

COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1999

**A Bill to amend the *Community Services (Aborigines) Act 1984* and the
*Community Services (Torres Strait) 1984***

EXPLANATORY NOTES

POLICY OBJECTIVES OF BILL

The policy objectives of the Bill are:

- to detail the powers of intervention by the State in the affairs of Aboriginal or Island councils and to describe in detail how such powers are to be exercised so that the legislation reflects the requirements of due process and natural justice,
- to assist Aboriginal or Island Councils which are in financial difficulty by enabling the appointment of financial controllers with limited powers in respect to councils' expenditure thus forestalling insolvency and or dissolution of the council,
- to allow the Minister to make accounting standards to prescribe the principles of financial management and accountability to be observed by Aboriginal and Island councils,
- to provide a simpler system of financial management for Aboriginal and Island councils by allowing councils to amend budgets,
- to clarify that an Aboriginal or Island council's jurisdiction extends over all types of land tenure which currently exist, or may exist in the future, within an Aboriginal or Island council's area, it is proposed to remove the nexus between land tenure type and the area for which an Aboriginal or Island council is established,

- to provide the power to make a regulation creating new Aboriginal and Island councils which will allow an Aboriginal council to be established for the Old Mapoon community,
- to allow for the extension of an Aboriginal or Island council's area, and
- to re-name the Tamwoy community referred to in the *Community Services (Torres Strait) Act 1984* as the Tamwoy, Rosehill, Aplin, Waiben, Quarantine (TRAWQ) communities.

HOW BILL WILL ACHIEVE POLICY OBJECTIVES

To reflect the imperatives of due process and natural justice pertaining to intervention by the State in the affairs of Aboriginal and Island councils the Bill mirrors the comprehensive provisions of the *Local Government Act 1993* which relate to the intervention by the State in local governments.

As a mechanism to impose controls over expenditure by Aboriginal or Island councils that are, or may be, at risk of insolvency the Bill proposes that the Governor in Council possess the power to appoint financial controllers to such councils. The creation of financial controllers was recommended by the Parliamentary Accounts Committee in its Report 42: *Aboriginal Councils and Torres Strait Island Councils: Review of Financial Reporting Requirements*. The Bill proposes that the powers of financial controllers derive from a very narrow delegation of the Governor in Council's powers. The existing provisions of the *Local Government Act 1993* which allow the Governor in Council to revoke or suspend a resolution or order of a local government have been used as the basis for the amendment. A financial controller will have the power to revoke or suspend a resolution or order of a council if the financial controller reasonably believes that the resolution or order will result in expenditure which has not been provided for in the council's budget, or will result in the wrongful expenditure of grant monies, or will cause the council to become insolvent. A financial controller will also be able to undertake administrative duties as directed by the Minister or at the request of the Aboriginal or Island council.

The Bill proposes that the Minister have the power to make accounting standards to enhance financial accountability in Aboriginal and Island councils. The Bill will enable accounting standards to be made as subordinate legislation which defines the principles of financial management and accountability to be observed by councils. The existing accounting

standards approved by the Minister in 1991 were made under a regulation which has since been found to be *ultra vires*. Therefore there is no power in the Community Services Acts to make legally enforceable accounting standards. The existing accounting standards are useful as a guide only.

The proposed Bill will provide a simpler financial management framework for Aboriginal and Island councils by allowing them to amend annual budgets rather than having to declare all non-budgeted expenditure as emergent or extraordinary. A council's budget will be able to be amended to compensate for unforeseen expenditure provided the amended budget remains balanced. The proposal mirrors a provision of the *Local Government Act 1993* that allows local governments to amend budgets.

To remove the nexus between land tenure type and the area for which an Aboriginal or Island council is established, the Bill simply allows for a regulation to declare a part of the State to be a council area and that each council area must have an Aboriginal or Island council. This mirrors the *Local Government Act 1993*. The Bill also clarifies the terminology used by describing the area for which an Aboriginal or Island council has local government jurisdiction as simply a "council area". This will address the ambiguous nature of the various terms used to describe a council's area in the existing legislation. These provisions will enable the establishment of an Aboriginal council at Old Mapoon. The provisions will also allow the extension of various Island council areas in the Torres Strait to include islands that are currently nominally within the Torres Shire but in practice are not under any local government jurisdiction.

Existing council areas and their respective Aboriginal and Island councils will be preserved through transitional provisions in the Bill.

