Local Government (Community Government Areas) Bill 2004

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

- declare Aboriginal councils as local governments (shire councils) under the *Local Government Act 1993* (referred to as community governments for the purposes of the Bill);
- declare Aboriginal council areas as local government areas (shires) under the *Local Government Act 1993*;
- apply most of the *Local Government Act 1993* to community governments;
- provide additional legislative provisions to deal with the unique needs and circumstances of Aboriginal communities, including providing community governments with the ability to establish local service committees, to levy a charge on residents in lieu of charging rates and to create electoral divisions based on Indigenous social groups;
- remove legislative provisions relating to local governance in Aboriginal council areas from the *Community Services (Aborigines) Act 1984* and retitle the residual provisions of the Act as the *Aboriginal Communities (Justice and Land Matters) Act 1984*;
- remove ambiguities in the *Community Services (Aborigines) Act 1984* regarding the entry of persons into trust areas within a community government area; and
- amend the *Local Government Act 1993* to correct an anomaly in relation to the current inability to appoint an administrator during the period when a council is suspended but not yet dissolved.

Reasons for the Bill

The Bill is part of the *Meeting Challenges, Making Choices* strategy, which is the Government's response to the Cape York Justice Study report handed

down by Justice Tony Fitzgerald in November 2001. The Cape York Justice Study report found, amongst other things, that Aboriginal councils established under the *Community Services (Aborigines) Act 1984* continue to suffer from lack of capacity, poor governance practices and an apparent inability to provide improvements in the quality of life for Aboriginal communities.

The Cape York Justice Study was the latest in a succession of reports and reviews over the past two decades that have questioned the appropriateness of the model of governance under the *Community Services (Aborigines) Act 1984* to meet the needs and aspirations of Aboriginal communities. These include the Legislation Review Committee in 1991, the Parliamentary Public Accounts Committee in 1991 and 1993, the Aboriginal and Torres Strait Islander Women's Task Force on Violence in 1999 and the Aboriginal Coordinating Council in 2001.

In April 2002, the *Meeting Challenges, Making Choices* set out a commitment to develop a Community Governance Improvement Strategy and to review the current laws for community governance through the preparation of a Green Paper. A Green Paper, *Making Choices about Community Governance*, was publicly released for consultation in March 2003 and was followed in September 2003 by a White Paper on new laws for Aboriginal community governance. The White Paper set out guiding principles for a new direction for Aboriginal community governance, along with an outline of proposed new laws to replace the *Community Services (Aborigines) Act 2004*. The Bill has been developed on the basis of the principles and the proposed model for new laws set out in the White Paper.

A fundamental principle underpinning the White Paper is that Aboriginal communities will receive the same standard of governance from their councils as that enjoyed by other Queenslanders. The Bill therefore replaces the outdated and flawed *Community Services (Aborigines) Act 1984* with a model that institutes best practice local governance. This entails adopting the rigorous standards that apply to other local governments in Queensland under the *Local Government Act 1993*. At the same time, the Bill meets the specific requirements of these small, mostly remote councils that suffer from a current lack of capacity and face unique governance challenges such as the trusteeship of communally held land and responsibility for a wider array of community services than other local governments. While the Bill applies the best practice standards of the *Local Government Act 1993* to councils in Aboriginal communities, it also contains the flexibility to accommodate some of the unique needs and circumstances of these communities.

The objective of the Bill is to provide Aboriginal communities with the tools they need to govern accountably and effectively. It underpins the Government's belief that good governance is the key to a sustainable future and a better quality of life for Aboriginal communities.

Administrative cost to government

Aboriginal councils already receive operational funding under the State Government Financial Aid (SGFA) program and will continue to receive this funding when they are reconstituted as local governments under the *Local Government Act 1993*.

The Bill imposes additional requirements on the former Aboriginal councils, such as the development of corporate and operational plans, annual reports, registers of interests and compliance with a range of statutory requirements. In the June 2004 State Budget, the Government committed an additional $16.6 million for a four-year Community Governance Improvement Strategy (CGIS) to assist Aboriginal and Torres Strait Island councils to achieve sustainable good governance and more effective service delivery. A key element of this strategy will be the provision of support to councils to comply with the requirements of the new legislation.

The Government will work in partnership with the councils to address priority issues including negotiating a tailored Service Development Plan with each council. These plans will set out agreed performance targets for councils to be achieved over four years, along with the obligations of the Government to provide support and capacity-building effort.

To improve integration of Aboriginal communities into the local government system of Queensland and to ensure access to the support of a professional, specialist local government agency, the administrative responsibility for Aboriginal councils has been transferred from the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) to the Department of Local Government, Planning, Sport and Recreation (DLGPSR).

Consistency with fundamental legislative principles

Clause 85 of the Bill inserts new section 188 in the *Community Services (Aborigines) Act 1984*. The new section validates the declaration of Aboriginal Council areas under that Act for all purposes. While the 14 Aboriginal Council areas in existence before 2000 are not in doubt, there is

some doubt the standing of the Mapoon Aboriginal Council area. The new section will have the effect of validating any prosecutions, under an Act, that hinged on the validity of the declaration, of the Mapoon council area.

This may be perceived as a breach of fundamental legislative principles, under subsection 4(3)(g) of the *Legislation Standards Act 1992*, as it may adversely affect rights and liberties, or impose obligations, retrospectively. However, any existing prosecutions have been carried out based on a presumption of the validity of the council area and any offences that depend on the validity of the area. Notwithstanding the technical issue that has given rise to doubt about the standing of the area, it was Government's intention, and the expectation of the public, that the area was properly declared and that all offences based on the area were also valid. The validation provision is necessary to give effect to the Government's intention and the public's expectation and remove any doubt surrounding this matter.

Consultation

The legislative proposals were the result of extensive consultations with remote Aboriginal communities and other key stakeholders from late 2001 to mid-2004.

As part of the response to the Cape York Justice Study, outlined in the paper *Meeting Challenges, Making Choices*, the Government undertook an analysis of the effectiveness of the current system of Indigenous community governance established under the Community Services legislation. This analysis resulted in the public release of the Green Paper, *Making Choices about Community Governance*, in March 2003. The Green Paper explored preferred models capable of providing strong and effective community governance based on the social, economic and cultural needs of each community.

In October 2003, the Government released a White Paper setting out proposed new laws for Aboriginal Councils to replace the Community Services Act. A series of community presentations were held in November 2003 to discuss the White Paper, which was called *Meeting the Challenges of Community Governance*.

In May 2004, the Government released the draft *Local Government (Community Government Areas) Bill 2004* to make the White Paper proposals into law. DATSIP and DLGPSR undertook a consultation process from May to July 2004 to ensure that all identified key

stakeholders had the ability to provide further input into the development of the Bill.

In May and June 2004, copies of the Bill and plain English summary were mailed to members of Aboriginal councils, Aboriginal community organisations, government agencies, all local governments and peak bodies and other relevant stakeholders. Additional copies were distributed directly to members of Aboriginal communities during presentations and face to face meetings. Consultations closed on 16 July 2004.

DATSIP and DLGPSR conducted a total of 24 presentations on the draft Bill in Indigenous communities and surrounding areas. Presentations were held with 15 Aboriginal councils, Aurukun Shire Council and Cook Shire Council. A workshop was also provided to a conference of Aboriginal council clerks and finance officers and six presentations were provided to community representatives and residents in Aboriginal communities.

Approximately 180 people attended these presentations, including about 80 councillors and 50 council staff. The purpose of the presentations was to explain the draft Bill, to answer any questions and to record feedback provided by participants.

A meeting was also held between DLGPSR and the Local Government Association of Queensland (LGAQ).

Notes on the Provisions

This section provides explanatory notes for each clause of the draft Bill. The clause numbers refer to the numbers of the clauses in the Bill.

The ‘clauses’ of a Bill become ‘sections’ of an Act after the Bill is passed by Parliament and assented to by the Governor.

Part 1 – Preliminary

Division 1 - Introduction

Clause 1 provides for the short title of the Act.

Clause 2 provides for the commencement of the Act to be fixed by proclamation, except clause 85, which validates the declaration of the Mapoon Aboriginal Council area. Delayed commencement by proclamation will provide sufficient time to finalise the regulations, administrative policies and for a smooth transition to the new arrangements.

Division 2 - Interpretation

Clause 3 provides that particular words used in the Act are defined in the dictionary in Schedule 4 to the Act (located at the end of the Act).

