

Act 1993 No. 30

LOCAL GOVERNMENT BILL 1993*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Impounding Bill 1993

Local Government (Consequential Provisions) Bill 1993

Roads Bill 1993

Traffic (Parking Regulation) Amendment Bill 1993.

The objects of the proposed Act are as follows:

- (a) to provide the legal framework for an effective, efficient and open system of local government in New South Wales;
- (b) to regulate the relationships between the people and bodies comprising the system of local government in New South Wales;
- (c) to encourage and assist the effective participation of local communities in the affairs of local government;
- (d) to give councils:
 - the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
 - the responsibility for administering some regulatory systems under this Act
 - a role in the management, improvement and development of the resources of their areas. (See clause 7)

The proposed Act will replace the Local Government Act 1919 (“the 1919 Act”).

* Amended in committee—see table at end of volume.

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CHAPTER 1—PRELIMINARY

This Chapter (clauses 1–6) contains provisions that are helpful in understanding the proposed Act as a whole, as well as some machinery provisions.

The Chapter sets out the proposed Act’s short title (“Local Government Act 1993”) (clause 1). The proposed Act is to commence on a day or days to be appointed by proclamation (clause 2). Interpretation of the proposed Act may require reference to the Dictionary at the end of the Act, or to the Interpretation Act (clause 3). Generally, the proposed Act is to bind the Crown unless specific provision is made to the contrary (clause 4). The 1919 Act adopted the reverse approach. It did not bind the Crown, except where specific provision was made to the contrary. (See for example 1919 Act, Part 10, Division 5B and Part 11, Division 4BA). Like the 1919 Act, the proposed Act is to apply only to those parts of the State that are constituted as local government areas (clause 5).

CHAPTER 2—WHAT ARE THE PURPOSES OF THIS ACT?

This Chapter (clause 7) states Parliament’s purposes in enacting the proposed Act. There is no equivalent provision in the 1919 Act.

The Chapter also aims to give an overview of the major elements in the system of local government in this State. It contains a diagram showing the way in which these elements relate to one another.

CHAPTER 3—WHAT IS A COUNCIL’S CHARTER?

This Chapter (clause 8) contains a set of principles that councils are to pursue in carrying out their functions. These principles constitute a council’s charter. There is no equivalent in the 1919 Act.

CHAPTER 4—HOW CAN THE COMMUNITY INFLUENCE WHAT A COUNCIL DOES?

Under this Chapter, members of the community have the opportunity to influence what a council does by attending meetings of the council and its committees, by being given access to a wide range of information concerning the council and its activities and by expressing community opinion through council polls and constitutional referendums.

Apart from the provisions of this Chapter, members of the public may influence council decisions concerning matters such as the levels of rates and charges, the terms of management plans, the granting of development and building approvals, etc. (which are dealt with in later Chapters) by making submissions, including comments on or objections to proposals relating to those matters.

The Chapter also enables the council to ascertain the views of the local community on various matters through 2 types of polls which may be conducted in the area. A summary of these polls is contained in Part 3 of this Chapter.

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PART 1—OPEN MEETINGS

Notice must be given of meetings of the council and its committees and they are required, as a general rule, to be open to the public (clauses 9 and 10). Under current law, only meetings of the council need be open to the public (and the press) (Ordinance 1, clause 50). The public is entitled to access to correspondence and reports tabled at meetings except in specified circumstances (clause 11).

PART 2—ACCESS TO INFORMATION

This Part (clauses 12 and 13) provides for public access to a wide range of information held by councils (clause 12). (See 1919 Act, sections 215, 311, 654A). A council must retain and preserve its records in accordance with approved standards (clause 13, currently, see Ordinance 1, clause 55).

PART 3—EXPRESSIONS OF COMMUNITY OPINION

Division 1—Council polls

A council may take a poll of electors for its information and guidance on any matter (clause 14). This in effect continues the operation of the 1919 Act, section 81. The effect of section 81A of the 1919 Act, which enables a poll on the question of whether or not the Library Act 1939 should apply in a particular local government area, has not been carried forward in this Bill.

Division 2—Constitutional referendums

Division 2 (clauses 15–17) enables a council to take a poll (called a constitutional referendum) on matters to do with the division of the area into wards, the number of councillors (in accordance with the limits set by clause 222) and the basis on which elections for the mayor and councillors are to be conducted.

The 1919 Act (sections 58 and 61) enables the Governor to divide areas into wards or ridings. The term “wards” is used in relation to municipalities and the term “ridings” in relation to shires. The council and the electors must be given the opportunity to comment on a proposal to alter wards or ridings, but a formal poll is not required. The number of aldermen or councillors on councils is also a matter for the Governor to decide under the 1919 Act, section 23. There is no maximum and no minimum number the Governor may set at present.

The 1919 Act stipulates that the Mayors of the City of Newcastle and the City of Greater Wollongong are to be elected by the electors rather than by the aldermen or councillors (section 25A). Under that section, a certain number of electors can trigger a poll in any other local government area (apart from the City of Sydney—see City of Sydney Act 1988, section 8) to determine whether or not the Mayor or President is to be elected by the electors rather than by the councillors (i.e. “popularly elected”).

Division 3—General provisions concerning a council poll or constitutional referendum

Division 3 (clauses 18–20) contains provisions indicating how and when polls and referendums are to be conducted.

CHAPTER 5—WHAT ARE A COUNCIL'S FUNCTIONS?

The Chapter specifies a council's functions in clauses 21 and 22. In doing so, it recognises that all functions of a council come from statute, either from this Act or another Act.

A council may do all such things as are supplemental or incidental to or consequential on the exercise of its functions (clause 23).

A council also has revenue functions (Chapter 15) and administrative functions (Chapters 11, 12 and 13).

This system of classification of council functions underpins the structure of the proposed Act, in contrast with the 1919 Act which is organised according to subject area rather than according to the type of function being conferred on councils.

CHAPTER 6—WHAT ARE THE SERVICE FUNCTIONS OF COUNCILS?

This Chapter confers on councils their service or non-regulatory functions. Examples of these functions include the provision, management or operation of

- community services and facilities
- public health services and facilities
- cultural, educational and information services and facilities
- sporting, recreational and entertainment services and facilities
- environment conservation, protection and improvement services and facilities
- waste removal, treatment and disposal services and facilities
- pest eradication and control services and facilities
- public transport services and facilities
- energy production, supply and conservation
- water, sewerage and drainage works and facilities
- storm water drainage and flood prevention, protection and mitigation services and facilities
- fire prevention, protection and mitigation services and facilities
- land and property development
- housing
- industry development and assistance
- tourism development and assistance.

This list of examples is not exhaustive.

These functions are conferred in broad terms in Part 1. Particular provisions are made for the management of public land in Part 2. Part 3 imposes some restraints and qualifications on the exercise of the service functions.

A council may have other service functions under other Acts. For example, a council has functions relating to the provision and management of roads under the proposed Roads Act 1993.

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PART 1—GENERAL

Part 1 (clause 24) enables a council to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to the proposed Act and any other law.

The 1919 Act gives councils the power to carry out service functions in numerous specific sections, which cut down the effect of section 84 of that Act which charges councils with the general control of their area.

PART 2—PUBLIC LAND

Division 1—Classification and reclassification of public land

This Division (clauses 25–33) requires all land vested in a council (except a road or land to which the Crown Lands Act 1989 applies) to be classified as either “community” or “operational”.

The classification will (except, perhaps, for the initial classification) be achieved by a local environmental plan.

The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). Community land would ordinarily comprise land such as a public park. Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a council of its functions or land which may not be open to the general public, such as a works depot or a council garage.

Division 2—Use and management of community land

This Division (clauses 34–46) provides for the use and management of community land.

The major consequence of classification as community land or operational land is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

Community land must not be sold. Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice of the proposed lease or licence is given and, if an objection is made to the proposed lease or licence, the Minister’s consent is obtained. No such restrictions apply to operational land.