Tamwoy is a suburb of Thursday Island which is afforded representation on the Island Coordinating Council along with the chairpersons of the 17 Island councils. The Tamwoy community was established soon after the Second World War when Torres Strait Islanders were first permitted to permanently reside on Thursday Island. Over the years the Torres Strait Islander community has expanded to encompass a further four localities on the Northern side of Thursday Island. These communities are predominantly comprised of Torres Strait Islanders and possess a collective identity (commonly referred to as TRAWQ) which is distinctly different to the other parts of Thursday Island which are more multicultural. The residents believe the term "Tamwoy" is too narrow a definition for the five communities involved, hence the proposal to substitute Tamwoy with

Tamwoy, Rosehill, Aplin, Waiben, Quarantine (TRAWQ) communities.

ADMINISTRATIVE COST OF THE IMPLEMENTING THE BILL

There are no foreseeable administrative costs to government in implementing the Bill. There will be a one-off capital cost to construct council chambers and staff housing when the Aboriginal council proposed for the Old Mapoon community is established in the future. This will be sought in a separate and distinct submission at the appropriate time. The level of recurrent funding will not need to increase as a result of this Bill as the Marpuna Community Aboriginal Corporation already receives funding under the Department of Aboriginal and Torres Strait Islander Policy and Development's State Government Financial Aid Program to provide local government services at Old Mapoon.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

It is the Department's view that the Bill is consistent with fundamental legislative principles.

Some concern over fundamental legislative principles in relation to three separate provisions was raised as a result of the circulation of the advance draft of the Bill.

1. *Legislative Standards Act 1992, section 4(3)(h)—Whether legislation confers immunity from proceeding or prosecution without adequate justification*

The Department received advice that sections 13B and 13C as drafted may not be consistent with section 4(3)(h) of the *Legislative Standards Act 1992*. Section 13B was drafted as a mirror of the *Local Government Act 1993*, section 161. This section provided for the Governor in Council to revoke or suspend a resolution or order of an Aboriginal (or Island) council. Section 13C was drafted as a mirror of the *Local Government Act 1993*, section 162. This section, which remains unchanged, provides that where the Governor in Council revokes or suspends a resolution or order of a council, the State is not legally liable for any loss or expense to a person. Advice was received that as

section 13B contained no object or limitation to the Governor in Council's powers, the State's actions could not be tested by judicial review.

As a remedy the Bill now proposes that the Governor in Council's power conferred by section 13B can only be exercised if the Minister is satisfied, on reasonable grounds, that a resolution or order of a council is unlawful or has been made for an improper purpose.

This allows the State's actions to be legally tested under the provisions of the *Judicial Review Act 1991*.

It is the Department's view that the section 13B and section 13C as now drafted are now consistent with the *Legislative Standards Act 1992*.

2. *Legislative Standards Act 1992, section 4(3)(h)—Whether legislation confers immunity from proceeding or prosecution without adequate justification*

Similarly, section 13T provides for a financial controller to revoke or suspend a resolution or order of a council, but only if the resolution or order will result in unlawful expenditure or wrongful expenditure of grant monies or will cause the council to become insolvent. Section 13U indemnifies the State and a financial controller for loss or expense incurred by a person because of the revocation or suspension of a council's resolution or order. The Department regards the financial controller's powers as a delegation of the powers conferred upon the Governor in Council under section 13B.

It follows that any loss or expense to a person will be a result of illegal or wrongful actions by the council and any liability therefore will lie with the council or the councillors.

A further justification for the provision of indemnity to a financial controller is that if a financial controller is not afforded indemnity under the legislation, it is unlikely that anyone qualified for appointment would accept such an appointment.

It is the Department's view that section 13T and section 13U are consistent with the *Legislative Standards Act 1992*.

3. *Legislative Standards Act 1992, section 4(3)(k)—Whether legislation is unambiguous and drafted in a sufficiently clear and precise way*

Section 13I(1) provides that an administrator of a council has all the jurisdiction, powers and duties of the council concerned. Section 13I(4) provides that this Act and other Acts apply to the administrator, with all necessary changes, as if the administrator were the council. An opinion has been expressed that this section may not be sufficiently clear and precise. The alternative, to enact a mass of provisions solely applicable to the administrator, is considered by the Department to be impractical. Section 13I(4) is similar to section 179 of the *Local Government Act 1993* (which in addition provides for changes to be prescribed by regulation).