Clause 4 provides that any terms used in the Act for which there is a definition in the *Local Government Act 1993* will have the meaning provided by the *Local Government Act 1993.*

Clause 5 provides that a note in the text of the Act is to be considered part of the Act.

Part 2 – New local government areas and local governments

Division 1 – Declaration of new local government areas and establishment of new local governments

Clause 6 specifies that, for the purposes of Part 2, Division 1, the definition of "column 1 area" map is provided in subclause 7(1).

Clause 7 refers to Schedule 2 and provides that an area on a map mentioned in column 1, which were council areas under the *Community Services (Aborigines) Act 1984* (renamed the *Aboriginal Communities (Justice and Land Matters) Act 1984*) before commencement of the section, is declared to be a local government area under the *Local Government Act 1993* and taken to be a local government area under section 16 of that Act. Under the *Community Services (Aborigines) Act 1984*, council areas were defined by deed-of-grant references or property descriptions. This has led to uncertainty in some cases. As in the case of other local governments, the former Aboriginal council areas will now be defined by a local government area map, thereby removing the previous uncertainty.

Under the *Local Government Act 1993*, Aboriginal council areas were not local government areas but were part of existing local government areas. The *Community Services (Aborigines) Act 1984* clarified that the Aboriginal council had local government jurisdiction over the Aboriginal council area despite the fact that it was part of an existing local government area. Clause 7 removes this historical anomaly by converting Aboriginal council areas into local government areas in their own right.

Subclause 7(2) provides that excluding the part of that area that becomes a new local government area changes the external boundaries of an old local government area affected by the above declaration. "Old local government area" is defined under subclause 7(6). This means that existing local government areas will be reduced in size due to the excision of the new local government areas, which were Aboriginal council areas, from the local government area. The maps for the existing local government areas under the *Local Government (Areas) Regulation 1994* will be redrawn to reflect the excision of the Aboriginal council areas.

Subclause 7(3) provides that for the *Local Government Act 1993* the new local government areas have:

- the name mentioned in column 2 shown opposite the local government area map (ie. column 1 area map). For example, the area shown on map LGB151, edition 1, is to be named 'Cherbourg'; and
- the class mentioned under the heading 'Class' shown opposite the local government area map. For example, for the area shown on map LGB151, edition 1, is the class of 'Shire'.

All the former Aboriginal council areas will be classified as 'shires' for the purposes of the *Local Government Act 1993.*

Subclause 7(4) provides that the actions that have been taken in subclauses (1), (2) and (3) (i.e. converting the Aboriginal council areas into local government areas) are not subject to the provisions of the *Local Government Act 1993*, Chapter 3, Part 1 - *Reviewable Local Government Matters*. While the creation of a new local government area would ordinarily be a reviewable local government matter under section 64 of the *Local Government Act 1993*, the Aboriginal council areas were already operating as defacto local government areas, so a review by a Local Government Electoral and Boundaries Review Commission is considered unnecessary. Changing boundaries, naming and deciding the class of local government areas would also ordinarily be reviewable local government matters under the *Local Government Act 1993*, but a review is not necessary in this instance. The purpose of the review process is to provide independent review of Government's executive actions in changing important local government matters through subordinate legislation. In this instance, the changes are brought about by an Act of Parliament and not subordinate legislation, so the review process is not applicable.

Subclause 7(5) clarifies that each local government area map is identified by a map number marked on the map.

Clause 8 refers to Schedule 2 and establishes new local governments by providing that a local government mentioned in column 4 is the local government for the area of the local government area map shown opposite the local government. For example, 'Cherbourg Shire Council' is the local government for the area shown on map LGB151, edition 1. The intent of this clause is to link the local governments to the relevant local government area.

Clause 9 requires that the chief executive ensure that each new local government has a copy of its local government area map and keeps a copy of each new local government area map for public inspection at the Department of Local Government, Planning, Sport and Recreation's head office. Each new local government must also keep a copy of its local government area map for public inspection at its public office. The clause is consistent with section 3 of the *Local Government (Areas) Regulation 1995*, which applies to all local governments.

Division 2 – Community government name

Clause 10 provides a community government with the flexibility to use the title 'Aboriginal Shire Council'. For example, the community government for Yarrabah may be called:

- Council of the Shire of Yarrabah;
- Yarrabah Shire Council; and/or
- Yarrabah Aboriginal Shire Council.

The option for a community government to use the title 'Aboriginal Shire Council' may assist in:

- signifying that the community government area of the community government is primarily an Indigenous community with its own cultural identity;
- signifying that the community government area is one where most or all of the land is Aboriginal land held in trust by the council;
- identifying the community government area as an area:
  - (a) where access is restricted under *the Aboriginal Communities (Justice and Land Matters) Act 1984*; and
  - (b) where part or all of the area is a restricted area under the *Liquor Act 1992*.

Division 3 – Application of Local Government Act 1993

Clause 11 is the key provision in the Act that applies the bulk of the *Local Government Act 1993* framework to community governments and community government areas.

Parts of the *Local Government Act 1993* that do not apply to community governments and community government areas, subject to clause 32 and Part 8, Division 1, are the following:

(a) section 33, which requires that each local government consist of at least five councillors. This part does not apply because the regulation-making power permits a regulation to make provision for this under clause 53;

(b) subsections 64(1)(d) and (g) to (k), which relate to reviewable local government matters. Most of these matters will instead be reviewable community government matters under Part 3 of the Bill (see clause 14). They relate to internal electoral matters for community governments. Part 3 of the Bill stipulates a review process for changes to community government electoral matters that adopts the review process in the *Local Government Act 1993* with some modifications. Subsections 64(1)(d) and (j) of the *Local Government Act 1993* are not applied as they are matters not considered relevant to community governments. It should be noted that for community governments, external matters such as boundary changes, amalgamations and changes that are not simply internal electoral matters will be reviewable local government matters under section 64 and the *Local Government Act 1993* review process will apply to them in the same way as any other local government. It is only electoral matters internal to a community government that will be subject to the separate process as a reviewable community government matter;

(c) Chapter 4, Part 1, Division 2 and Part 4, which relate to the qualifications and disqualifications of councillors and councillor vacancies. These are to be dealt with by regulation pursuant to the regulation-making power provided under clause 53;

(d) Chapter 5, which relates to local government elections. The conduct of elections is to be dealt with by regulation pursuant to the regulation-making power provided under clause 53. This is the current approach under the *Community Services (Aborigines) Regulation 1998*;

(e) sections 502 and 503, which relate to the Local Government Finance Standards. Instead clause 30 permits the Minister to make separate *Community Government Finance Standards* which will be less onerous than the *Local Government Finance Standard 1994* in that they will not require general purpose financial reporting and accrual accounting;

(f) section 854, which prohibits local governments from making local laws about development matters, within the meaning of the *Integrated Planning Act 1997*. Community governments are exempted from this restriction as it is considered that a local law may be an appropriate tool to regulate development in community government areas in some circumstances. This recognises that community government areas comprise land held in trust by the council, and different approaches to

development planning may be necessary to that provided under the *Integrated Planning Act 1997.*

Part 3 – Reviewable community government matters

Division 1 – Preliminary

Clause 12 defines "reviewable community government matter" for the purposes of the Part.

Clause 13 clarifies that Part 3 applies certain provisions in the *Local Government Act 1993* that relate to reviewable local government matters to reviewable community government matters. This highlights the intention that reviewable community government matters are examined and implemented in a manner consistent with that for reviewable local government matters.

Clause 14 details what matters are considered reviewable community government matters under the Bill. The matters that are provided for under subclause (1)(a) to (d) are considered reviewable local government matters for local governments, other than community governments, under subsection 64(1) of the *Local Government Act 1993.*

Subclause 1(e) provides the ability for electors in a community government area to be divided or redivided with consideration to Indigenous social groupings for the purposes of community government elections, including the assigning and reassigning of councillors of a community government area to Indigenous social groupings within its area.

Subclause (1)(f) retains the ability for the mode of election of the mayor to be changed (as per the current *Community Services (Aborigines) Regulation 1998*). The *Local Government Act 1993* provides only for mayors to be directly elected by the residents of the area. Community governments will continue to be able to choose either direct election of the mayor or appointment of the mayor by a vote of the councillors. The process for this will be set out in the regulation, made pursuant to clause 53 of the Bill.

Subclause (1)(g) permits other matters to be prescribed as reviewable community government matters. This means that a regulation can be made to add a matter that can be referred to a Local Government Electoral and Boundaries Review Commission for independent review.