Classification or reclassification of land does not affect any estate or interest a council has in the land.

The use and management of community land is to be regulated by a plan of management. Until a plan of management is adopted, the nature and use of the land must not change.

The 1919 Act does not contain such a system. Under the 1919 Act, there are restrictions on the alienation of land in certain public reserves (sections 519C, 519D, 519E, 519F).

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Division 3—Miscellaneous

Division 3 (clauses 47–52) contains provisions giving councils control of certain public reserves and other miscellaneous matters.

PART 3—RESTRAINTS AND QUALIFICATIONS THAT APPLY TO SERVICE FUNCTIONS

Division 1—Tendering

Division 1 (clause 53) specifies the contracts which a council can enter into only after it has invited tenders. The circumstances in which councils must invite tenders currently are set out in Ordinance 23, clause 6.

Division 2—Contracting out

Division 2 (clause 54) requires a council to consider contracting work out to the private sector if the estimated cost of the work is not less than \$100,000. The 1919 Act does not contain an equivalent to the requirement to consider contracting work out to the private sector.

Division 3—Water, sewerage and drainage works and facilities

Division 3 (clauses 55–65) controls the construction by a council, or by the Minister for Public Works on behalf of a council, of water, sewerage and drainage works and enables the Minister for Public Works, in certain circumstances, to appoint an administrator to exercise some or all of a council's functions under this Division (clause 65). (See 1919 Act, Part 14, Division 3 (sections 373–377) and section 382 (4). There is no equivalent to the proposed clause 65 enabling the appointment of an administrator).

Division 4—Private works

Division 4 (clause 66) enables a council to carry out work on land that is privately owned, provided it follows certain procedures.

CHAPTER 7—WHAT ARE THE REGULATORY FUNCTIONS OF COUNCILS?

The major regulatory functions of councils are found in this Chapter. It lists the activities that are regulated and it sets out the means of their regulation.

A council, in relation to a range of activities within its areas, exercises regulatory functions of 2 main kinds.

First— various activities can only be carried out if the council gives its approval (for example, the erection of a building or the operation of a caravan park).

Second—a council can order a person to do, or to stop doing, something (for example, a council can order a person to demolish a building that has been erected without an approval or to keep fewer animals on specified premises).

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Failure to obtain or to comply with an approval and failure to comply with an order are made offences under clauses 621, 622 and 623.

A council is not given power to regulate activities by other means. For example, the Chapter does not confer power to require a person to hold a periodic licence.

In exercising its regulatory functions, the council must observe any relevant statutory criteria and any other criteria contained in a local policy it may have adopted after public consultation.

The Chapter provides, as an adjunct to the approvals and orders systems, for the issuing by a council of certain certificates, including building certificates.

The Chapter also enables appeals to be made to the Land and Environment Court against decisions made under the Chapter.

PART 1—APPROVALS

Division 1—What activities require approval?

Division 1 (clause 67) lists the activities that may be carried out only if the prior approval of the council is obtained. These activities generally now require approval under the 1919 Act or Ordinances made under that Act. Approvals given by councils under the regulations made under the Construction Safety Act 1912, for amusement devices and public stands, will be transferred to this Act. A number of approvals required under the 1919 Act and Ordinances made under that Act will no longer be required. Examples are approvals for:

- the erection of tents
- boarding houses
- hairdressers and beauty salons etc.

There is power for additional activities to be prescribed by the regulations. This Bill does not recreate the power of councils to “control and regulate” activities under various sections of the 1919 Act.

Division 2—Crown activities

Division 2 (clauses 68–73) exempts the Crown from the requirement to obtain the approval of a council to the erection or demolition of a building, but requires the Crown to comply with the technical requirements of the State’s building laws. This retains the current position of the Crown in relation to these matters (see 1919 Act, section 304A). The Division also regulates the way in which applications for other approvals by the Crown are to be determined by councils.

Division 3—Making and determination of applications for approval—generally

Division 3 (clauses 74–112) sets out the way in which an application for an approval is to be made and determined. A determination may be made by granting the approval, unconditionally or subject to conditions, or by refusing approval. In some circumstances a council does not have to form an independent judgment about some aspect of the activity for which approval is being sought, but may rely on an accreditation or certificate of another person.

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A council may give an “in principle” approval and a staged approval. Neither are explicitly provided for in the 1919 Act (although there is a form of staged approval allowed for in Ordinance 32, clause 2 (e1)).

The Division establishes the date from which an approval operates and the circumstances in which an approval lapses. It provides for the amendment, extension, renewal, revocation and modification of approvals. A council must keep a record of approvals (clause 112). The 1919 Act requires a council to keep a record of some, but not all, approvals.

Division 4—Special provisions relating to notice of applications to erect buildings

Division 4 (clauses 113–118) requires notice to be given to certain persons of an application to erect a building. It enables persons to inspect certain of the building plans and to make submissions to the council concerning the proposed building. The 1919 Act contains a provision (section 312A) that gives certain rights to owners of adjoining land and land that may be detrimentally affected by a proposed building.

Division 5—Accreditation of components, processes and designs

Division 5 (clauses 119–122) enables a person to obtain accreditation from the Director-General of the Department of Local Government and Co-operatives of a component, process or design relating to an activity that may only be carried out with the council’s prior approval. The 1919 Act gives this role directly to a body constituted under section 309A of that Act, the Building Regulations Advisory Council. A council cannot refuse approval to an activity on the ground that any component, process or design relating to the activity is unsatisfactory if the component, process or design is accredited (clause 91, currently, see 1919 Act, section 3091). A council is exempted from liability in relying on accreditation (clause 727).

PART 2—ORDERS

Division 1—Giving of orders

Division 1 (clauses 123–127) lists the things for which council orders may be given and specifies the circumstances in which and the persons to whom orders may be given. These provisions replace the power of a council to “control and regulate” numerous activities under the 1919 Act.

Division 2—Procedures to be observed before giving orders

Division 2 (clauses 128–134) requires the council to take into consideration any relevant local criteria before giving an order. A council must also follow the procedures as to notice and hearing and consideration of representations set out in the Division before giving an order.

Division 3—Orders generally

Division 3 (clauses 135–155) requires a council to give reasons for giving an order (clause 135). The Division stipulates the things an order may require, the ways in which an order may be given, the time at which an order takes effect and the modification and revocation of orders. The Minister may revoke or modify an order given by a council.

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A council must not give an order affecting an item of environmental heritage unless it has considered the impact of the order on the heritage significance of the item (clause 141). If the item is listed in the Register of the National Estate or is subject to an order under the Heritage Act 1977, the Heritage Council must be given notice and any submissions it makes must be considered before an order is given. (See 1919 Act, section 317JA). The Division enables the Minister to give any order that a council may give (see 1919 Act, section 317JO). It also enables certain fire officers to give orders concerning the fire safety of premises (clause 149). This preserves the effect of the 1919 Act, section 317JY.

PART 3—ADOPTION OF LOCAL POLICIES CONCERNING APPROVALS
AND ORDERS

Part 3 (clauses 156–165) enables a council to prepare and adopt local policies specifying the criteria to be taken into consideration by the council in determining whether to give or refuse an approval or whether or not to give an order. A policy may only be adopted after a period of public consultation. A policy must not be inconsistent with the proposed Act or a regulation made under it and must not be more onerous than the proposed Act or regulation. The 1919 Act does not require a council to follow any formal procedure in determining the policies it follows.

PART 4—CERTIFICATES CONCERNING BUILDINGS

Part 4 (clauses 166–173) provides for the giving of building certificates by a council. If a council issues a building certificate for a building, the building is protected by the certificate from being the subject of an order to demolish the building or to carry out work to the building because of:

- anything existing before the date of the certificate
- deterioration due solely to fair wear and tear within 7 years after that date
- any encroachment of the building onto council land.