It is the Department's view that there is sufficient justification for section 13I(4) for it to be consistent with the *Legislative Standards Act 1992*.

EXTENT OF CONSULTATION

Consultation on all facets of the proposed Bill was undertaken with the Aboriginal Coordinating Council (ACC) and the Island Coordinating Council (ICC), the peak bodies for Aboriginal councils and Island councils respectively.

The ACC supported the proposed amendments to allow the Aboriginal councils to amend budgets and to allow the creation of Aboriginal councils but did not offer a view on the other proposed amendments. The ICC supported all the proposed amendments.

The development of the proposal for financial controllers was undertaken with the assistance of the Aboriginal and Torres Strait Islander Commission and the Torres Strait Regional Authority. Both agencies strongly support the proposal.

During the preparation of the Authority to Prepare Submission a copy of the draft instructions for the Parliamentary Counsel was circulated to the following government departments and agencies;

Department of Premier and Cabinet,
Department of Justice and Attorney-General,

Department of Communication and Information, Local Government and Planning,

Department of Training and Industrial Relations,

Department of Natural Resources,

Queensland Treasury, and

Queensland Audit Office.

The Bill as proposed incorporates the views, advice and requirements of all agencies consulted.

Comments received as a result of the circulation of the Authority to Prepare Submission were all favourable.

The circulation of the advance draft of the Bill evoked an assessment of the draft Bill's compliance with fundamental legislative principles from the Office of the Parliamentary Counsel. The issues raised have been addressed in the preceding section.

COMMUNITY SERVICES (ABORIGINES) ACT 1984

EXPLANATION OF AMENDED SECTIONS

Section 6 (Meaning of Terms) has been amended to remove definitions for area and trust area and replace them with a definition for a council area. Section 6(2) has been omitted. These amendments are a consequence of the amendment to section 14.

Section 6A (Meaning of "conclusion" of election for Aboriginal council) is derived from the *Local Government Act 1993* which defines what is meant by the conclusion of an election. Its inclusion is made desirable by the use of the concept in section 14B.

Section 11 (Appointment of magistrates to trust areas) has been amended to replace references to "trust areas" with "council areas" This amendment is a consequence of the amendment to section 14.

PART 2A—INTERVENTION BY THE STATE

This new part mirrors Part 2—Intervention by the State of the *Local Government Act 1993* with the addition of provisions (sections 13E, 13S, 13T, 13U, 13V, 13 W, 13X) in respect to financial controllers. That part of the *Local Government Act 1993* provision which allows the Governor in Council to exclude part of a council's area from the Act has been omitted.

Section 13A (Procedures before exercise of certain powers) is derived from the *Local Government Act 1993* and requires that written notice of the intention to exercise a power of intervention must be given to the Aboriginal council unless the Aboriginal council has requested the intervention or where giving notice would be counterproductive or otherwise serve no useful purpose. The section also requires the Minister to take into account all submissions received from the Aboriginal council within the stated time. After the stated time has elapsed intervention may proceed without further notice to the Aboriginal council.

Section 13B (Revocation and suspension of resolutions and orders) is derived from the *Local Government Act 1993* and provides for the Governor in Council, by regulation, to revoke or suspend, indefinitely or not, a resolution or order of an Aboriginal council. The Governor in Council's power can only be exercised if the Minister is satisfied, on reasonable grounds, that the resolution or order is unlawful or was made for an improper purpose.

Section 13C (Effect of revocation or suspension) is derived from the *Local Government Act 1993* and states that a resolution or order of an Aboriginal council that is revoked by regulation ceases to have effect on the day stated by the regulation or if no day is stated the resolution or order is deemed never to have taken effect. A resolution or order which is suspended by regulation does not have any effect while it is suspended. The section also indemnifies the State from any liability arising from any such revocation or suspension.

Section 13D (Overruling by-laws) is derived from the *Local Government Act 1993* and enables the Governor in Council by regulation to declare that an Aboriginal council's by-law or a provision of such a by-law has no effect if it is necessary to protect State interests. Such declaration may be later revoked by regulation if it is no longer necessary to protect State interests.