Subclause (2), which is consistent with subsection 64(5) of the *Local Government Act 1993*, clarifies that the following are considered reviewable community government matters:

- any aspect of a reviewable community government matter;
- a particular proposal about a reviewable community government matter; and
- an aspect of a proposal about a reviewable community government matter.

Subclause (3) defines "indigenous social grouping" for the purposes of section 14. The definition of "indigenous social grouping" is the same as the one in the *Community Services (Aborigines) Act 1984*.

Division 2 – Examining and determining reviewable community government matters

Clause 15 provides that Part 1 – *Reviewable Local Government Matters* of Chapter 3 of the *Local Government Act 1993* applies to community government areas and community governments, as if the reviewable local government matter were a reviewable community government matter.

Subclause (2) ensures that Part 1 of Chapter 3 of the *Local Government Act 1993* can be effectively applied to reviewable community government matters, by clarifying that other sections of that Act which relate to reviewable local government matters can be applied if necessary or convenient.

The intent of clause 15 is that the process for review of a reviewable community government matter is largely the same as that for a reviewable local government matter. However, some parts of the *Local Government Act 1993* process are not applied for reviewable community government matters (sections 64, 84, 157 and 158) because separate provisions are made for these matters in the Bill. The following sections of the *Local Government Act 1993* will not apply:

- section 64, which provides the meaning of a "reviewable local government matter". The Bill makes alternative provision for this in clause 14;
- section 84, which –
  (a) requires the Local Government Electoral and Boundaries Review Commission to have regard to prescribed issues when considering a reviewable local government matter. This matter is dealt with under clause 18, discussed below; and
  (b) includes a requirement regarding external boundary matters. Such matters are not considered reviewable community government matters under the Bill;
- section 157 and 158, which relate to the implementation of a reviewable local government matter. The implementation of reviewable community government matters is dealt with under clause 19, discussed below.

Clause 16 provides that a referral of a reviewable community government matter by the Minister under section 77 of the *Local Government Act 1993* is taken to be declared as minor reference under that Act by the Commissioner. Declaring reviewable community government matters as minor references will ensure that proposals for variations to the standard electoral model within community government areas are:

- subject to adequate independent scrutiny regarding their workability and impact;
- subject to appropriate consultation processes prior to implementation of a proposal; and
- aligned with the requirements of the *Local Government Act 1993*; and
- consistent with the current requirements of *the Community Services (Aborigines) Regulation 1998*, which provides council and electors with the flexibility to adapt the standard electoral model to meet the needs of the community.

Clause 17 assists in raising community awareness about a proposal to determine that a reviewable community government matter be implemented by requiring that when a commission gives a notice to a community government about such a proposal, the community government

must put a copy of the notice on display in the community government's public office. This acknowledges the fact that the requirement in section 100 of the *Local Government Act 1993* that the proposal is advertised in a newspaper may not by itself be sufficient to make the community aware of the proposal, due to the limited circulation of newspapers in remote Aboriginal communities.

Clause 18 requires the commission to have regard to issues prescribed by regulation when considering a reviewable community government matter. It is intended that matters such as the criteria to be considered by the commission when considering a reviewable community government matter will be prescribed by regulation. These matters may be similar to the matters prescribed for reviewable local government matters under section 84 of the *Local Government Act 1993*, but may include matters specifically relevant for community governments (e.g. criteria relating to reviewing proposals for election by Indigenous social groupings).

Clause 19 provides that a reviewable community government matter may be implemented by regulation and that implementation may only occur if the commissioner, and the applicable commission, has substantially complied with Chapter 3, Part 1 of the *Local Government Act 1993.* This clause mirrors sections 157 and 158 of the *Local Government Act 1993*.

Division 3 – Quota requirements for divided community government areas

Clause 20 provides that sections 285 and 286 of the *Local Government Act 1993* apply to community government areas and community governments, as if the reviewable local government matter were a reviewable community government matter. The application of sections 285 and 286 of the *Local Government Act 1993* ensures that if a community government area is divided, or redivided, the divisions must be made in a manner which provides for a comparable number of voters for each councillor to be elected for a division.

Subclause (2) ensures that sections 285 and 286 of the *Local Government Act 1993* can be effectively applied to reviewable community government matters, by clarifying that other sections of that Act which relate to these sections can be applied if necessary or convenient.

Part 4 – Financial management

Division 1 – Financial controllers

Clause 21 mirrors the existing provision in the *Local Government Act 1993* (section 157) requiring due process before a power of state intervention (in this case, appointment of a financial controller) is exercised. The clause provides that, in order for a community government to make a submission prior to the appointment of a financial controller for the community government, the Minister must give notice of a proposal to appoint the financial officer to the community government before the appointment, unless:

- the applicable community government has asked for a financial controller to be appointed; or
- giving notice would be likely to defeat the purpose of the proposed exercise of power, or would serve no useful purpose.

The notice must state:

- the reasons that can be relied upon for the appointment of a financial controller; and
- a period within which the community government may make submissions about the proposal.

The Minister must consider community government submissions made within the stated period but after consideration may appoint a financial controller without further notice to the community government.

Clause 22 provides that the Governor in Council may, by regulation, appoint a financial controller for a community government. This and the other provisions for a financial controller in the Bill are adapted from the existing provisions in the *Community Services (Aborigines) Act 1984*, which are being repealed. The objective of these provisions is to enable a financial controller to be appointed for a community government during circumstances of financial management, as provided for in subclause (2), to prevent the community government getting into serious financial difficulties. The appointment of a financial controller provides an extra avenue for government and the community government to address financial concerns without the need to dissolve the community government under section 164 of the *Local Government Act 1993*.

Clause 23 provides that the function a financial controller is to ensure that the community government for which the financial controller was appointed adheres to its budget. However, in addition, a financial controller must undertake other administrative duties as directed by the Minister and may assist the community government by:

- giving advice about financial management to the community government. This will enable the financial controller to work with a community government in the development of a remedial plan to address financial difficulties; and
- undertaking administrative duties requested by the community government.

Clause 24 gives the financial controller the power to revoke, or suspend the operation of a resolution passed or an order made by the community government to give effect to a resolution, to assist in ensuring the community government adheres to its budget. Subclause (2) provides the grounds for a financial controller to exercise this power, including that the financial controller reasonably believes the applicable resolutions or orders will result in unlawful expenditure or cause the community government to become insolvent.

A financial controller can only exercise the above powers with a written notice to the chief executive officer, which states the reasons for the revocation or suspension. The revocation or suspension may be for a stated period or indefinite, depending on the nature of the resolution or order.

Clause 25 clarifies when a resolution or order that is suspended or revoked stops having effect and that neither the State nor the financial controller is legally liable for any loss or expense incurred by a person because of the revocation or suspension.

Clause 26 provides an additional power for financial controllers appointed for a community government to assist in ensuring the community government adheres to its budget. Clause 26 requires that the community government can only make payments from an account it holds with a financial institution if they have been authorised by the financial controller. The grounds on which a financial controller can refuse to authorise a payment are consistent with the reasons for suspending or revoking a resolution or order under clause 24. The effect of this provision is that all expenditure by the community government must be authorised by the financial controller, which gives the financial controller the opportunity to ensure the community government adheres to its budget. This provision

extends the current financial controller provisions in the *Community Services (Aborigines) Act 1984* to strengthen the capacity of the financial controller to perform his or her function under clause 23.

Clause 27 supports financial controllers to meet their responsibilities by requiring a community government to cooperate with a financial controller appointed for the community government, in the carrying out of the financial controller's functions. This provision also extends the current financial controller provisions in the *Community Services (Aborigines) Act 1984*. A failure by the community government to cooperate with the financial controller could constitute grounds for the Government to dissolve the council under section 164 of the *Local Government Act 1993*.

Clause 28 provides that a financial controller appointed for a community government is to be employed under the *Public Service Act 1996.*

Clause 29 permits the State to recover the costs and expenses of a financial controller, include salary and allowances payable to the financial controller as a public service officer, from the applicable community government.

Division 2 – Finance standards

Clause 30 enables the Minister to make standards in consultation with the Auditor-General about matters relating to the financial management of community governments, which are provided for under subclauses (1) and (3). The intent of the clause is that such standards, to be known as *Community Government Finance Standards*, will be developed in a similar manner to the *Local Government Finance Standards* under section 502 of the *Local Government Act 1993*. However, the *Community Government Finance Standards* will be tailored to the current capability and needs of community governments, who will be moving from the modified cash system of accounting to accrual accounting during the transition to the *Local Government Finance Standards.* This clause largely follows the provisions of section 502 of the *Local Government Act 1993.*

Subclause (4) clarifies that a standard about the content of a policy in relation to the lending of amounts to adult residents of community government areas, noted in subclause 30(1)(c), may include a model lending policy or model provisions of a lending policy. Clause 38 enables a community government to develop such a policy and therefore the development of a model lending policy or model provisions may assist community governments in applying a consistent policy across the

community government areas, if appropriate. This provision replicates the current provision for the making of *Aboriginal Council Accounting Standards* under section 50 of the *Community Services (Aborigines) Act 1984*.