These provisions substantially recreate Division 4D of Part 11 of the 1919 Act, except section 317AD.

PART 5—APPEALS

Division 1—Approvals and orders

Division 1 (clauses 174–182) enables the making of appeals to the Land and Environment Court against:

- the determination of applications for approvals (clause 174)
- a determination as to an “in principle” approval (clause 175)
- the revocation or modification of approvals (clause 176)
- the giving of an order (clause 178).

The Land and Environment Court has a discretion to order a council to pay compensation to an applicant for approval in certain circumstances (clause 177). There is no equivalent provision in the 1919 Act.

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While an appeal does not stay an order, the Land and Environment Court has a discretion to award a person compensation for the cost incurred in complying with an order (clause 179).

Division 2—Building certificates

Division 2 (clause 183) enables the making of appeals to the Land and Environment Court against the failure or refusal of a council to issue a building certificate. This preserves the effect of section 317AH of the 1919 Act.

CHAPTER 8—WHAT ANCILLARY FUNCTIONS DOES A COUNCIL HAVE?

This Chapter confers on councils certain functions that it is necessary or desirable for them to have in order to carry out their other functions.

Councils are given power to acquire land by compulsory process.

The Chapter also confers on councils powers to enter land and buildings and to carry out inspections.

A council may also have similar powers for different purposes under other Acts. For example, under the proposed Roads Act 1993, a council has power to compulsorily acquire land for road purposes and may enter land for the purposes of that Act.

PART 1—ACQUISITION OF LAND

Part 1 (clauses 184–188) contains provisions relating to the acquisition of land. A council may acquire land, for any of the purposes of the proposed Act, by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (clauses 184 and 185). In the case of land acquired for the purpose of resale, the approval of the owner of the land is normally required (clause 186). Except for clause 186, which is a new requirement, these provisions substantially reproduce section 532 of the 1919 Act. Special provision is made for land containing minerals (clause 188, currently, see 1919 Act, sections 536AA–536DH). A council may acquire land under this Part outside its area (clause 187).

PART 2—ENTRY ON TO LAND AND OTHER POWERS

Part 2 (clauses 189–201) contains provisions relating to entry on to land. A council may authorise a person (in writing) to enter premises at any reasonable hour and that person may carry out an inspection or investigation (clauses 189 and 190). A council is required to give notice to the owner or occupier before the authorised person enters the premises (clause 191).

Provision is made for the use of reasonable force to gain entry (but only if authorised by the council and not in relation to residential premises) (clause 192). A council is also authorised to recover the reasonable costs of the entry or inspection (clause 195).

Part 2 contains provisions allowing for entry to residential premises but only with the approval of the occupier or under the authority of a search 'warrant' (clause 198).

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Part 2 also contains provisions relating to fire brigades and fire-safety inspections (clauses 200 and 201).

These provisions largely continue the effect of the 1919 Act, section 524. The power to take temporary possession of land and to remove materials from private land without the owner's consent (section 524 (1) (e) and (9)) has not however been recreated.

CHAPTER 9—HOW ARE COUNCILS ESTABLISHED?

This Chapter contains provisions dealing separately with the constitution of land as a local government area and the constitution of a council to manage that area. It enables the making of changes to those areas and to councils. It provides for the dissolution of councils and the appointment of administrators.

Each council is a statutory corporation. The councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the council in accordance with the proposed Act.

The Chapter includes a statement of the role of the mayor and of a councillor.

Provision is made for the payment of fees to the mayor and other councillors. Payment is to be made in accordance with determinations of the Local Government Remuneration Tribunal which is constituted by this Chapter. Provision is also made for the payment of expenses and the provision of facilities to the mayor and other councillors.

The Chapter also constitutes the Local Government Boundaries Commission and provides for its functions.

PART 1—AREAS

Division 1—How are areas constituted, altered and dissolved?

Division 1 (clauses 202–211) empowers the Governor-in-Council to constitute and name areas, to constitute an area as a city, to alter the boundaries and names of areas and to dissolve areas.

A council is empowered to divide its area into wards, to change ward boundaries and to abolish wards. Under the 1919 Act, section 58, the Governor determines these matters, not the council.

Division 2—What must be done before areas can be constituted or altered?

Division 2 (clauses 212–216) sets out the things that must be done before areas can be constituted or altered.

Land may only be constituted as an area or the boundaries of an area altered if the public has been notified of the proposal to do so and the councils and electors concerned have been given an opportunity to make representations concerning the proposal.

Division 2 allows proposals for the constitution or alteration of areas to be initiated by the Minister, by an affected council or by electors (clause 213). At least 28 days' public notice must be given of such a proposal within which period representations may be made to the Minister (clause 215).

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The Division provides for the Boundaries Commission (or the Director-General, in the case of a minor alteration or variation) to consider proposals to constitute or alter areas. Under the 1919 Act, the Minister is obliged to refer a proposal to alter boundaries to the Boundaries Commission if the council or a certain number of electors objects (section 19).

PART 2—COUNCILS**Division 1—Constitution**

Division 1 (clauses 217–222) constitutes a council for each area and provides for its corporate name (see 1919 Act, sections 22 and 23). The elected representatives, to be called “councillors”, are the governing body of a council (clause 220). Its role is to direct and control the affairs of the council in accordance with the Act (clause 221). The 1919 Act calls elected representatives of the cities and municipalities “aldermen” (section 23) and the elected representatives of the shires “councillors” (section 24). It does not draw any explicit distinction between a council as a corporate entity and a council as a group of elected representatives.

The governing body of a council is to consist of not fewer than 5 nor more than 13 elected representatives called councillors (including a mayor). Under the 1919 Act, sections 23 and 24, the number of aldermen or councillors on a council is a matter for the Governor.

Division 2—The mayor

Division 2 (clauses 223–229) requires each area to have a mayor elected by the councillors or, except in the City of Sydney, by the electors (see 1919 Act, section 25 and City of Sydney Act 1988, section 8). The role of the mayor is:

- to exercise in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office (1919 Act, section 87)

The mayor’s term of office is 1 year, if elected by the councillors, and 4 years, if elected by the electors. This is also the current law under the 1919 Act (sections 25A and 32). Councillors are empowered to appoint a deputy mayor as is currently the case under the 1919 Act, section 26 (“deputy president”, in the case of a shire).

Division 3—The councillors

Division 3 (clauses 230–232) sets out the role of a councillor. A councillor’s term of office is 4 years as is the case for aldermen and councillors under the 1919 Act (1919 Act, section 32). The Division specifies the grounds on which a vacancy occurs in a councillor’s office (clause 232).

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Division 4—Local Government Remuneration Tribunal

Division 4 (clauses 233–245) establishes the Local Government Remuneration Tribunal which is to determine annually the maximum and minimum amounts of fees to be paid to councillors (other than mayors), members of county councils (other than electricity authorities) and mayors. There is no equivalent to these provisions in the 1919 Act, section 29A of that Act fixes a fee of \$60 per meeting to a maximum \$3,000.

Division 5—What fees, expenses and facilities may be paid or provided to councillors?

Division 5 (clauses 246–252) requires a council to pay an annual fee to each councillor and to the mayor (see 1919 Act, section 29A). A council is also required to adopt a policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors (including the mayor and any deputy mayor). (Currently, see 1919 Act, section 29)

Division 6—Appointment of administrator

Division 6 (clauses 253–257) empowers the Governor to dismiss all councillors of a council and to appoint an administrator and order a fresh council election. An administrator may also be appointed for an area if its council has ceased to function. (See 1919 Act, sections 86, 219)

PART 3—LOCAL GOVERNMENT BOUNDARIES COMMISSION

Part 3 (clauses 258–263) constitutes the Boundaries Commission. If required to do so by the Minister, the Commission must examine and report on any matter with respect to the boundaries of areas or county areas.