Section 13E (Appointment of financial controller) is a new provision which has no counterpart in the *Local Government Act 1993*. The provision provides that the Governor in Council (subject to section 13A) may by regulation appoint a financial controller if the Minister is satisfied that a council has made non-budgeted disbursements which are not of an emergent or extraordinary nature, or has wrongfully spent grant monies or has not prepared financial statements as required or as a result of its actions is at risk of insolvency.

Section 13F (Dissolution of Aboriginal council) is derived from the *Local Government Act 1993* and provides the power for the Governor in Council to dissolve by regulation an Aboriginal council if it has acted unlawfully, or is corrupt, or is at risk of not properly exercising its jurisdiction, or is incompetent.

Section 13G (Abolition of joint Aboriginal council and its area) is derived from the *Local Government Act 1993* and provides for the abolition of a joint Aboriginal council. The power to create a joint Aboriginal council is provided by sections 42 and 43 of the *Local Government Act 1993*.

Section 13H (When an administrator may be appointed) is derived from the *Local Government Act 1993* and requires that when an Aboriginal council is dissolved an administrator must be appointed by the Governor in Council by gazette notice.

Section 13I (Jurisdiction, powers and duties of administrator) is derived from the *Local Government Act 1993* and provides that an administrator of an Aboriginal council has all the jurisdiction, powers and duties of the council concerned however the extent of these may be limited by regulation. The section further provides that the administrator is required or permitted to exercise the powers of the council's chairperson. The administrator does not have a duty of an Aboriginal council appropriate only to a body of persons such as establishing a quorum for a meeting for example.

Section 13J (Title of Administrator) is derived from the *Local Government Act 1993* and stipulates the title of an administrator.

Section 13K (Committee to help administrator) is derived from the *Local Government Act 1993* and provides for the Minister to appoint a committee to assist the administrator.

Section 13L (Conditions of appointment as administrator or member of committee) is derived from the *Local Government Act 1993* and provides for the level of fees, allowances and expenses for administrators or

members of committees to be decided by the Governor in Council but payable by the Aboriginal council. The section also provides that a public service officer who is appointed as the administrator or a member of a committee can continue to hold a public service office during the period of the appointment.

Section 13M (Recovery of amounts from Aboriginal councils) is derived from the *Local Government Act 1993* and provides for the Governor in Council to direct an Aboriginal council to pay to the Minister the costs and expenses of the administrator. In the case of a public service officer who is appointed as administrator or committee member the stated amount may include the salary and allowances payable to that officer.

Section 13N (Role of committee) is derived from the *Local Government Act 1993* and requires the administrator to implement a committee's decision as soon as practicable. However if the administrator believes that the decision is not in the best interests of the area, the administrator may, within 14 days, refer the committee's decision to the Minister for decision.

Section 13O (Decision by Minister on referral by administrator) is derived from the *Local Government Act 1993* and provides that the Minister, when in receipt of a referral described in section 13N, may direct the department's chief executive to investigate the issue. The section also provides that the Minister's decision on the issue is final and must be implemented by the administrator as soon as possible.

Section 13P (Procedures of committee) is derived from the *Local Government Act 1993* and provides that any provision which applies to an Aboriginal council or members of an Aboriginal council applies to the committee or the members of the committee and that any provision which applies to the chairperson of an Aboriginal council applies to the administrator or the person acting as chairperson of the committee.

Section 13Q (Termination of administrator's appointment) is derived from the *Local Government Act 1993* and requires that a fresh election for the Aboriginal council should occur as soon as practicable after the appointment of the administrator. The section also provides that the appointment of an administrator ceases upon the conclusion of a fresh election or may be terminated by the Governor in Council for any reason in the interim.

Section 13R (Termination of appointment of committee member etc.) is derived from the *Local Government Act 1993* and provides that a member

or all members of a committee may have their appointment to the committee terminated for any reason by the written notice of the Minister. A committee ceases to exist upon conclusion of the fresh election for the Aboriginal council concerned.

Section 13S (Functions of financial controller) is a new provision which has no counterpart in the *Local Government Act 1993*. The provision describes the functions of a financial controller appointed under section 13E which are to ensure the Aboriginal council adheres to its budget and to undertake administrative duties directed by the Minister. A financial controller may also provide advice to the Aboriginal council about financial management and may, at the request of the Aboriginal council, undertake other administrative duties.