Clause 31 requires a community government to comply with the *Community Government Finance Standards.* It is consistent with section 503 of the *Local Government Act 1993*.

Clause 32 clarifies that a reference in the *Local Government Act 1993* to the *Local Government Finance Standards*, in a section which applies to community governments, is taken to be a reference to the *Community Government Finance Standards.*

Division 3 – Inspection of accounting records

Clause 33 provides definitions for "authorised person" and "authorised powers", for the purposes of the Division.

Clause 34 enables the chief executive to authorise a person, who the chief executive is satisfied has the necessary expertise or experience, to exercise the powers mentioned in clause 35, discussed below. The authorisation is restricted to a stated community government.

Clause 35 enables the authorised person to enter a premises of the applicable community government, provided a person does not reside on the premises, to inspect, take an extract from, or copy, accounting records of the community government at the premises. An example of the potential use of this provision is to assist the Government to ascertain the financial status of a community government before it has fallen into serious debt, in order to determine whether the Government needs to step in early to prevent the community government getting into serious financial difficulties. The powers are similar to those previously provided under the *Community Services (Aborigines) Act 1984*. However, the powers have been restricted under this clause and clauses 34 and 36 to reflect current drafting practice regarding the exercising of powers.

Clause 36 requires an authorised person to produce a copy of the written authority to the applicable community government's chief executive officer before exercising the authorised powers unless the authorised person reasonably believes that the requirement could frustrate the authorised person's effective exercise of the authorised powers. For example, the

authorised person may believe that the notification to the chief executive officer may lead to the destruction of records that will be sought during the inspection.

Division 4 – Other financial provisions

Clause 37 requires a community government to prepare financial statements in an approved form that is relevant to the accounting system used by the community government – either in a format based on modified cash or a format based on accrual. This reflects the current practice for Aboriginal councils, whereby councils can choose between two forms that have been approved by the chief executive under the *Community Services (Aborigines) Act 1984*. The intention is that councils will be encouraged to use the accrual format to ensure a transition to the accrual based accounting systems required by the *Local Government Act 1993*.

The requirement to prepare financial statements will be included in the *Community Government Finance Standards* to be made pursuant to clause 30.

Clause 38 retains the ability for community governments to make a loan to an adult resident of its community government area if it does so under a lending policy adopted by the community government by resolution and approved by the Minister. This power was previously provided for under the *Community Services (Aborigines) Act 1984*. The provision was introduced to deal with the problem of inappropriate lending practices by Aboriginal councils highlighted in successive reports by the Auditor General.

The Minister must approve the policy unless satisfied on reasonable grounds that the policy does not comply with the *Community Government Finance Standards,* in which case the Minister must advise the community government of how the policy does not comply. This enables the community government to reconsider its lending policy with a view to amending the policy to comply with the Standards.

Clause 39 enables a community government to, by resolution, make and levy a charge on residents of residential premises in its community government area. The making and charging of levies is an effective way for community governments to raise funds for house maintenance and other essential services, due to the absence of privately owned land in community government areas on which community governments may raise

rates. The *Local Government Act 1993* does not provide a power for councils to levy charges on residents because most local governments have the capacity to levy rates on private property. This clause retains a specific power that Aboriginal councils had under section 52 of the *Community Services (Aborigines) Act 1984*.

Subclause (2) enables the community government to give exemptions from the payment of charges.

Subclause (3) enables the community government to give an exemption if another amount is payable to the community government in relation to the premises. For example, the council may give an exemption from the levy on residents if a resident is already paying rent to the council for the residential premises.

Clause 40 provides for special accounting provisions in relation to canteen profits paid to a community government by a community liquor licence board established under the *Indigenous Communities Liquor Licences Act 2002*. The community government must keep separate accounting records for these profits and they must only be used for funding programs and services for the benefit of residents of the area. The exception in subsection (2)(b) is that the profits can be used for payment against a community government's liabilities relating to the canteen if permitted by an implementation regulation under the *Indigenous Communities Liquor Licences Act 2002*. This exception may be necessary to enable the community government to repay a business loan or a loan for the canteen premises once the canteen licence has been transferred to the community liquor licence board. This clause mirrors section 61 of the *Community Services (Aborigines) Act 1984*, which is repealed.

Part 5 – Local services committees

Clause 41 enables a community government to establish a committee of the community government, known as a local services committee, which may include persons who are not councillors of the community government. The ability to establish such committees to manage various community government programs and services recognises the particular challenges faced by community governments which administer a much wider array of services than other local governments. This creates a significant burden on community governments, especially in relation to the management of

functions for which the community government may not be the most appropriate decision-makers in the community, such as the management of trust lands, women's shelters, local retail stores, and administration of housing and employment programs.

Community governments will be able to establish advisory committees and standing committees under the *Local Government Act 1993*. The difference with local services committees is that they will be able to include non-councillors and they will be able to be fully delegated decision-making authority. Under the *Local Government Act 1993,* committees that include non-councillors can only be advisory and cannot be delegated council functions.

Under clause 41, a local services committee can be established by a local law that includes provisions about the composition, conduct and decision-making of the committee and the powers that can be delegated to the committee under a local government Act of the community government. Under the *Local Government Act 1993* a proposed local law must be provided to the Minister to determine whether State interests are satisfactorily dealt with by the proposed local law. This process will ensure that a local law does not include inappropriate delegations to local services committees.

Subclause 41(3)(a) provides a community government with the flexibility to stipulate the membership of a committee in a manner that best reflects the needs and aims of the committee. For example, a local law could specify membership by reference to:

- specific individuals by name;
- representatives of certain organisations or community groups (including Indigenous social groupings);
- certain recognised positions within the community government, the community or community groups; or
- an election process for members of the committee to be elected by residents.

Clause 42 provides that the function of a local services committee is to exercise any powers under a local government Act of the community government that may be delegated to the committee under clause 43.

Clause 43 enables a community government to make a resolution which delegates to a local services committee a power provided for under the community government's local law that established the committee. This is

in addition to the power of a community government to make a delegation under section 472 of the *Local Government Act 1993*, other than a power mentioned in subsection 472(3) of that Act. A delegation made under subclause (4) must be recorded in the community government's register of delegations under subsection 472(4) of the *Local Government Act 1993.* The powers that may be delegated are powers "under a local government Act". "Local government Act" is defined in the Schedule (*Dictionary*) of the *Local Government Act 1993*.

Clause 44 provides that if a community government proposes to make a resolution revoking a previous resolution to delegate a power to a local services committee, the community government must at least two weeks before the community government meets to discuss the resolution:

- publish a notice about the proposed resolution (known as a revocation notice) in a newspaper circulating in the community government area; and
- put a copy of the revocation notice on display in a conspicuous place in its public office.

Written submissions to the community government submitted before the day of the meeting and must be taken into account by the community government before making the proposed resolution. This process ensures that residents have the opportunity to consider and provide comments to the community government on the proposed revocation and the reasons for the revocation.

Clause 45 applies section 237 of the *Local Government Act 1993* to members of local services committees to enable the community government to pay members of local services committees in the same way as other committee members can be paid under the *Local Government Act 1993.*

Clause 46 applies sections 244 to 250 of the *Local Government Act 1993* to members of local services committees, thereby ensuring that:

- because local services committee members will be exercising community government powers, they have the same obligations as councillors in regards to matters relating to material personal interest and the use of information; and
- a register of interests of each local services committee member is to be kept by the chief executive officer.

Clause 47 provides that sections 454 to 457 of the *Local Government Act 1993* do not apply to local service committees. Subclause 41(3) addresses the matters covered by sections 454 to 457 by requiring that the local law establishing the local services committee set out provisions regarding quorums, meeting procedures and the election of the chairperson. This enables local services committees to be set up with rules appropriate to the particular community.

Clause 48 declares that a reference to a committee under sections 458 to 463, 469(3) and 473 of the *Local Government Act 1993* includes a local services committee of a community government. This applies the *Local Government Act 1993* provisions relating to the making of reports, keeping of minutes, the preservation of proceedings and the holding of closed meetings to local services committees.