The Boundaries Commission is currently established and given powers under Part 2A of the 1919 Act.

CHAPTER 10—HOW ARE PEOPLE ELECTED TO CIVIC OFFICE?

This Chapter deals with the election of persons to civic office. The main features of the electoral system are that those qualified for civic office are elected for 4-year terms under a preferential and proportional system (or other system decided by referendum in each area) in which voting is compulsory for residents but optional for non-resident ratepayers, occupiers and ratepaying lessees. Elections are conducted under the supervision of the Electoral Commissioner.

When an area is not divided into wards, councillors are elected by the area. When it is divided, councillors may be elected by wards (or, if so decided at a referendum, by wards and area).

The mayor may be popularly elected or elected by the councillors from among their number. The choice of method depends on a referendum under Chapter 9. A popularly-elected mayor holds office for 4 years and is a councillor by virtue of being mayor. A mayor elected by the councillors holds office for 1 year. In each case, the mayor votes as mayor, not as a councillor, at council meetings (see Chapter 9).

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PART 1—WHO MAY VOTE?

Part 1 (clauses 264–271) identifies 3 categories of voters in local government elections—residents, non-resident ratepayers, and occupiers and ratepaying lessees (clauses 264, 265 and 267–271). Under the current law occupiers and ratepaying lessees are entitled to vote only in the City of Sydney (see 1919 Act, section 5 and City of Sydney Act 1988, section 15).

No person is entitled to more than one vote in one area (clause 266). This is also the case under the 1919 Act, section 266.

PART 2—WHO MAY BE ELECTED?

Part 2 (clauses 272–275) sets out the qualifications and disqualifications for election as councillor or mayor.

PART 3—WHAT IS THE SYSTEM OF ELECTION?

Part 3 (clauses 276–285) outlines the various processes to be used to elect councillors and mayors, in areas that are divided into wards and those that are not, in both ordinary elections and by-elections, and in areas where the mayor is popularly elected and those where the councillors elect the mayor. Elections are normally based on a preferential or proportional system, but may be changed by referendum to preferential or equal value voting. The 1919 Act does not provide for the equal value voting system (see sections 73, 73A, 74).

PART 4—WHEN ARE ELECTIONS HELD?

Part 4 (clauses 286–289) sets out the normal arrangements for both ordinary elections and by-elections, but also provides for the circumstances in which elections may be delayed. Ordinary elections are to be held on the second Saturday of September every four years. Under the 1919 Act, section 39, ordinary elections are held on the second Saturday of September every four years.

PART 5—HOW ARE CASUAL VACANCIES FILLED?

Part 5 (clauses 290–294) sets out the procedures for the holding of by-elections to fill casual vacancies in civil offices.

By-elections are to be held within three months after a vacancy occurs (clause 291) as is now the case under the 1919 Act, section 39. The Minister can however delay an election for up to 28 days in certain circumstances (clause 292). This is also possible under the 1919 Act, section 38.

PART 6—HOW ARE ELECTIONS CONDUCTED?

Division I—The role of the Electoral Commissioner

Division 1 (clauses 295 and 296) prescribes the functions of the Electoral Commissioner and enables the delegation of those functions. Under the 1919 Act, sections 70 and 70A, the conduct of certain elections is already the function of the Electoral Commissioner.

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Division 2—Electoral rolls

Division 2 (clauses 297–304) deals with the enrolment of electors and the compilation of rolls.

The roll of electors for an area is prepared in time for each election. The roll of electors is a composite roll based on the residential roll, the non-residential roll and the roll of occupiers and ratepaying lessees.

- *The residential roll* is a roll of residents in the area, whether or not they own the property where they reside. It is prepared and confirmed by the Electoral Commissioner in time for each election. It may be based on the same roll as the one used for State and Federal elections (clause 297, currently, see 1919 Act, section 65).
- *The non-residential roll* is a roll of persons who pay rates on property they own in the area but who do not live on that property. It is continuously maintained by the general manager of the council for the area on the basis of rating information and confirmed by the Electoral Commissioner in time for each election (clause 298, currently, see 1919 Act, section 65A).
- *The roll of occupiers and ratepaying lessees* covers both occupiers of rateable land who are not owners, and lessees who, under the terms of their leases, must pay rates. It is prepared for a specific election by the general manager and includes only those who actually apply for inclusion on this roll. It is confirmed by the Electoral Commissioner (clause 299).

Division 3—Nominations and election

Division 3 (clauses 305–310) provides for nominations, resumes, uncontested elections and contested elections.

Division 4—Where residents fail to vote

Division 4 (clauses 311–314) provides for the prosecution of residents who, without good reason, fail to vote. The initial procedure is by way of simple penalty notice (clauses 313 and 314). This continues the position under the 1919 Act, sections 74A and 74F.

Division 5—Miscellaneous

Division 5 (clauses 315–317) deals with the order of candidates on ballot-papers and with formal defects in elections. The order of candidates' names is to be determined by ballot (clause 315). (Currently, see Ordinance 9, clauses 5A and 5B)

PART 7—POLITICAL PARTIES

Part 7 (clauses 318–323) provides for the Local Government Register of Political Parties and for the printing of appropriate words on ballot-papers to show the party endorsements of candidates or whether they are independents.

There are no such provisions in the 1919 Act.

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PART 8—DISCLOSURE OF ELECTION FUNDING

Part 8 (clauses 324–327) applies the Election Funding Act 1981 to ensure the disclosure of donations to candidates, groups and parties at the local government level. This is not a requirement under the 1919 Act. The Part also provides for a Local Government Register of Party Agents and a Local Government Register of Official Agents. These are also new requirements.

PART 9—DISMISSAL FROM CIVIC OFFICE

Part 9 (clauses 328–330) provides for the courts to order the dismissal of persons from civic office in cases of irregular election or appointment and in cases of disqualification (clause 328). Currently, see 1919 Act, sections 31 (4) and 43. There is a right of appeal to the Supreme Court if such an order is made by a lower court (clause 329, currently, see 1919 Act, section 46).

CHAPTER 11—HOW ARE COUNCILS STAFFED?

This Chapter provides for the employment of staff to assist councils to exercise their functions. A council should have sufficient and appropriately qualified staff for the efficient and effective management of its organisation.

This Chapter includes provision for the appointment by each council of a general manager and sets out the functions of the general manager. Other senior staff are to be appointed by the general manager. The appointment of a “public officer” is also provided for. Some requirements concerning employment of staff are contained in other law (for example, industrial relations legislation).

These provisions supersede the requirements in the 1919 Act that a council appoint a town clerk (section 88) and certain other staff, such as engineers (section 90). They also supersede section 87 which gave certain powers to the mayor or president who is nominated as the “chief executive officer” of a council.

PART 1—ORGANISATION STRUCTURE

Part 1 (clauses 331–332) requires a council to determine, and keep under review, an organisation structure. The organisation structure is to include those positions that are determined to be senior staff positions. There are no equivalent provisions in the 1919 Act.

PART 2—THE GENERAL MANAGER AND OTHER SENIOR STAFF

Part 2 (clauses 333–341) provides for the appointment and functions of the council’s general manager (clauses 333–336). The general manager is generally responsible for the efficient and effective operation of the council’s organisation and for ensuring the implementation, without undue delay, of decisions of the council. He or she also has specified particular functions (clause 334). The general manager is not subject to the control or direction of council in certain matters (clause 335). The appointment of other senior staff is a matter for the general manager after consultation with the council.

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PART 3—THE PUBLIC OFFICER

Part 3 (clauses 342 and 343) provides for the appointment and functions of the council's public officer. There is no equivalent position under the 1919 Act.

PART 4—EQUAL EMPLOYMENT OPPORTUNITY

Part 4 (clauses 344–347) requires a council to prepare and implement an equal employment opportunity management plan:

- to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital status and physical impairment
- to promote equal employment opportunity for women, members of racial minorities and physically handicapped persons.