Section 13T (Power of financial controller to revoke or suspend resolutions and orders) is a new provision which has no counterpart in the *Local Government Act 1993*. The power accorded the financial controller in this section derives from a very narrow delegation of the Governor in Council's power described in section 13B which mirrors section 161 of the *Local Government Act 1993*. The financial controller can, by written notice to the council clerk, revoke or suspend, indefinitely or not, a resolution or order of an Aboriginal council. This may only occur if the financial controller reasonably believes that the resolution or order will result in expenditure not provided for in the budget, or the misuse of grant monies irrespective of source, or the Aboriginal council becoming insolvent.

Section 13U (Effect of revocation or suspension) is a new provision derived from section 13C which provides that the effect of a revocation or suspension made by a financial controller is the same as a revocation or suspension made by the Governor in Council. The section also indemnifies both the State and the financial controller from any liability arising from any revocation or suspension made by the financial controller.

Section 13V (Financial controller's employment conditions) is a new provision which states that a financial controller for an Aboriginal council is to be employed under the *Public Service Act 1996*.

Section 13W (Recovery of amounts from Aboriginal councils) is a new section and provides for the Governor in Council to direct an Aboriginal council to pay to the Minister the costs and expenses of a financial controller as can be done in the case of an administrator.

Section 13X (Termination of financial controller's appointment) is a new section which provides that the appointment of a financial controller may be terminated by the Governor in Council for any reason.

PART 3—LOCAL GOVERNMENT OF AREAS

Section 14 (Declaration of council areas) together with section 14A and section 14B replace section 14 (Requirement of Aboriginal councils). The new section 14 is derived from the *Local Government Act 1993* and provides that a regulation may declare a part of the State to be an Aboriginal council area. This provision removes the requirement that the area for which an Aboriginal council is declared must be a trust area thus confirming an Aboriginal council's jurisdiction over non trust land within the Aboriginal council's area. There are now a number of different land tenures which exist within Deed of Grant in Trust areas which may not have existed in the areas at the commencement of the Act in 1984. These include Aboriginal land, leased land, unallocated State land, and Native Title land. This section consequentially allows the declaration of an Aboriginal council area at Old Mapoon.

Section 14A (Aboriginal council required for each council area) is derived from the *Local Government Act 1993* and requires an Aboriginal council to be established for each Aboriginal council area.

Section 14B (Implementation of council area) provides that the same regulation which declares a part of the State to be an Aboriginal council area may also implement the Aboriginal council. The section lists a number of matters in regard to the implementation of an Aboriginal council which may be provided for in the regulation. The section also provides that where the election for the first Aboriginal council for an area is less than 18 months prior to a triennial election then the Aboriginal council is exempt from that triennial election.

Insertion (after section 27A) of new Division 1A—Financial Operations of Aboriginal Councils

Section 27B (Issue of standards) is derived from the *Local Government Act 1993* and provides for the Minister to make accounting standards for

Aboriginal councils. The section lists the matters which may be included in accounting standards. The section also requires the Minister to consult with the auditor-general and have regard to the standards of professional bodies before making standards. Accounting standards are to be made as subordinate legislation.

Section 27C (Standards must be complied with) requires that an Aboriginal council must comply with the accounting standards.

Section 29A (Separate budgets for funds) has been omitted as the *Community Services (Aborigines) Regulation 1998* requires councils to maintain only a general fund for which a budget is required and a trust fund for which no budget is required to be made.

Section 29C (Framing of budget) has been amended to reflect that councils only have one fund for which a budget is required.

Section 29CA (Amendment of budget) is a new section derived from the *Local Government Act 1993* and provides for an Aboriginal council to amend its budget during a financial year.

Section 29E (Budget provisions apply to other funds) has been omitted as the *Community Services (Aborigines) Regulation 1998* requires councils to have only a general fund for which a budget is required and a trust fund for which no budget is required to be made.

Section 29F (Provisions in respect of loan repayments) has been amended to reflect that councils only have one fund for which a budget is required.

Section 29G (Illegal expenditure) has been amended to reflect the adoption of the term “council area” in section 6 and section 14 and to reflect that councils only have one fund for which a budget is required.

Section 68 (Power of Aboriginal council to regulate presence in area) has been amended to reflect the adoption of the term “council area” in section 6 and section 14. Consequentially, this section requires that prior to making a by-law regulating presence in a council area an Aboriginal council must gain, in addition to the approval of the grantees of Aboriginal land within the council area, the approval of people who have the right to exclude persons from certain land within the council area. This section recognises that a variety of land tenures may exist within a council’s area and that the council may not be the trustee for all land within its council area.