Part 6 – Superannuation

Clause 49, which should be read in conjunction with clause 68, provides for a three-year transition to the *Local Government Act 1993* superannuation requirements. This approach is necessary to enable community governments to make the adjustment from the present situation, where Aboriginal councils are required to contribute a minimum of 9% of employees' salaries under the *Superannuation Guarantee (Administration) Act 1992 (Cwlth),* to the *Local Government Act 1993* situation, where the mandatory minimum contribution is 12%.

The effect of clause 49 is that, despite the fact that section 1182(2) of the *Local Government Act 1993* applies to community governments, the contribution rates for community governments are not the rates set out in section 1182(2) but the rates set out in clause 49.

When read in conjunction with clause 50, the effect of clause 49 is to increase employer superannuation contributions by 1% of an employee's salary each financial year for three years, commencing on 1 July 2005. Subsection 1182(2) of the *Local Government Act 1993* provided a similar transitional arrangement for local governments following the commencement of that Act.

It should be noted that the rates in clause 49 are minimum rates, as section 1184 of the *Local Government Act 1993* enables a local government to

make additional payments to the scheme above those provided for in that Act.

Clause 50, which should be read in conjunction with clause 68, also provides for a three-year transition to the *Local Government Act 1993* superannuation requirements in relation to employee contributions. This approach is necessary to enable employees to make the adjustment from the present situation for Aboriginal councils, where employee contributions are voluntary, to the *Local Government Act 1993* situation, where the Act requires employees to contribute 6% of their salary. The clause provides for a three-year transition to the *Local Government Act 1993* requirements for employee contributions. The transitional provision increases employee superannuation contributions by 2% of the employee's salary each financial year for three years, commencing on 1 July 2005.

The effect of clause 50 is that, despite the fact that section 1183(1) of the *Local Government Act 1993* applies to community governments, the contribution rates for employees are not the rates set out in section 1183(1) but the rates set out in clause 50.

The employee contributions are included in the contributions that the community government is required to pay under clause 49 as a result of section 1182 of the *Local Government Act 1993*.

Section 1184 of the *Local Government Act 1993* enables an employee to make additional payments to the scheme above those required by clause 50.

Part 7 – Miscellaneous

Clause 51 provides that the chief executive may approve forms for use under the Act.

Clause 52 requires the Minister to review the efficacy and efficiency of the Act within four years of its commencement. It is intended that this will provide an opportunity to determine the appropriate time for community governments to be fully integrated under the *Local Government Act 1993.* At this time, consideration can be given to removing some of the transitional measures for community governments, such as the *Community Government Finance Standards.* Consideration can also be given to integrating some of the specific provisions for community governments into the *Local Government Act 1993*.

Clause 53 enables the Governor in Council to make regulations under the Act relating to the electoral and community government membership matters specified in subclause (2). Clause 11 provides that the provisions of the *Local Government Act 1993* relating to these matters do not apply to a community government area or its community government, with exceptions as noted in clause 11. The approach of providing for community government elections by regulation follows the current approach for Aboriginal councils under the *Community Services (Aborigines) Act 1984* (see section 182 of that Act). As at present, it is intended that the regulations for community government elections will closely follow the *Local Government Act 1993* election provisions (contained in Chapter 5), with some modifications. The rationale for having electoral matters provided for by regulation is:

- to retain some of the current differences from the *Local Government Act 1993* model (such as different qualification provisions and the option of election of mayors by councillors);
- to retain the current flexibility to modify the model of election for community governments, such as introducing election by Indigenous social groupings.

It should be noted that certain changes to the election model for community governments (such as creating or changing electoral divisions, changing the number of councillors or changing the mode of election of the mayor) may be reviewable community government matters under clause 14. In these cases, changes will require independent review by a Local Government Electoral and Boundaries Review Commission.

Part 8 – Transitional provisions

Division 1 – Transitional provisions delaying application of certain provisions of Local Government Act 1993

Clause 54 provides that a community government's chief executive officer is not required to keep registers of interests under subsection 247(1) of the *Local Government Act 1993*, until 1 July 2005. This will provide a chief

executive officer with the time necessary to develop the register after commencement of the Act.

Clause 55 provides that a community government's chief executive officer is not required to keep registers of delegations under subsection 472(4) of the *Local Government Act 1993*, until 1 July 2005. This will provide a chief executive officer with the time necessary to develop the registers after commencement of the Act.

Clause 56 provides that a community government is not required to keep a register of enterprises under subsection 501(1) of the *Local Government Act 1993*, until 1 July 2005. This will provide a community government with the time necessary to develop the register after commencement of the Act.

Clause 57 provides that a community government is not required to prepare and adopt a corporate plan under section 504 of the *Local Government Act 1993*, for a period that includes a period before 1 July 2007. This will provide a community government with the time to develop the systems necessary to prepare and adopt a corporate plan.

Clause 58 provides that a community government is not required to prepare and adopt an operational plan under section 508 of the *Local Government Act 1993*, for a financial year ending before 1 July 2007. This will provide a community government with the time to develop the systems necessary to prepare and adopt an operational plan.

Clause 59 provides that a community government is not required to prepare and adopt a revenue policy under section 513A of the *Local Government Act 1993*, for a financial year ending before 1 July 2006. This will provide a community government with the time to develop the systems necessary to prepare and adopt a revenue policy.

Clause 60 provides that a community government is not required to prepare and adopt a revenue statement under section 518 of the *Local Government Act 1993*, for a financial year ending before 1 July 2006. This will provide a community government with the time to develop the systems necessary to prepare and adopt a revenue statement.

Clause 61 provides that a community government's budget for the financial year ending 30 June 2006, or any amendment of the budget, is not required to comply with sections 519(2) and 520 of the *Local Government Act 1993*. These sections relate to the development and adoption of budgets and make references to documents such as a corporate plan, operational plan and

revenue policy, which are not required under the Bill to be in place until after the 2005/06 financial year budget has been adopted.

Clause 62 provides that a community government's annual report is not required to contain the information mentioned in sections 533 and 534 of the *Local Government Act 1993*, for a financial year ending before 1 July 2007. This means that until the 2007/08 financial year, annual reports will not be required to contain information relating to corporate or operational plans, as these plans are not required until 2007/08. Additionally the annual reports will not be required to contain information about the other issues of public interest listed in section 534. In effect, in the initial years, the annual report will only need to contain the financial statements.

Clause 63 provides that a community government is not required to keep a register of its regulatory fees under section 1071E of the *Local Government Act 1993*, until 1 July 2005. This will provide a community government with the time necessary to develop the register after commencement of the Act.

Clause 64 provides that a community government is not required to have a corporate structure appropriate for the conduct of its affairs under subsection 1127(1) of the *Local Government Act 1993*, until 1 July 2005. This will provide a community government with the time necessary to finalise its corporate structure after commencement of the Act.

Clause 65 provides that a community government is not required to decide the resources to be allocated to the employment of staff under section 1128 of the *Local Government Act 1993*, until 1 July 2005. This will provide a community government with the time necessary to consider and make decisions regarding the allocation of resources to staff after commencement of the Act.

Clause 66 provides that a community government's chief executive officer is not required to have a register of delegations under subsection 1132(3) of the *Local Government Act 1993*, until 1 July 2005. This will provide a chief executive officer with the time necessary to develop the register after commencement of the Act.

Clause 67 provides that:

- a community government's mayor is not required to keep registers of interests, mentioned under 1139(1) of the *Local Government Act 1993*, until 1 July 2005.

- a community government's chief executive officer is not required to have registers of interests under subsection 1139(2) of the *Local Government Act 1993*, until 1 July 2005.

This will provide a mayor and chief executive officer with the time necessary to develop the registers after commencement of the Act.

Clause 68 provides that an employee of a community government is not required to be a member of the Local Government Employees' Superannuation Scheme, as required under subsection 1181(2) of the *Local Government Act 1993*, until 1 July 2005. Most employees of Aboriginal councils are already members of the Local Government Employees' Superannuation Scheme because they have been prescribed as local government entities under subsection 1181(1). Once Aboriginal councils become local governments and the *Local Government Act 1993* is applied to them, they will be required by subsection 1181(2) to have their employees under the Local Government Employees' Superannuation Scheme. The effect of clause 68, however, is that those councils who do not presently use this scheme will not be required to change to the scheme until 1 July 2005. This will give these councils and their employees the time they need to change from their present scheme to the Local Government Employees' Superannuation Scheme.