There is no equivalent set of provisions under the 1919 Act.

PART 5—OTHER PROVISIONS CONCERNING STAFF

Part 5 (clauses 348–352) contains provisions requiring the advertising of staff vacancies and the appointment of staff on merit. These are stricter requirements than currently exist (see Ordinance 4, clause 8). The circumstances in which staff can engage in outside work are set out in clause 351 (currently, see 1919 Act, section 96) and clause 352 prevents a former mayor or councillor from being appointed to the council's staff within 6 months after ceasing to hold his or her civic office.

CHAPTER 12—HOW DO COUNCILS OPERATE?

This Chapter describes the ways in which a council carries out its functions and makes decisions.

The Chapter requires each council to adopt a code of meeting practice after giving public notice of a draft code. The Chapter provides for the basic matters concerning council meetings (frequency of meetings, notice of meetings, quorum, voting, rescission motions, committees, etc.)

The Chapter enables a council to delegate its functions, other than those functions the delegation of which is expressly prohibited. Functions that may not be delegated include the making of a rate or charge, the borrowing of money, the compulsory acquisition of land, the adoption of financial statements and the classification of public land as operational land. Functions may be delegated to the general manager and to specified persons and bodies but may not be delegated directly by the council to council employees other than the general manager.

The Chapter requires councils to have public liability and professional liability insurance.

The Chapter also makes provision for the constitution, functions, operation and dissolution of county councils.

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PART 1—GENERAL

The various ways in which a council may exercise its functions under the proposed Act are described (clause 353). The 1919 Act contains several sections which cover some of the same ground, see sections 521, 521A, 527 and 530A. The Part specifies the extent to which a council may grant financial assistance (clause 354, compare with 1919 Act, sections 358, 360, 364A, 475P, 475Q, 504, 505) and the circumstances in which a council may act as an agent. A council may act within or outside its area, except for the exercise of regulatory functions (clause 355).

PART 2—HOW ARE DECISIONS MADE?

Division 1—Code of meeting practice

A council must adopt a code of meeting practice and must conduct its meetings in accordance with its code (clause 358). Ordinance 1 currently establishes meeting practices for all local councils.

Division 2—Other provisions concerning council meetings

Division 2 (clauses 363–374) contains provisions concerning:

- the regularity of council meetings
- the way in which meetings are called
- the quorum (clause 366, currently, see 1919 Act, section 47 and Ordinance 1, clause 5)
- who is to preside (clause 367) generally, the mayor presides, but in his absence or at his request the Deputy Mayor presides (see 1919 Act, section 87 and Ordinance 1, clause 9)
- voting entitlements (clause 368), each councillor has one vote and the person presiding has a casting vote (clause 368, see also 1919 Act, section 87 (4))
- how decisions are made (clause 369) and rescinded (clause 370, see also Ordinance 1, clause 25)
- council committees and the keeping of minutes. A council is required to meet at least 10 times a year, each time in a different month (clause 363). Currently, the number of council meetings is at a council's discretion (Ordinance 1, clause 2 (a)). If two or more councillors call for an extraordinary meeting, the Mayor must call the meeting as soon as practicable but in any event within 21 days of the request. There is no explicit power for the Mayor to call an extraordinary meeting in the absence of such a request.

The current law is contained not in the 1919 Act but in Ordinance 1, clause 2 (b). This clause enables the Mayor to call a “special” meeting and enables three members in a municipality, or two in a shire, to call for a special meeting.

Councillors must be given three days notice of meetings and the business proposed to be transacted (clause 365). Under current law each council can decide on the required notice (Ordinance 1, clauses 3 and 4).

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PART 3—DELEGATION OF FUNCTIONS

Part 3 (clauses 375–379) regulates the delegation by a council of its functions (see 1919 Act, section 530A) and the delegation of the general manager’s functions.

PART 4—INSURANCE

Part 4 (clause 380) imposes a requirement for compulsory public liability and professional liability insurance by councils. There is no equivalent provision in the 1919 Act.

PART 5—COUNTY COUNCILS

Part 5 (clauses 381–398) provides for the establishment of county councils (clauses 381–391, currently, see 1919 Act, sections 561, 561A, 562, 563), the conferring of functions on county councils, the constitution of the governing body, their area of operations, the appointment and role of the general manager (clause 393, currently, see 1919 Act, section 88) and for the application of other provisions of the proposed Act to county councils (clause 398, currently, see 1919 Act, section 564 (4) (a)).

CHAPTER 13—HOW ARE COUNCILS MADE ACCOUNTABLE FOR THEIR ACTIONS?

This Chapter sets out the mechanisms by which a council is made accountable for its actions.

Each year, a council is required to adopt a management plan that sets out its proposed strategy for at least the following 3 years, together with its proposed revenue policy for the next year. The management plan is to include a statement of the council’s objectives and performance targets for its principal activities.

Public notice is to be given by the council of its management plan.

A council is required to have 2 funds (a consolidated fund and a trust fund). It must keep proper accounts which are to be audited annually.

Each year, a council is required to prepare an annual report on its work and activities.

The Minister retains a supervisory role in relation to councils. The Minister and the Director-General will be able to call for further information from councils, and the Director-General will be able to authorise persons to investigate and report on matters connected with a council’s work and activities and to direct a council to act on any recommendations contained in such a report.

Members of the general public are entitled to inspect a wide range of council documents. Members of the general public are also entitled, under the Freedom of Information Act 1989, to be given access to certain other documents held by a council. They are also entitled to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading.

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PART 1—PRELIMINARY

Part 1 (clause 399) applies the provisions of Chapter 13 to all functions conferred or imposed on a council, whether by or under the proposed Act or by any other Act or law.

PART 2—MANAGEMENT PLANS

Part 2 (clauses 400–405) requires a council each year to prepare, publicise and adopt a management plan with respect to the council's work and activities for the next 3 years and with respect to the council's revenue policy for the next year.

There is no equivalent set of provisions in the 1919 Act, but section 138 of that Act does require a council to make and advertise in a newspaper estimates of the income and expenditure of the fund to which a proposed rate belongs before making the rate.

PART 3—FINANCIAL MANAGEMENT

Division 1—Funds

Division 1 (clauses 406–409) imposes certain duties on a council with respect to the way in which it deals with money held by it. In particular, it specifies which money is to be paid into a consolidated fund and which into a trust fund and regulates the use that may be made of the money in each of those funds.

Under the 1919 Act, sections 106–115, a council is required to operate five separate funds.

Division 2—Accounting records, financial reports and auditing

Division 2 (clauses 410–419) imposes certain duties on a council with respect to the keeping of accounting records, the preparation of financial reports and the auditing of those reports. In general, audited accounts must be presented to the council within 5 months after the end of each financial year.

The council is required to keep such accounting records as correctly record and explain its financial transactions and its financial position (clause 410, currently, see 1919 Act, section 106 (2), which requires the five separate funds required under the Act to be kept separate and distinct and section 206 and Ordinance 26).

A council is required to prepare financial reports, and refer those reports for audit, at specified times (clauses 411 and 412).

A council's auditor is required to audit a council's financial reports within a specified period in accordance with certain standards adopted by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia (clauses 413–415, currently, see Ordinance 26).

Members of the public are entitled to be given notice of the presentation of a council's financial reports and to make submissions on those reports (clauses 416–418).

The method of keeping accounts is currently prescribed by Ordinance 26 (see 1919 Act, sections 106 (2) and 206).

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Division 3—Auditors

Division 3 (clauses 420–425) provides for the appointment of auditors and the powers that auditors may exercise for the purposes of the proposed Act (currently, see 1919 Act, sections 211, 211A and 214).

PART 4—ANNUAL REPORTS

Part 4 (clause 426) requires a council each year to prepare, and to furnish to the Minister and to certain other persons, an annual report as to the council's achievements with respect to the objectives and performance targets set out in the council's management plan for the previous year (compare with 1919 Act, section 654A).