Section 77B (Aborigines' right to certain forest products and quarry material—non-Aboriginal land) has been amended as a consequence of the adoption of the term “council area” in section 6 and section 14. The section has been amended to ensure that the rights extended to a member of a community of Aborigines in respect to the taking of forest and quarry products from non-Aboriginal land have not been extended as a result of the adoption of the term “council area”. The rights may still only be exercised over trust land for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*.

PART 10—TRANSITIONAL PROVISION

Section 85 (Transitional provision for council areas) ensures that Aboriginal councils and their areas established prior to this amendment act survive the commencement of this amendment act.

COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

EXPLANATION OF AMENDED SECTIONS

Section 6 (Meaning of Terms) has been amended to remove definitions for area and trust area and replace them with a definition for council area. This amendment is a consequence of the amendment to section 14.

Section 6A (Meaning of “conclusion” of election for Island council) is derived from the *Local Government Act 1993* which defines what is meant by the conclusion of an election. Its inclusion is made desirable by the use of the concept in section 14B.

Section 11 (Visiting justices) has been amended to replace references to “trust areas” with “council areas” This amendment is a consequence of the amendment to section 14.

PART 2A—INTERVENTION BY THE STATE

This new part mirrors Part 2—Intervention by the State of the *Local Government Act 1993* with the addition of provisions (sections 13E, 13S, 13T, 13U, 13V, 13 W, 13X) in respect to financial controllers. That part of the *Local Government Act 1993* provision which allows the Governor in Council to exclude part of a council’s area from the Act has been omitted.

Section 13A (Procedures before exercise of certain powers) is derived from the *Local Government Act 1993* and requires that written notice of the intention to exercise a power of intervention must be given to the Island council unless the Island council has requested the intervention or where giving notice would be counterproductive or otherwise serve no useful purpose. The section also requires the Minister to take into account all submissions received from the Island council within the stated time. After the stated time has elapsed intervention may proceed without further notice to the Island council.

Section 13B (Revocation and suspension of resolutions and orders) is derived from the *Local Government Act 1993* and provides for the Governor in Council, by regulation, to revoke or suspend, indefinitely or not, a resolution or order of an Island council. The Governor in Council’s power can only be exercised if the Minister is satisfied, on reasonable grounds, that the resolution or order is unlawful or was made for an improper purpose.

Section 13C (Effect of revocation or suspension) is derived from the *Local Government Act 1993* and states that a resolution or order of an Island council that is revoked by regulation ceases to have effect on the day stated by the regulation or if no day is stated the resolution or order is taken never to have taken effect. A resolution or order which is suspended by regulation does not have effect while it is suspended. The section also indemnifies the State from any liability arising from any such revocation or suspension.

Section 13D (Overruling by-laws) is derived from the *Local Government Act 1993* and enables the Governor in Council by regulation to declare that an Island council's by-law or a provision of such a by-law has no effect if it is necessary to protect State interests. Such declaration may be later revoked by regulation if it is no longer necessary to protect State interests.

Section 13E (Appointment of Financial Controller) is a new provision which has no counterpart in the *Local Government Act 1993*. The provision provides that the Governor in Council (subject to section 13A) may by regulation appoint a financial controller if the Minister is satisfied that the council has made non-budgeted disbursements which are not of an emergent or extraordinary nature, or has wrongfully spent grant monies, or has not prepared financial statements as required, or as a result of its actions is at risk of insolvency.

Section 13F (Dissolution of Island council) is derived from the *Local Government Act 1993* and provides for the Governor in Council to dissolve by regulation an Island council if it has acted unlawfully, or is corrupt, or is at risk of not properly exercising its jurisdiction, or is incompetent.

Section 13G (Abolition of joint Island council and its area) is derived from the *Local Government Act 1993* and provides for the abolition of a joint Island council. The power to create a joint Island council is provided by sections 42 and 43 of the *Local Government Act 1993*.

Section 13H (When an administrator may be appointed) is derived from the *Local Government Act 1993* and requires that when an Island council is dissolved an administrator must be appointed by the Governor in Council by gazette notice.