Subclause (2) also provides that a community government is not required to pay the mandatory rates for yearly contributions for its permanent employees, as required under subsection 1182(1) of the *Local Government Act 1993*, until 1 July 2005. This will provide community governments with the time necessary to prepare for the increase in employer contributions provided for under clause 49. Currently most Aboriginal councils contribute a general rate of 9% of the employee's salary, as prescribed in the *Superannuation Guarantee (Administration) Act 1992 (Cwlth).* It should be noted that the mandatory rates that community governments will have to pay under section 1182 are not the rates set out in that section, but the rates substituted by clause 49 of the Bill.

Division 2 – Other transitional provisions

Clause 69 provides the definitions of "Aboriginal council" and "commencement" for the purposes of the Part. An "Aboriginal council" is defined as an Aboriginal council previously existing under the *Aboriginal*

Communities (Justice and Land Matters) Act 1984 (which is the *Community Services (Aborigines) Act 1984*, as renamed).

Clause 70 provides that an Aboriginal council is taken to have continued in existence as the newly established local government shown opposite the applicable Aboriginal council in Schedule 3. For example, Cherbourg Aboriginal Council is taken to have continued in existence as Cherbourg Shire Council.

Clause 71 provides that, if the context permits, a reference in an Act or document to:

- an Aboriginal council - may be taken as a reference to the newly established local government, shown opposite the applicable Aboriginal council in Schedule 3;
- a council area of an Aboriginal council - may be taken as a reference the local government area of the newly established local government shown opposite the applicable Aboriginal council in Schedule 3; and
- by-law or subordinate by-law of an Aboriginal council - may be taken as a reference to a local law or subordinate local law, respectively of a newly established local government shown opposite the applicable Aboriginal council in Schedule 3.

Clause 72 provides that an Aboriginal council's assets and liabilities, contractual obligations, and property will, on commencement of the Act, transfer to the newly established local government that succeeds it.

Clause 73 provides that proceedings that could have been started or continued by or against an Aboriginal council before commencement of the Act may be started or continued by or against the local government that succeeds the Aboriginal council.

Clause 74 provides that from commencement of the Act, a member of an Aboriginal council is taken to be a councillor of the newly established local government that succeeds the Aboriginal council.

Clause 75 provides that from commencement, the chairperson and deputy chairperson of an Aboriginal council are taken to be the mayor and deputy mayor, respectively, of the newly created local government that succeeds the Aboriginal council.

Clause 76 provides that from commencement, the clerk of an Aboriginal council mentioned is taken to be the chief executive officer of the newly established local government that succeeds the Aboriginal council.

Clause 77 provides that by-laws and subordinate by-laws of an Aboriginal council are taken to be local laws and subordinate local laws, respectively, of the newly established local government that succeeds the Aboriginal council. However, this transitional provision does not apply to by-laws mentioned in repealed section 166 of the *Aboriginal Communities (Justice and Land Matters) Act 1984* (formerly the *Community Services (Aborigines) Act 1984*). These by-laws relate to authorising or excluding persons of a specified class from entering, being in or residing in a council area. Subclause (3) provides that these by-laws stop being effective on commencement of the Act.

Clause 78 provides that the budget of an Aboriginal council for the 2004/2005 financial year is taken to be the budget for that financial year for the newly established local government shown opposite the Aboriginal council in Schedule 3. By the time the Bill commences, Aboriginal councils will already have adopted their budgets for 2004/05. This provision clarifies that this budget continues in effect for the newly established local government.

Clause 79 provides that an adopted lending policy:

- of an Aboriginal council is taken to be an adopted lending policy for the newly established local government that succeeds the Aboriginal council; and
- approved under repealed section 48 of the *Aboriginal Communities (Justice and Land Matters) Act 1984* (formerly the *Community Services (Aborigines) Act 1984*) is taken to be approved under clause 38.

Clause 80 provides that a decision or order made, or other action taken, by or in relation to an Aboriginal council, which had an ongoing operation effect immediately before commencement of the Act, is taken to be a decision or order made, or other action taken, by or in relation to the newly established local government that succeeds the Aboriginal council.

Clause 81 provides that a resolution made by an Aboriginal council, which had an ongoing operation or effect immediately before the commencement of the Act, is taken to be a resolution properly made, under the *Local Government Act 1993*, and the Act, by the local government that succeeds the Aboriginal council. Subclause (2) provides that if such a resolution authorises the payment or provision of remuneration to a councillor of an Aboriginal council the resolution stops having effect at the end of 30 June 2005. The effect of this is that the community government will need to

make a new resolution about the payment of councillors by 30 June 2005. The new resolution will need to comply with the requirements of the *Local Government Act 1993* set out in section 237.

Clause 82 provides that any financial controller that had been appointed for an Aboriginal council under the *Community Services (Aborigines) Act 1984* (renamed the *Aboriginal Communities (Justice and Land Matters) Act 1984*) continues as a financial controller for the local government that succeeds the Aboriginal council.

Clause 83 provides that an administrator that had been appointed for an Aboriginal council under the *Community Services (Aborigines) Act 1984* (renamed the *Aboriginal Communities (Justice and Land Matters) Act 1984*) continues as an administrator for the local government that succeeds the Aboriginal council. The administrator is taken to have been appointed under section 178 of the *Local Government Act 1993*.

Subclause (2) provides that a committee that was appointed to provide advice to an administrator under the *Community Services (Aborigines) Act 1984* (renamed the *Aboriginal Communities (Justice and Land Matters) Act 1984*) continues as if the committee was appointed under section 181 of the *Local Government Act 1993*.

Clause 84 enables a regulation to be made for a transitional or saving purpose if the Bill does not make sufficient provision or if it is necessary to achieve the transition of an Aboriginal council to the status of a local government. The transitional regulation-making power is necessary to cater for any unforeseen transitional issues that arise within a year after the commencement. Such a regulation can have retrospective effect but can only be made and have effect within a year of the commencement of the Bill.

Part 9 – Amendment of Acts

Clause 85 inserts section 188 into the *Community Services (Aborigines) Act 1984* to remove any doubt about the declaration of the Aboriginal council areas under the *Community Services (Aborigines) Regulation 1998*. During the drafting of the Bill, doubt arose about the standing of the regulation that purported to declare the Mapoon Aboriginal council area in 2000, as the regulation appears to conflict with the regulation-making

power. The regulation-making power in section 39 of the *Community Services (Aborigines) Act 1984* does not permit an Aboriginal council area to be declared for a part of the State that is within an existing local government area. While the 14 Aboriginal council areas in existence before 2000 are not in doubt, for completeness, the provision deals with all the Aboriginal council areas.

Clause 86 provides that Schedule 1 amends the Acts mentioned in that Schedule.

Schedule 1

Schedule 1 provides for consequential and other amendments to be made to the following Acts:

- *Aboriginal Land Act 1991;*
- *Aborigines and Torres Strait Islanders (Land Holding) Act 1985;*
- *Acts Interpretation Act 1954;*
- *Coastal Protection and Management Act 1995;*
- *Community Services (Aborigines) Act 1984;*
- *Community Services (Torres Strait) Act 1984;*
- *Criminal Code;*
- *Domestic and Family Violence Protection Act 1989;*
- *Electoral Act 1992;*
- *Financial Administration and Audit Act 1977;*
- *Freedom of Information Act 1992;*
- *Housing Act 2003;*
- *Indigenous Communities Liquor Licences Act 2002;*
- *Integrated Planning Act 1997;*
- *Juvenile Justice Act 1992;*
- *Liquor Act 1992;*
- *Local Government (Aboriginal Lands) Act 1978;*
- *Local Government Act 1993;*
- *Ombudsman Act 2001;*

- *Penalties and Sentences Act 1992;*
- *Police Powers and Responsibilities Act 2000;*
- *Public Sector Ethics Act 1994;*
- *Residential Tenancies Act 1994;* and
- *Valuation of Land Act 1944.*

With the exception of a number of amendments to the *Community Services (Aborigines) Act 1984* and the *Local Government Act 1993*, which are discussed below, the amendments to the Acts are consequential amendments which, in general, reflect one or more of the following matters:

- removing the terms 'Aboriginal council' and 'Aboriginal local government';
- replacing the terms 'Aboriginal council' and 'Aboriginal local government' with the term 'community government';
- where applicable, replacing the term 'council area' with 'community government area';
- where applicable, replacing 'by-law' with 'local law';
- where applicable replacing the term 'council' with the term 'community government';
- removing references to the *Community Services (Aborigines) Act 1984*;
- replacing references to the *Community Services (Aborigines) Act 1984* with the new title *Aboriginal Communities (Justice and Land Matters) Act 1984*;
- renumbering provisions;
- removing or amending references to provisions that have been omitted or renumbered;
- removing references to the Aboriginal Industries Board, which has never been established in practice, and for which the relevant provisions in the *Community Services (Aborigines) Act 1984* are being repealed by the Bill; or
- removing references to the Aboriginal Coordinating Council, which is dissolved under new section 186 inserted into the *Aboriginal Communities (Justice and Land Matters) Act 1984* .