PART 5—INQUIRIES, REVIEWS AND SURCHARGING

Division 1—Inquiries and reviews

Division 1 (clauses 427–432) enables the Minister or the Director-General to inquire into and review the work and activities of a council and, for that purpose, to appoint Departmental representatives with specified powers of inquiry.

The Minister or Director-General may require a council to furnish information about the council or its work or activities (clause 427). There is no direct equivalent in the 1919 Act.

The Director-General may authorise a Departmental representative to investigate any aspect of a council or of its work and activities (clause 428).

The 1919 Act enables the appointment of local government inspectors (sections 212 and 212A) and enables the Director-General of the Department of Local Government and Co-operatives to require that a management review be carried out (section 213C). Sections 212, 213A, 213B and 214 of the 1919 Act give certain powers to inspectors.

Division 2—Surcharging

Division 2 (clauses 433–436) enables a Departmental representative to disallow items of a council's expenditure and to surcharge the councillor, general manager or other member of staff responsible for any deficiency arising from the disallowance or for any loss arising out of that person's culpable negligence or misconduct. These provisions in effect continue the operation of section 213 (1), (9) of the 1919 Act.

CHAPTER 14—HONESTY AND DISCLOSURE OF INTEREST

This Chapter places obligations on councillors, council, delegates and staff of councils to act honestly and responsibly in carrying out their functions.

The Chapter also requires councils to adopt a code of conduct for councillors, staff and other persons associated with the functions of councils. However, the Chapter does not affect any other duties imposed by other laws or any offences created by other laws.

It also requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded and requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest.

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The Chapter enables any person to make a complaint concerning a failure to disclose a pecuniary interest and provides for the investigation of complaints.

The Chapter also constitutes the Local Government Pecuniary Interest Tribunal.

The Tribunal is empowered to conduct hearings into complaints and to take disciplinary action against a person if a complaint against the person is found to be proved.

PART 1—CONDUCT

Part 1 (clauses 437 and 438) requires councillors, members of staff of councils and council delegates to act honestly and exercise reasonable care and diligence in carrying out their functions. The "oath of allegiance and declaration of office" required under the 1919 Act, section 33, obliges an alderman or councillor to declare "that I will duly and faithfully fulfil the duties of the office according to the best of my judgment and ability".

The Part (clause 438) also requires each council to prepare or adopt a code of conduct for those persons and to review the code annually. There is no statutory requirement for such a code to be adopted at present.

PART 2—DUTIES OF DISCLOSURE**Division 1—Preliminary**

Division 1 (clauses 439-446) specifies which persons are required to make disclosures of interests (these include councillors, general managers, other senior staff of councils and other members of staff or delegates of the council designated by the council because of the type of council functions they exercise). (Compare with 1919 Act, Part 4, Division 9A).

What constitutes a pecuniary interest is defined for the purposes of the Part in clause 440. The term is not defined in the 1919 Act and the proposed definition essentially codifies case law on the issue.

Division 2—Disclosure of interests in written returns

Division 2 (clauses 447 and 448) requires councillors and designated staff and delegates of councils to make written returns disclosing specified interests (in a form set out in Schedule 3) when they attain their positions and every year while holding those positions. The interests of spouses, de facto partners and relatives do not have to be disclosed in these returns (clause 447 (6)). The provision dealing with pecuniary interest declarations under the 1919 Act is section 46B.

Division 3—Disclosure of pecuniary interests at meetings

Division 3 (clauses 449-456) requires councillors and members of council committees to disclose their pecuniary interests in matters under discussion at council or committee meetings and to refrain from taking part in discussion and voting on such matters. Certain persons giving advice at such meetings have similar duties of disclosure (currently, see 1919 Act, sections 46C-46G).

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Division 4—Disclosure of pecuniary interests in council dealings

Division 4 (clause 457) requires designated staff and delegates of councils to disclose their pecuniary interests in council matters with which they are dealing (currently, see 1919 Act, section 46E).

PART 3—COMPLAINTS CONCERNING NON-DISCLOSURE

Division 1—Making and investigation of complaints

Division 1 (clauses 458–466) enables a person to make a complaint to the Director-General, or the Director-General to make a complaint, on the ground that a person has contravened Part 2 of the proposed Chapter.

The Director-General may investigate the complaint or, if agreed to by the relevant authority, may refer it for investigation to the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions. A referral may be made whether or not the Director-General has begun an investigation.

An authority who receives such a complaint directly may refer it to the Director-General.

The Director-General is to present any report of an investigation to the Pecuniary Interest Tribunal established by Part 4.

These provisions are not found in the 1919 Act, allegations of breaches of Part 4, Division 9A are dealt with by way of prosecution.

Division 2—Proceedings before the Pecuniary Interest Tribunal

Division 2 (clauses 467–474) deals with the holding of hearings by the Tribunal and the procedure to be followed at such hearings. Other matters such as rights to legal representation and the taking of evidence are also included in the Division.

If the Tribunal finds, on the balance of probabilities, that a complaint against a person is proved, it may:

- (a) in the case of a councillor—reprimand or counsel the councillor, suspend the councillor from civic office for not more than 2 months or disqualify the councillor from holding civic office for not more than 5 years; and
- (b) in the case of a council employee—recommend the taking of specified disciplinary action or dismissal.

A party to a proceeding before the Tribunal may appeal to the Supreme Court against a decision of the Tribunal in the proceeding.

PART 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

Part 4 (clauses 485–488) establishes the Local Government Pecuniary Interest Tribunal which consists of one part-time member who is a barrister or solicitor eligible for appointment as a District Court or Supreme Court Judge. A person cannot be appointed as that member if he or she was a councillor or council employee at any time within the 12 months prior to the appointment.

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The functions of the Tribunal are to hold hearings into and decide allegations of contraventions of Part 2. It also has such other functions as are conferred on it under the proposed Act or other Acts. The Tribunal is required to provide an annual report to the Minister.

CHAPTER 15—HOW ARE COUNCILS FINANCED?

The main sources of council finance are:

- rates, of which there are 2 kinds
 - ordinary rates
 - special rates
- charges
- fees
- grants
- borrowings
- income from business activities
- income from land
- income from other investments
- sales of assets.

This Chapter deals mainly with the making and collection of the different kinds of rates and the imposition of charges.

PART 1—AN OVERVIEW OF RATES AND CHARGES

Part 1 (clauses 489–502) gives a general overview of the principles of rating and explains the relationship between ordinary rates, special rates and charges.

A council must make an ordinary rate each year. The amount of the ordinary rate may differ according to the category of the land to which it applies and it may differ according to sub-categories within those categories.

A council has a discretion whether it will make a special rate. Special rates may be levied for services provided by the council (such as water supply) or for special purposes.

A council has 2 choices in determining the structure of a rate (whether an ordinary rate for a category or sub-category of land or a special rate). It may decide that the rate is to be wholly an ad valorem rate (that is, an amount in the dollar that is to be applied uniformly to the rateable value of all rateable land in its area subject to the rate). It may decide, instead, that a rate is to have a 2-part structure. The first part is to be a base amount that will be the same for each parcel of rateable land subject to the rate. This base amount will be the amount that the council determines to be the basic contribution required to cover the general operating costs of the council or to cover the cost of providing the specific service or facilities to which it relates. The second part is to be an ad valorem amount. The 2 parts are added together to produce the amount of the rate to be paid in respect of the rateable parcel.

If a council makes a rate with a 2-part structure, the application of the base amount for the rate (or the category or sub-category of the rate) must not produce more than 50% of the total revenue derived from the rate (or the category or sub-category of the rate).

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Special provisions are made for the rating of vacant land.

