bill impact upon the provisions of existing laws dealing with Local Government and actions taken under those laws. Certain terms and meanings will be updated or superseded by the new legislative provisions and it is intended not to disrupt any actions taken under existing legislative jurisdictions as a result of the commencement of the provisions of this Bill.

The intention of the provisions in this Part is therefore to rationalise various terms and preserve certain actions under the *Local Government Act 1936* and other Acts or documents relating to the operations of Local Government.

The provisions also require local governments to review their by-laws or ordinances in view of the proposed legislative regime providing for the making of local laws. This requirement also conforms with the current regulatory reform processes requiring the review of all State legislation and statutory instruments.

Division 1—Preliminary

Clauses 753-755 provide for the meaning of terms in this Part.

Division 2—The local government system

Clauses 756-761 facilitate the saving of various matters dealing with the system of local government.

Division 3—Interaction with the State***Subdivision A—Review of local government matters***

Clauses 762-766 facilitate the saving of various matters dealing with the office and functions of the Local Government Commissioner.

Subdivision B—Local Government Grants Commission

Clause 767 facilitates the saving of appointments to the Local Government Grants Commission.

Subdivision C—Expiry

Clause 768 provides that this Division expires 1 year after it commences.

Division 4—Local government councillors

Clause 769 limits the effect of certain Council resolutions made before the commencement of these provisions.

Division 5—Local government elections

Clauses 770-772 comprise transitional provisions to facilitate the holding of the 1994 Local Government triennial elections.

Division 6—Financial operation and accountability

Clause 773 gives local governments an extension of time for preparing and adopting a corporate or operational plan. No plans are required for the financial years ending 30 June 1994 and 30 June 1995.

Clause 774 provides that local governments are not required to prepare an annual report for the financial year ending 30 June 1994.

Clause 775 preserves the existence of the “Trustees of the Local Authorities Debt Redemption Fund” currently constituted under the existing Local Government Act.

Division 7—Local laws and local law policies

Clauses 776-778 term all existing by-laws and ordinances as “local laws” and allow procedures commenced for making by-laws and ordinances prior to the commencement of the provisions in this Bill relating to local laws, to continue as if the by-laws or ordinances were still being made under the *Local Government Act 1936* or the *City of Brisbane Act 1924* (as the case may be).

Clauses 779-781 provide for the process whereby all local governments (including Brisbane City Council) are to review all their existing laws within three years after the commencement of the provisions in this Bill relating to local laws and local law policies.

Should a local government fail to comply with the review process within the required time, its by-laws/ordinances expire at the end of that period.

Division 8—Local government infrastructure

Clauses 782-786 preserve certain actions in relation to local government infrastructure, i.e. roads, pedestrian malls, foreshores, bathing reserves and levee banks.

Division 9—Rates and charges

Clauses 787-792 preserve certain actions taken in relation to the making and levying of rates and charges.

Division 10—Provisions aiding the local government

Clause 793 applies provisions of the *National Parks and Wildlife Act 1975* and the *Land Act 1962* to local governments pending the commencement of Part 13 of the *Nature Conservation Act 1992*. In this respect, a local government is restricted from taking materials from rateable land in a national park or an environmental park.

Division 11—Local government staff

Clauses 794-798 preserve certain matters in relation to employees of local government.

Division 12—General

Clause 799 preserves the rules of the Local Government Association of Queensland (Inc.).

Clauses 800-801 provide a regulation making power for facilitating transitional arrangements as a result of the repeal of the *Local Government Act 1936*.

PART 2—REPEALS

Clauses 802-803 provide for the repeal of the *Local Government Act 1936* and all Acts amending that Act. The provisions also repeal those Acts, the provisions of which are now contained in this Bill or are no longer required.

PART 3—AMENDMENTS

Clause 804 provides for the amendment of the Acts contained in the Schedule to this Bill.

Various Acts are affected by the repeal of the *Local Government Act 1936* and the commencement of the provisions contained in this Bill.

SCHEDULE

AMENDMENTS OF ACTS

Numerous Acts contribute towards the jurisdictional responsibilities and powers of local governments and the legislative framework within which they work. Provisions contained in these Acts will be superseded on the commencement of the provisions contained in this Bill.

The Schedule provides for consequential amendments by updating various terms and references in other Acts. It is not intended to alter the effect of existing legislation nor introduce any new legislative requirements. The amendments merely provide for the adoption of the legislative provisions that will apply to the system of Local Government at the commencement of the provisions contained in this Bill.