Amendments to the *Community Services (Aborigines) Act 1984*

Schedule 1 amends the *Community Services (Aborigines) Act 1984* through the following amendments noted under the heading *Community Services (Aborigines) Act 1984*. Amendments which are not specifically explained below are those which simply update terms or renumber provisions as a consequence of the Bill.

Amendment 1 amends the long title of the Act to reflect the removal of provisions relating to Aboriginal councils and the retention of provisions relating to specific justice and land matters.

Amendment 2 amends section 1 by inserting a new short title for the Act that better reflects the provisions that are retained in the Act following the repeal of all provisions related to Aboriginal councils.

Amendment 3 amends section 3 by omitting subsections (1) to (4), which relate to transitional matters that are no longer relevant.

Amendment 6 omits definitions of terms in section 4 that are no longer referred to in the Act.

Amendment 7 adds new definitions of terms into section 4. The defined terms relate to new provisions inserted by amendments under the *Local Government (Community Government Areas) Act 2004.*

Amendment 10 omits sections 5 and 6 of the Act, which relate to matters that:

- in the case of section 5 – are now dealt with under section 5 of the *Local Government Act 1993*; or
- in the case of sections 6 - no longer serves a useful purpose.

Amendment 11 omits section 10 to 14 and inserts a new section 11 that clarifies that only a departmental officer with the necessary appropriate qualifications, experience or standing can be delegated the powers, functions or duties of the chief executive. Sections 10, 12 and 14 have been omitted as they no longer serve a useful purpose.

Amendment 12 omits Part 3 – *Intervention by the State*. The matters dealt with in Part 3 are either dealt with in the *Local Government Act 1993* or, in the case of provisions relating to financial controllers, are now included in the *Local Government (Community Government Areas) Act 2004.*

Amendment 13 updates the heading to Part 4 as a consequence of Amendment 10.

Amendment 14 omits Divisions 1, 2 and 4 of Part 4. Division 1 – *Aboriginal councils* and Division 2 – *Financial operations of Aboriginal councils* relate to local governance of Aboriginal communities, which is now dealt with under the *Local Government (Community Government Areas) Act 2004*. Division 4 – *Determination of matters of complaint in areas*, which relates to Aboriginal Courts, is repealed because these courts are no longer in existence and have been replaced in practice by Justice of the Peace Magistrates Courts.

Amendment 23 amends section 76(2) to remove the paternalistic and impractical requirement for community governments to seek the Minister's approval to appoint a specified number of Aboriginal police.

Amendment 25 inserts new subsections in section 76 to enable a regulation to be made about the qualifications of Aboriginal police in order to avoid the appointment of inappropriate persons as Aboriginal police. The amendment also clarifies that a community government may consider other issues not dealt with in the regulation when deciding whether to appoint an Aboriginal police officer.

Amendment 26 amends subsection 77(4) to remove any doubt that the reference to 'they' refers to Aboriginal police officers for the council area.

Amendment 32 amends subsection 90(3)(d) to correct an erroneous cross-reference to another provision.

Amendment 33 omits Parts 7 to 10 of the Act and inserts new Part 7 – *Entry on Trust Areas*, to replace Part 10 - *Entry Upon Areas.*

The current Part 7 of the Act, which relates to the making of by-laws and subordinate by-laws, has been omitted because:

- as provided for under clause 7, all by-laws and subordinate by-laws of an Aboriginal council, with the exception of by-laws and subordinate by-laws made under repealed section 166 of the *Community Services (Aborigines) Act 1984* are taken to be local laws and subordinate local laws, respectively, of the newly established local government that succeeds the Aboriginal council; and
- all new local laws and subordinate local laws are to be made in accordance with Chapter 12, Part 2 - *Making Local Laws and Subordinate Local Laws* of the *Local Government Act 1993*, which will apply to community governments as a result of the Bill.

The current Part 8 of the Act relates to the Aboriginal Coordinating Council (ACC) and is omitted because under new section 186, inserted by

Amendment 49, the ACC is dissolved making Part 8 redundant. This matter is discussed further below in regard to Amendment 49.

The current Part 9 of the Act relates to the Aboriginal Industries Board. This Part has been omitted in recognition that the Aboriginal Industries Board has never been established in practice and the provisions are redundant.

The current Part 10 of the Act relates to Entry Upon Areas and is replaced with a new Part 7 – *Entry on Trust Areas*. The new Part 7 substantially re-drafts the old Part 10 to remove ambiguities about the rights of entry to trust areas and to update the provisions to reflect native title issues.

The new Part 7 includes the following provisions:

Section 114, which provides definitions for the purposes of the Part.

Section 115 creates a specific offence for a person to enter, or be in, a trust area other than as permitted under the Part. The *Community Services (Aborigines) Act 1984* currently does not provide for a specific offence. While Aboriginal police and State police have the ability to remove such persons, from a trust area, as discussed below, the creation of a specific offence provides community governments with the option of prosecuting persons who are in the area without authority, particularly in response to repeated breaches of the entry provisions.

Section 116 provides a general right to enter particular parts of the trust area. Residents of the trust area do not have to rely on this provision because they have a general right to enter under section 119. Section 116 is therefore aimed principally at non-residents. It provides that any person may enter and be in a place within a trust area if the place is an "accessible place" or another place that the community government has decided by resolution is a place to which non-residents, or certain groups of non-residents, may have access. The term "accessible place" replaces the use of the concept of public place under the *Community Services (Aborigines) Act 1984*. The lack of definition of the concept of public place has led to uncertainty about the scope of entry rights of non-residents, because trust areas comprise land that has been set aside specifically for the benefit of Aboriginal residents. Under section 116, accessible place is specifically defined as a road, park, boat ramp or landing, airport or a building open to the public, whether or not on payment of money. "Airport", "landing", and "road" are further defined to avoid any

uncertainty. It is intended that "buildings open to the public" would include buildings such as council chambers, shops, recreational centres and community centres.

The provision gives community governments flexibility to determine which further parts of the trust area will be open to non-residents by making a resolution. This is consistent with the role of the community government as trustee of the trust lands under the deed of grant instrument. One current area of uncertainty that is cleared up by the provisions is beaches within trust areas. Such areas will not be open to non-residents unless the community government specifically resolves that a beach is open to non-residents. Community governments have a further power to authorise particular non-residents to be in parts of the trust area by making a local law under section 119(1)(c). For example, this might be used to authorise persons with a permit to enter particular parts of the area.

Section 116 further provides that a community government may only make a resolution granting non-residents access to Aboriginal land within the trust area if the written consent of the grantees, who have the right to exclude entry to the place, has been obtained. This refers to Deed of Grant in Trust Land that has been transferred to trustees as Aboriginal freehold land under the *Aboriginal Land Act 1991*.

Subsection (2) provides that a non-resident may enter and be in a place within a trust area that residents may enter if the non-resident is a guest of a resident of the trust area or has been requested to be there by a resident of the trust area. This preserves the existing right of guests of residents to enter the area under subsection 163(2) of the *Community Services (Aborigines) Act 1984*.

Subsection (3) preserves any existing rights of native title holders to access land within the trust area to which they have native title. This addresses a concern that the new definition of "accessible place" is more restrictive than the previous right of entry to public places under the *Community Services (Aborigines) Act 1984*.

Section 117 requires a community government that makes a resolution to designate a place as open to a non-resident to display written notice of the resolution in a prominent place in its trust area while the resolution is in force. Subsection (2) details the information to be included in such notices. The displaying of the notice will assist non-

residents in determining which parts of the trust area are accessible to them.

Section 118 enables a community government to restrict the number of non-residents allowed within the trust area, and the time that they are allowed there, if the community government is concerned about the unsustainable use of resources or services in the area, such as the supply of water, refuse collection or the treatment of sewage. This provision responds to concerns raised by councils in previous consultations on the entry to area provisions.

Section 119(1) provides a general authority for the following persons to enter, be in or live in a trust area:

(a) residents of the trust area;

(b) persons discharging a function under an Act that requires the person to be in the trust area; and

(c) a person authorised under a local law by the applicable community government.