Section 13I (Jurisdiction, powers and duties of administrator) is derived from the *Local Government Act 1993* and provides that an administrator of an Island council has all the jurisdiction, powers and duties of the council concerned however the extent of these may be limited by regulation. The section further provides that the administrator is required or permitted to exercise the powers of the council's chairperson but that the administrator does not have a duty of an Island council appropriate only to a body of persons such as a quorum for meetings for example.

Section 13J (Title of Administrator) is derived from the *Local Government Act 1993* and stipulates the title of an administrator.

Section 13K (Committee to help administrator) is derived from the *Local Government Act 1993* and provides for the Minister to appoint a committee to assist the administrator.

Section 13L (Conditions of appointment as administrator or member of committee) is derived from the *Local Government Act 1993* and provides for the level of fees, allowances and expenses for administrators or members of committees to be decided by the Governor in Council but payable by the Island council. The section also provides that a public service officer who is appointed as the administrator or a member of a committee can continue to hold a public service office during the period of the appointment.

Section 13M (Recovery of amounts from Island councils) is derived from the *Local Government Act 1993* and provides for the Governor in Council to direct an Island council to pay to the Minister the costs and expenses of the administrator. In the case of a public service officer who is appointed as administrator or committee member the stated amount may include the salary and allowances payable to that officer.

Section 13N (Role of committee) is derived from the *Local Government Act 1993* and requires the administrator to implement a committee's decision as soon as practicable. However if the administrator believes that the decision is not in the best interests of the area, the administrator may, within 14 days, refer the committee's decision to the Minister for decision.

Section 13O (Decision by Minister on referral by administrator) is derived from the *Local Government Act 1993* and provides that the Minister, when in receipt of a referral described in section 13N, may direct the department's chief executive to investigate the issue. The section also provides that the Minister's decision on the issue is final and must be implemented by the administrator as soon as possible.

Section 13P (Procedures of committee) is derived from the *Local Government Act 1993* and provides that any provision which applies to an Island council or members of an Island council applies to the committee or the members of the committee and that any provision which applies to the chairperson of an Island council applies to the administrator or the person acting as chairperson of the committee.

Section 13Q (Termination of administrator's appointment) is derived from the *Local Government Act 1993* and requires that a fresh election for the Island council should occur as soon as practicable after the appointment

of the administrator. The section also provides that the appointment of an administrator ceases upon the conclusion of a fresh election or may be terminated by the Governor in Council for any reason in the interim.

Section 13R (Termination of appointment of committee member etc.) is derived from the *Local Government Act 1993* and provides that a member or all members of a committee may have their appointment to the committee terminated, for any reason, by the written notice of the Minister. A committee ceases to exist upon conclusion of the fresh election for the Island council concerned.

Section 13S (Functions of financial controller) is a new provision which has no counterpart in the *Local Government Act 1993*. The provision describes the functions of a financial controller appointed under section 13E which are to ensure the Island council adheres to its budget and to undertake administrative duties directed by the Minister. A financial controller may also provide advice to the Island council about financial management and may, at the request of the Island council, undertake other administrative duties.

Section 13T (Power of financial controller to revoke and suspend resolutions and orders) is a new provision which has no counterpart in the *Local Government Act 1993*. The power accorded the financial controller in this section derives from a very narrow delegation of the Governor in Council's power described in section 13B which mirrors section 161 of the *Local Government Act 1993*. The financial controller can, by written notice to the council clerk, revoke or suspend, indefinitely or not, a resolution or order of an Island council. This may only occur if the financial controller reasonably believes that the resolution or order will result in expenditure not provided for in the budget or the misuse of grant monies irrespective of source or the Island council becoming insolvent.

Section 13U (Effect of revocation or suspension) is a new provision derived from section 13C which provides that the effect of a revocation or suspension made by a financial controller is the same as a revocation or suspension made by the Governor in Council. The section also indemnifies both the State and the financial controller from any liability arising from any revocation or suspension made by the financial controller.

Section 13V (Financial controller's employment conditions) is a new provision which states that a financial controller for an Island council is to be employed under the *Public Service Act 1996*.

Section 13W (Recovery of amounts from Island councils) is a new section and provides for the Governor in Council to direct an Island council to pay to the Minister the costs and expenses of a financial controller as can be done in the case of an administrator.

Section 13X (Termination of financial controller's appointment) is a new section which provides that the appointment of a financial controller may be terminated by the Governor in Council for any reason.