Where it is considered that provisions contained in the *Local Government Act 1936* should be preserved in other Acts rather than the proposed new *Local Government Act 1993*, those provisions have been transferred to those Acts, e.g. the provisions regulating the fencing of residential swimming pools have been transferred to the *Building Act 1975*.

Where it is considered that the provisions of other Acts conflict with the provisions in this Bill, that conflict has been rationalised and removed from those other Acts.

The opportunity has also been taken to revise and update the provisions of other Acts as a result of the current provisions in the *Local Government (Planning and Environment) Act 1990* and the legislative requirements and provisions in the *Statutory Instruments Act 1992*.

Amendments are as follows:—

ACTS INTERPRETATION ACT 1954

Clauses 1-2 update definitions that deal with aspects of local government.

AMBULANCE SERVICES ACT 1991

Clause 1 deletes provisions that will be provided for in the *Acts Interpretation Act 1954*.

BUILDING ACT 1975

Clause 1 updates the long title to the Act.

Clauses 2-43 update various terms, references and provisions as a result of the provisions in this Bill or the provisions in the *Local Government (Planning and Environment) Act 1990*.

Clause 44 updates and transfers into this Act the existing provisions in the *Local Government Act 1936* regulating the fencing of residential swimming pools.

Clauses 45-78 update various terms, references and provisions as a result of the provisions in this Bill or the provisions in the *Local Government (Planning and Environment) Act 1990* or as a consequence of transferring the provisions relating to swimming pool fencing into this Act.

BUILDING UNITS AND GROUP TITLES ACT 1980

Clauses 1-25 update various terms, references and provisions as a result of the provisions in this Bill or the provisions in the *Local Government (Planning and Environment) Act 1990*.

CITY OF BRISBANE ACT 1924

Clauses 1-18 update various terms, references and provisions as a result of the provisions in this Bill.

COMMUNITY SERVICES (ABORIGINES) ACT 1984

Clause 1 allows Aboriginal Councils to enter into certain financial arrangements on the same basis as that applying to local governments.

COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

Clause 1 allows Torres Strait Island Councils to enter into certain financial arrangements on the same basis as that applying to local governments.

CORRECTIVE SERVICES ACT 1988

Clause 1 deletes provisions that will be provided for in the *Acts Interpretation Act 1954*.

CRIMINAL CODE

Clauses 1-6 delete provisions that will no longer be required at the commencement of the provisions in this Bill. An amendment has also been provided for that clarifies that certain provisions of the Criminal Code will no longer apply to local government elections.

ELECTRICITY ACT 1976

Clause 1 updates provisions as a result of the provisions in the *Local Government (Planning and Environment) Act 1990*.

FINANCIAL ADMINISTRATION AND AUDIT ACT 1977

Clause 1 removes savings and transitional provisions relating to the Auditor-General and to the audit of local governments by the Auditor-General that are no longer required in the Act.

FIRE SERVICE ACT 1990

Clauses 1-5 update various terms, references and provisions as a result of the provisions in this Bill.

**FISHING INDUSTRY ORGANISATION AND MARKETING ACT
1982**

Clause 1 deletes the definition of “local authority” as it will be provided for by the transitional and savings provisions in this Bill and the *Acts Interpretation Act 1954*.

FORESTRY ACT 1959

Clause 1 deletes provisions as a result of the repeal of the *Local Government Act 1936*.

GLADSTONE AND AREA WATER BOARD ACT 1984

Clause 1 deletes provisions that are no longer required or have been superseded and updates the definition of “town planning scheme”.

HEALTH ACT 1937

Clauses 1-15 delete obsolete or superseded provisions and update provisions in accordance with the provisions in this Bill.

HEALTH SERVICES ACT 1991

Clause 1 deletes the definition of “Area of Local Authority” as this is now provided for in the transitional and savings provisions in this Bill and the *Acts Interpretation Act 1954*.

INDY CAR GRAND PRIX ACT 1990

Clause 1 deletes the definition of “local authority” as this is now provided for in the transitional and savings provisions in this Bill and the *Acts Interpretation Act 1954*.

JUSTICES ACT 1886

Clause 1 deletes the obsolete definition of “chairperson of a local authority”.

LAND ACT 1962

Clause 1-2 update provisions as a result of provisions in this Bill and the *Local Government (Planning and Environment) Act 1990*.