This provision follows section 164 of the *Community Services (Aborigines) Act 1984* permitting residents and persons discharging functions to be in the trust area. The latter category covers police and public servants such as teachers.

The provision for community governments to make a by-law authorising entry to the area follows section 166 of the *Community Services (Aborigines) Act 1984*. This provision might be used to authorise access to the area, or part of the area, by persons with a permit. For example, the community government could establish a permitting regime for campers or tourists under this provision. The provision might also be useful in granting authority to individuals conducting scientific research or other activities.

Significantly, the provision in the *Community Services (Aborigines) Act 1984*, under subsection 166(1), for the community government to make a by-law restricting access to the area is discontinued. The *Community Services (Aborigines) Act 1984* provision, which some councils have purported to use to banish residents from the area, has led to ambiguity as it appears to conflict with the general right of residents to be in the area under section 164 and the broader principle that trust areas are held on trust for the benefit of all residents of the community. This ambiguity is now removed as the provisions allow only for local laws to extend access to the trust area, not to restrict it.

Subsection (2) provides that a community government can only make a local law permitting access to Aboriginal land within the trust area, if the written consent of the grantee has been obtained.

The provision also requires a local law authorising access to the area to state the parts of the trust area to which it applies. It should be noted that a local law under subsection (1)(c) can apply to the whole of the trust area or to specified parts only.

Section 120 specifies the persons who are authorised to enter, be in and live in a trust area until the purpose of their entry to the area is fulfilled, including persons bringing medical aid to residents. This provision follows the existing section 165 of the *Community Services (Aborigines) Act 1984*, although it removes the paternalistic provision regarding the right of entry for persons bringing religious instruction.

Section 121 enables police officers or Aboriginal police officers to remove a person from a trust area, if that person is not permitted under the Part to be in the trust area. When exercising this power, Aboriginal police, and those assisting them, are permitted to use reasonable necessary force provided it is not likely to cause grievous bodily harm, or death, to the person. This provision follows section 168 of the *Community Services (Aborigines) Act 1984*. However, where section 168 authorised agents of the council to exercise the power of ejectment, the new provision restricts this to Aboriginal and State police officers.

Amendment 43 inserts a new section 179 that is consistent with omitted subsection 47(4) to provide a community government with the power to make local laws for its community government area in relation to:

- regulating and controlling the possession or consumption of alcohol, provided they are not inconsistent with Part 6 – *Control of Possession and Consumption of Alcohol in Community Areas*; and
- conferring functions on the community justice group for the community government area.

While the other provisions of section 47 regarding Aboriginal council functions are omitted, because the Bill replaces them with the *Local Government Act 1993* framework, this provision is retained in the *Aboriginal Communities (Justice and Land Matters) Act 1984* because it relates to matters that are retained in the Act (i.e. alcohol regulation and community justice groups).

Amendment 44 amends section 182 to remove the ability to make regulations regarding matters dealt with under the *Local Government Act 1993* or the *Local Government (Community Government Areas) Act 2004* and to remove references to redundant matters, such as matters relating to Aboriginal Courts and the Aboriginal Coordinating Council.

Amendment 48 amends section 182 to conform to standard legislative drafting practice. The amendment does not change the regulation making power of the Governor in Council.

Amendment 49 omits Parts 13 and 14 of the Act and inserts a new Part 13 – *Transitional provisions for Local Government (Community Government Areas) Act 2004.* Section 183 of repealed Part 13 related to the provision of assistance to Aboriginal councils, which is unnecessary as the Minister and Chief Executive derive their authority to make grants and provide assistance under other legislation. Section 184 of repealed Part 13, which relates to the provision of assistance by religious organisations, is redundant and unnecessary. Repealed Part 14 – *Transitional Provisions* included transitional provisions regarding previous amendments to the Act, which are now redundant.

The new Part 13 contains three new divisions relating to transitional matters.

Division 1 – *Preliminary* includes new section 183 that provides a definition of "commencement" for the new Part.

Division 2 – *Transitional provision for process for making by-laws or subordinate by-laws* includes new section 184. This section provides that if an Aboriginal council has started, but not finished, the process of making a by-law or subordinate by-law under repealed Part 7, that Part and any associated provisions still apply to the making of the by-law or subordinate by-law. This ensures that community governments do not need to begin the process for making local laws again, under Chapter 12 of the *Local Government Act 1993*, if they are currently part-way through the existing by-law process at the time of commencement. Under subclauses 71(3) and (4) of the *Local Government (Community Government Areas) Act 2004*, these by-laws and subordinate by-laws will be considered local laws and subordinate local laws, respectively.

Division 3 – *Transitional provisions for Aboriginal Coordinating Council*, which comprises the following provisions.

Section 185 provides definitions for the purposes of the Division.

Section 186 dissolves the Aboriginal Coordinating Council (ACC). The provisions of Part 8 of the *Community Services (Aborigines) Act 1984* that provide for the ACC are repealed by Amendment 33 of Schedule 1 of the Bill. The dissolution of the ACC as a statutory peak body for Aboriginal councils was announced in the White Paper for New Laws for Aboriginal Community Governance. It will provide local governments in Aboriginal communities with the option of establishing a new peak body that is independent of the Government or utilising the Local Government Association of Queensland (LGAQ) as their peak body. Unlike the ACC, whose functions and structures were tightly circumscribed by the *Community Services (Aborigines) Act 1984*, a separately incorporated peak body can determine its own functions, structure and rules in its corporate constitution and would not be subject to Ministerial decisions.

Sections 186A, 186B and 186C provide for transitional matters relating to the dissolution of the ACC. The operations of the ACC will be completely wound up before the commencement of these provisions. However, any remaining assets or liabilities, contractual obligations or rights of action against the ACC will attach instead to the State after the commencement of the provisions.

The dissolution of the ACC leaves it open to community governments to independently incorporate a peak body in the same way that other local governments have incorporated the LGAQ as their peak body. The intention is that this will lead to a peak body that is more independent of Government and is directly accountable to its members.

Amendment 50 omits section 187 as it relates to the making of a levy on residents, which is now dealt with in clause 39 of the *Local Government (Community Government Areas) Bill 2004.*

Amendment 51 inserts a *Part 16 – Provision for reprinting Act*, which includes section 189 to provide for the renumbering of the Act for the new reprint of the Act.

Amendments to the *Local Government Act 1993*

Amendments 6, 7, 8, 9, 11, 12 and 13 amend a number of provisions relating to the dissolution of a council and appointment of an administrator to ensure that these provisions reflect Chapter 7, Part 2 of the *Constitution*

of Queensland 2001, which provides that a regulation dissolving a local government has the effect only of suspending the councillors from office until the dissolution is ratified by the Legislative Assembly.

The amendments address concerns raised in Crown Law advice about similar provisions in the *Community Services (Aborigines) Act 1984* that during the period of suspension before the Legislative Assembly ratifies the dissolution it is not possible to appoint an administrator to exercise the powers and duties of the local government. Crown Law recommended that the legislation be amended to either:

> (i) insert a provision that allows for the appointment of an administrator where a Council is suspended by the operation of section 74 of the *Constitution of Queensland 2001*; or
>
> (ii) include an amendment to the definition of "dissolve" in the Act so that it includes a period of suspension created by the operation of section 74 of the Constitution.

The amendments clarify that an administrator can be appointed during the period of suspension prior to the ratification of the dissolution. The amendments also expressly state that the effect of the Legislative Assembly ratifying the dissolution of a local government is that the councillors go out of office and that the local government continues in existence as a body corporate and continues to be constituted by the local government's administrator. Although the *Constitution of Queensland 2001* states that the local government is dissolved if the Legislative Assembly ratifies the dissolution, it does not expressly state that the effect of the dissolution is that the councillors go out of office.

Amendment 15 inserts new subsection 1171(3) to clarify that a person employed by a local government under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders is not a permanent employee. The effect of the new subsection is to exempt local government employees who are funded under Community Development Employment Projects (CDEP), and their local government employers, from the mandatory contribution rates for superannuation under sections 1182 and 1183 of the *Local Government Act 1993*. CDEP is a Commonwealth-funded work-for-the-dole scheme. The Commonwealth does not provide funding for superannuation for CDEP workers and CDEP jobs are not considered permanent jobs. Because the Bill applies the *Local Government Act 1993* to community governments, this exemption will also apply to community governments, which commonly administer CDEP schemes. The provision has been included in the *Local Government Act*

1993 for all local governments so that the exemption is available to Aurukun and Mornington Shire Councils, two Aboriginal councils that administer CDEP schemes.