This Chapter also enables the making and collection of charges. A council must make an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available. A charge may be made in relation to specified services provided by a council (such as the provision of water, sewerage or drainage services or the collection of garbage). A charge may be set at a level that enables part or full cost recovery or, in some cases, that exceeds costs.

A council may impose charges in addition to ordinary rates and special rates or in substitution for special rates that may be made for the same purposes as a charge.

A charge, when made, has the same characteristics as a rate concerning payment, the accrual of interest (if the charge remains unpaid) and the procedures that may be taken for its recovery.

The reasonable cost to the council of providing domestic waste management services must not be recovered by the ordinary rate. It must be obtained from the making and levying of a charge.

PART 2—LIMIT OF ANNUAL INCOME FROM RATES AND CHARGES

Clause 503 defines “general income”. This term is not used in the 1919 Act.

The Minister may specify annual percentage variations for:

- (a) the annual amount of revenue a council may obtain from rates and charges (other than domestic waste management services charges); and
- (b) the annual amount of revenue a council may obtain from the annual charge for domestic waste management services.

The amount a council may raise in general income or domestic waste management services income is limited by reference to specified annual percentage variations (clauses 504–507).

A council may catch up on shortfalls, over the next two years only, if it does not charge the maximum allowed under clauses 507, 508 and 509 in any one year (currently, see 1919 Act, section 131A (1B) and (1C)). Clause 510 sets out the effect of contravening section 507 or 508 (currently, see 1919 Act, section 131A (2)).

A council may obtain supplementary valuations from the Valuer-General, to enable it to ascertain notional rate income for the purposes of the Part (clause 511, currently, see 1919 Act, section 131AA to which that clause closely corresponds).

PART 3—ORDINARY RATES

Part 3 (clauses 512–527) requires a council, before it makes an ordinary rate, to declare each parcel of rateable land in its area to be within the category of farmland, residential or business. The Part defines the characteristics of each category. It provides for the making of changes in category and for the making of appeals to the Land and Environment Court against declarations of category.

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PART 4—MAKING OF RATES AND CHARGES

Part 4 (clauses 528–541) specifies the procedures to be followed and the criteria to be considered in the making of rates and charges.

PART 5—LEVYING OF RATES AND CHARGES

Division 1—General

Division 1 (clauses 542–546) provides for the levying of rates and charges by the service of a rates and charges notice on the person liable for the rate or charge. It makes provision for rating dwellings under company title, for aggregating the values of certain related parcels of land for rating purposes and for reducing certain rates levied on vacant land.

Division 2—Special rates and charges relating to water supply, sewerage and drainage

Division 2 (clauses 547–549) specifies the land that may be subject to a special rate or charge relating to water supply, sewerage or drainage and the time at which that land becomes subject to the special rate or charge.

PART 6—WHAT LAND IS RATEABLE?

Part 6 (clauses 550–555) provides that all land in an area is rateable unless exempt under the Part. An exempt may be from all rates or only from specified rates.

PART 7—PAYMENT OF RATES AND CHARGES

Part 7 (clauses 556–570) identifies the persons liable to pay rates and charges, including payment by quarterly instalments, discounts for prompt payment in full and the accrual of interest on overdue rates and charges. An appeal may be made to the Land and Environment Court on the question of whether land is rateable or rateable to a particular rate.

PART 8—CONCESSIONS

Division 1—Concessions for pensioners

Division 1 (clauses 571–579) provides for the granting of rebates of rates to certain pensioners.

Division 2—Other concessions

Division 2 (clauses 580–596) enables a ratepayer to apply for a postponement of part of rates on land which is used only as a house or rural land but, because of its zoning or permitted use, is valued for rating purposes in a way that reflects its permitted use rather than its actual use.

This Division also entitles the Maritime Services Board, the State Rail Authority and the State Transit Authority to a 25% rebate for ordinary rates payable for certain land.

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Other rating concessions may be provided under other Acts. For example, section 127 of the Heritage Act 1977 provides for rates to be levied on heritage valuations determined in accordance with that Act instead of on other valuations.

PART 9—MISCELLANEOUS MATTERS CONCERNING RATES AND CHARGES

Part 9 (clauses 597–607) requires a council to keep a record of rates and charges (currently, see 1919 Act, section 142). A person may request a council to issue a certificate as to rates and charges. These certificates will convey essentially the same information as certificates under section 160 of the 1919 Act.

Notice of transfer of interests in land must be given to council (clause 599, currently, see 1919 Act, section 163).

A council may add to the amount of a rate or charge its reasonable expenses in tracing the person liable to pay the rate or charge (clause 600). This clause continues the effect of the 1919 Act, section 159.

The Crown is to give notice to council of certain leases (clause 602), this continues the effect of the 1919 Act, section 163A.

PART 10—FEES

Part 10 (clauses 603–607) regulates the fixing of fees for services provided by councils.

PART 11—GRANTS

Part 11 (clauses 608–615) constitutes the Local Government Grants Commission and specifies its functions. It provides for the allocation by the Minister of Commonwealth funds paid to the State for local government assistance.

PART 12—LOANS

Part 12 (clauses 616–619) regulates council borrowings.

PART 13—INVESTMENTS

Part 13 (clause 620) provides for the investment of money by councils. This clause recreates section 20] of the 1919 Act, except that it also provides that the acquisition of a controlling interest in a corporation under clause 356, is not an investment for the purposes of the section.

CHAPTER 16—OFFENCES

This Chapter creates offences which are grouped under the following headings:

- General offences—relating to failure to obtain an approval and failure to comply with an approval or order
- Public land

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- Water, sewerage and drainage offences
- Street drinking—relating to the creation and enforcement of alcohol-free zones
- Parking—relating to parking in free parking areas
- Offence relating to civic office
- Offences relating to buildings
- Miscellaneous.

This Chapter does not contain all offences created under the proposed Act. Other offences are found in clause 31 in Chapter 10 (How are people elected to civic office?), clauses 473, 474 and 478 in Chapter 14 (Honesty and disclosure of interests) and clause 675 in Chapter 17 (Enforcement).

The regulations may also create offences, for example, offences relating to elections.

Furthermore, councils may conduct prosecutions for offences under other Acts, for example, the Crimes Act 1900 and the Summary Offences Act 1988.

Penalties for offences are expressed in penalty units. Under section 56 of the Interpretation Act 1987, the amount of a penalty unit is currently \$100.

PART 1—GENERAL OFFENCES

Part 1 (clauses 621–623) deals with general offences relating to approvals required for the carrying out of various activities (for example, erecting or demolishing a building, operating a caravan park).

It will be an offence to carry out an activity that requires approval without having obtained an approval (clause 621). The 1919 Act contains a number of separate offences relating to particular approvals e.g. section 317.

It will be an offence to fail to comply with the terms of an approval (clause 622). For example, failure to comply with conditions would be an offence. This is already the case under current law.

It will be an offence not to comply with an order (clause 623). The 1919 Act contains a number of separate offences relating to particular orders.

PART 2—PUBLIC LAND

Part 2 (clauses 624–628) is concerned with public land. Clause 625 prohibits dangerous behaviour such as breaking glass or leaving syringes on the land. Clause 626 makes damaging, defacing or polluting public bathing places an offence. Clauses 627 and 628 require a person to comply with the terms of any notice erected on public land or a public bathing place by a council. Notices may relate to matters such as nude bathing, the use of vehicles or the taking of animals onto the land. Under current law certain activities are offences in all public reserves, and others depend on whether or not councils have passed appropriate resolutions (currently see section 249C and Ordinances 48 and 52).

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PART 3—WATER, SEWERAGE AND DRAINAGE OFFENCES

Part 3 (clauses 629–636) creates offences relating to water, sewerage and drainage (such as the offences of tampering with meters or fittings, polluting the water supply and discharging prohibited matter into sewers and drains). It also prohibits unqualified persons from doing water supply, sewerage or drainage works (currently, see Ordinances 44, 45 and 46).