LEGISLATIVE STANDARDS ACT 1992

Clause 1 updates the definition of “exempt instrument”, i.e. a local law is exempted from the provisions of the Act.

LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

Clauses 1-11 delete obsolete or superseded provisions and update existing provisions as a result of the enactment of the new *Local Government Act 1993*.

LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY
MALLS) ACT 1984

Clause 1 deletes provisions as a result of the provisions in this Bill and the provisions of the *Local Government (Planning and Environment) Act 1990*.

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT
1990

Clauses 1-11 update provisions in accordance with the provisions in this Bill.

LOCAL GOVERNMENT (QUEEN STREET MALL) ACT 1981

Clauses 1-4 delete obsolete provisions and update existing provisions as a result of the provisions in this Bill and the provisions of the *Local Government (Planning and Environment) Act 1990*.

MINERAL RESOURCES ACT 1989

Clauses 1-9 delete obsolete provisions and update existing provisions as a result of the provisions in this Bill and the provisions of the *Local Government (Planning and Environment) Act 1990*.

REGULATORY REFORM ACT 1986

Clause 1 updates the definition of “subordinate legislation” by providing that “local laws” are not subject to the application of the Act.

RIVER IMPROVEMENT TRUST ACT 1940

Clause 1 applies certain provisions in this Bill relating to obligations of councillors (e.g. declaration of interests) to members of River Improvement Trusts.

RURAL LANDS PROTECTION ACT 1985

Clauses 1-4 delete obsolete provisions and update existing provisions.

SEWERAGE AND WATER SUPPLY ACT 1949

Clauses 1-23 transfer provisions in the *Local Government Act 1936* to this Act and update existing provisions and delete obsolete provisions as a result of the provisions in this Bill.

SOIL CONSERVATION ACT 1986

Clauses 1-3 update provisions primarily as a result of the provisions in this Bill and the *Local Government (Planning and Environment) Act 1990*.

SOUTH BANK CORPORATION ACT 1989

Clauses 1-9 delete obsolete provisions and update existing provisions as a result of the provisions in this Bill or the provisions of the *Local Government (Planning and Environment) Act 1990*.

SOUTH EAST QUEENSLAND WATER BOARD ACT 1979

Clauses 1-2 update definitions as a result of the provisions in this Bill, the provisions of the *Local Government (Planning and Environment) Act 1990* and the *Acts Interpretation Act 1954*.

STATE HOUSING ACT 1945

Clauses 1-3 update definitions and references as a result of the provisions in this Bill and the *Acts Interpretation Act 1954*.

STATUTORY INSTRUMENTS ACT 1992

Clauses 1-2 update the meaning of “statutory instrument” and the meaning of “subordinate legislation” by providing that a local law or other statutory instrument made by a local government is not subordinate legislation for the purposes of the Act.

SUGAR INDUSTRY ACT 1991

Clause 1 updates provisions by requiring a sugar mill owner to comply with the provisions in this Bill (in respect of local governments controlling ancillary works and encroachments on roads by local laws) when operating a tramway or carriageway on a road under the control of a local government.

**TOWNSVILLE BREAKWATER ENTERTAINMENT CENTRE ACT
1991**

Clauses 1-3 delete obsolete provisions and update existing provisions as a result of the provisions in this Bill and the provisions of the *Acts Interpretation Act 1954*.

**TOWNSVILLE/THURINGOWA WATER SUPPLY BOARD ACT
1987**

Clauses 1-3 delete obsolete provisions and update existing provisions as a result of the provisions in this Bill and the provisions of the *Acts Interpretation Act 1954* and the *Local Government (Planning and Environment) Act 1990*.

TRAFFIC ACT 1949

Clauses 1-5 update provisions or delete obsolete provisions as a result of the provisions in this Bill and the provisions of the *Acts Interpretation Act 1954*.

TRANSPORT INFRASTRUCTURE (RAILWAYS) ACT 1991

Clauses 1-4 update provisions or delete obsolete provisions as a result of the provisions in this Bill.

VALUATION OF LAND ACT 1944

Clauses 1-4 update provisions as a result of the provisions in this Bill and the provisions of the *City of Brisbane Act 1924*.

WATER RESOURCES ACT 1989

Clauses 1-3 delete obsolete provisions and clarify the application of the Act as a result of the provisions in this Bill enabling local governments to regulate the construction of levee banks.