PART 3—LOCAL GOVERNMENT OF AREAS

Section 14 (Declaration of council areas) together with section 14A and section 14B replace section 14 (Requirement of Island councils). The new section 14 is derived from the *Local Government Act 1993* and provides that a regulation may declare a part of the State to be an Island council area. This provision removes the requirement that the area for which an Island council is declared must be a trust area thus confirming an Island council's jurisdiction over non trust land within the Island council's area. There are now a number of different land tenures which exist within Deed of Grant In Trust areas which may not have existed in the areas at the commencement of the Act in 1984. These include Torres Strait Islander land, leased land, unallocated State land, and Native Title land.

Section 14A (Island council required for each council area) is derived from the *Local Government Act 1993* and requires an Island council to be established for each Island council area.

Section 14B (Implementation of council area) provides that the same regulation which declares a part of the State to be an Island council area may also implement the Island council. The section lists a number of matters in regard to the implementation of an Island council which may be provided for in the regulation. The section also provides that where the election for the first Island council for an area is less than 18 months prior to a triennial election then the Island council is exempt from that triennial election.

Section 23 (Functions of Island Councils) has been amended to reflect the adoption of the term "council area" in section 6 and section 14. It has also been amended by the addition subsection 3B which unequivocally

provides an Island council with the power to run business enterprises which can be profitably or effectively carried on. Aboriginal councils already have this power under the *Community Services (Aborigines) Acts 1984*.

Insertion (after section 25A) of new Division 1A—Financial Operations of Island councils

Section 25B (Issue of standards) is derived from the *Local Government Act 1993* and provides for the Minister to make accounting standards for Island councils. The section lists the matters which may be included in the accounting standards. The section also requires the Minister to consult with the auditor-general and have regard to the standards of professional bodies before making standards. Accounting standards are to be made as subordinate legislation.

Section 25C (Standards must be complied with) requires that an Island council must comply with the accounting standards.

Section 27A (Separate budgets for funds) has been omitted as the *Community Services (Torres Strait) Regulation 1998* requires councils to have a general fund for which a budget is required and a trust fund for which no budget is required.

Section 27C (Framing of budget) has been amended to reflect that councils only have one fund for which a budget is required.

Section 27CA (Amendment of budget) is a new section derived from the *Local Government Act 1993* and provides for an Island council to amend its budget during a financial year.

Section 27E (Budget provisions apply to other funds) has been omitted as the *Community Services (Torres Strait) Regulation 1998* requires councils to have only a general fund for which a budget is required and a trust fund for which no budget is required.

Section 27F (Provisions in respect of loan repayments) has been amended to reflect that councils only have one fund for which a budget is required.

Section 27G (Illegal expenditure) has been amended to reflect the adoption of the term “council area” in section 6 and section 14 and to reflect that councils only have one fund for which a budget is required.

Section 45 (Membership of council) has been amended with the effect that the Tamwoy community representative on the Island Coordinating

Council becomes known as the TRAWQ communities (Tamwoy, Rosehill, Aplin, Waiben, Quarantine) representative.

Section 66 (Power of Island council to regulate presence in area) has been amended to reflect the adoption of the term “council area” in section 6 and section 14. Consequentially, this section requires that prior to making a by-law regulating presence in a council area an Island council must gain, in addition to the approval of the grantees of Torres Strait Islander land within the council area, the approval of people who have the right to exclude persons from land within the council area. The section recognises that a variety of land tenures may exist within a council’s area and that the council may not be the trustee for all land within its council area.

Section 76B (Islanders’ right to certain forest products and quarry material—non-Torres Strait Islander land) has been amended as a consequence of the adoption of the term “council area” in section 6 and section 14. The section has been amended to ensure that the rights extended to a member of a community of Torres Strait Islanders in respect of the taking of forest and quarry products from non-Torres Strait Islander land have not been extended as a result of the adoption of the term “council area”. The rights may still only be exercised over trust land for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*.

PART 10—TRANSITIONAL PROVISION

Section 84 (Transitional provision for council areas) ensures that Island councils and their areas established prior to this amendment act survive the commencement of this amendment act.

SCHEDULE

The Schedule to the Bill lists a number of minor amendments to both the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.

The amendments are consequential to the adoption of the term “council area” in sections 6 and section 14 and the adoption PART 2A—INTERVENTION BY THE STATE.

There are also amendments which update cross references and update references to penalties in accordance with current drafting practice. These amendments do not change the nature or intent of any section.