PART 4—STREET DRINKING

Part 4 (clauses 637–644) supplements the Summary Offences Act 1988 in relation to street drinking. It allows the creation of alcohol-free zones and the confiscation of alcohol from persons drinking in those zones. Similar provisions already exist in the 1919 Act, see Part 23, Division 2B, sections 512H–512P.

PART 5—PARKING

Part 5 (clauses 645 and 646) requires compliance with council notices and signs in free parking areas operated by a council. Notices and signs may cover matters such as the times during which the public may use the parking area, the maximum period for which a vehicle may be parked and the reservation of certain parking spaces for persons with disabilities. The Part also provides for the liability of owners of vehicles for offences relating to Compliance with any such notices and signs (currently, see 1919 Act, section 2700).

PART 6—OFFENCE RELATING TO CIVIC OFFICE

Part 6 (clause 647) prohibits a person from holding civic office while disqualified from doing so.

PART 7—OFFENCES RELATING TO BUILDINGS

Part 7 (clauses 648–653) requires the proper guarding of excavations to prevent them from being dangerous to life and property and the display of fire safety notices in buildings containing fire-isolated passageways, ramps or stairways (see Building Code of Australia (Administrative Provisions) Ordinance 1991, clauses 24.14 (13) and 59.7). The Part also requires pathways to exits etc. not to be obstructed and prohibits the locking or obstruction of doorways that are exits or lead to them (clauses 654–665, currently, see Building Code of Australia (Administrative Provisions) Ordinance 1991).

PART 8—MISCELLANEOUS

Part 8 (clauses 654–665) deals with miscellaneous matters, such as the obstruction of certain persons exercising functions under the proposed Act (this is already an offence under section 635 of the 1919 Act), the disclosure and misuse of information and the wilful destruction of council notices and signs.

It is not an offence to comply with a notice or sign unless the sign is clearly legible and appropriately placed; the council has the onus of establishing that these requirements are met (clause 665). There is no such provision under current law.

CHAPTER 17—ENFORCEMENT

This Chapter is concerned with the enforcement of the proposed Act.

PART 1—GENERAL

Part 1 (clauses 666–676) provides means for enforcing the proposed Act in addition to the summary prosecution of offences under Chapter 16. For example, it makes provision for the taking of proceedings in the Land and Environment Court to restrain a breach of the proposed Act, empowers a council to carry out work following a failure by a person to carry out the work in accordance with an order of the council, and makes provision for the issue of penalty notices. There is no equivalent under the 1919 Act to clauses 666–672, which enable breaches of the Act to be remedied.

Clause 673 largely continues the effect of the 1919 Act, sections 317B (2) and 317H.

Clause 674 enables certain offences to be dealt with “on the spot” by way of penalty notices rather than by prosecution. Under the current law a number of offences can already be dealt with this way—see for example 1919 Act, sections 74C, 270S, 512N.

Clause 676 permits the removal of offenders from public land, currently, see Ordinance 48, clause 28 and 1919 Act, section 366.

PART 2—PROCEEDINGS BY THE COUNCIL OR ITS EMPLOYEES**Division 1—General**

Division 1 (clauses 677–691) concerns rights and obligations of a council in relation to legal proceedings. Examples of these include the right to appear before a local land board and a council’s obligation to pay its employees for expenses incurred in taking legal action on behalf of the council.

Division 2—Evidence

Division 2 (clauses 692–699) deals with matters relating to evidence in legal proceedings involving a council. These include matters of which proof by a council is not required unless evidence to the contrary is given and matters of which judicial notice is to be taken.

Division 3—Notices by the council

Division 3 (clauses 700–706) is concerned with notices given by a council. It provides for such matters as the content and method of service of the notices.

Division 4—Legal proceedings for the recovery of rates and charges

Division 4 (clause 707) contains special provisions for legal proceedings to recover unpaid rates and charges.

Division 5—Sale of land for unpaid rates and charges

Division 5 (clauses 708–721) provides for the sale of land and interests in land (other than an estate or interest of the Crown in land) to recover amounts unpaid for rates and charges.

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PART 3—PROCEEDINGS AGAINST COUNCILS, COUNCILLORS AND STAFF

Division 1—General

Division 1 (clauses 722–725) contains general provisions relating to proceedings against councils. For example, it specifies the way in which disputed claims for compensation are to be dealt with.

Clause 722 provides that documents are to be served on a council by serving them on the General Manager or “public officer” (currently, see 1919 Act, section 627 (1)).

A penalty or surcharge recoverable against the council or a councillor or an employee of a council may be sued for without notice (clause 723).

There is a three month time limit on challenges to the validity or effectiveness of a decision of council (clause 724). There is no equivalent in the 1919 Act, but see sections 35 and 104A of the Environmental Planning and Assessment Act 1979.

Clause 725 provides a mechanism for settling disputes over compensation under clause 127 or 196.

Division 2—Liability

Division 2 (clauses 726–728) exempts councils, councillors and council employees from liability in respect of any matter or thing done in good faith in the execution of the proposed Act.

Clause 726 corresponds generally to the 1919 Act, section 583.

Clause 727 corresponds generally to the 1919 Act, sections 309M and 314 (1 AA).

Clause 728 corresponds to the 1919 Act, section 582A.

CHAPTER 18—MISCELLANEOUS

This Chapter makes provision for a number of matters relating to the operation of the proposed Act.

PART 1—GENERAL

Part 1 (clauses 729–740) contains provisions that include:

- a requirement that notices under the proposed Act be in writing (clause 729)
- a description of the ways in which the Governor may exercise the Governor’s powers under the proposed Act (clause 730)
- a description of the effect of proclamations (clauses 731 and 732, currently, see 1919 Act, sections 647 and 648)
- a right for a person to request that certain material not be made public so as to protect his or her privacy (clause 733)
- a description of how public inquiries are to be held (clause 734, currently, see 1919 Act, section 649)
- specification of tax exemptions applicable to council property and dealings (clause 735, currently, see 1919 Act, section 651)

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- a description of the manner of settling disputes between councils (clause 736, currently, see 1919 Act, section 654)
- a statement that certain waste is the property of a council (clause 737, currently, see 1919 Act, section 284)
- specification of the Minister's and Director-General's powers to delegate (clauses 738 and 739, currently, see Environmental Planning and Assessment Act 1979, section 23).

Clause 740 requires the Minister to review the Act at the end of five years from the date of assent. This is a new provision.

PART 2—REGULATIONS

Part 2 (clause 741) and Schedule 6 provide for regulations to be made for certain purposes (currently, see 1919 Act, sections 575 and 576 which provide for the making of ordinances).

SCHEDULE 1—LOCAL GOVERNMENT REMUNERATION TRIBUNAL AND ASSESSORS

Schedule 1 contains provisions relating to the appointment and the terms and conditions of office of the person appointed as the Remuneration Tribunal and persons appointed as assessors.

SCHEDULE 2—MEMBERSHIP AND PROCEDURE OF THE BOUNDARIES COMMISSION

Schedule 2 contains provisions relating to the appointment and the terms and conditions of office of the commissioners of the Boundaries Commission. It also specifies the procedures to be followed at meetings of the Boundaries Commission (currently, see 1919 Act, sections 15A, 15D, 15G, 15I).

SCHEDULE 3—DISCLOSURE OF INTERESTS

Schedule 3 contains the form of written returns for disclosure of interests required to be made by councillors and designated persons under Chapter 14. The Schedule also gives explanations of matters which must be included in those returns (currently, see 1919 Act, Schedules 5 and 5A).

SCHEDULE 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

Schedule 4 contains matters relating to the member of the Tribunal such as the term of office of the member, the remuneration of the member and the filling of a vacancy in the office of member. This is new as the Tribunal does not exist under the 1919 Act.

SCHEDULE 5—LOCAL GOVERNMENT GRANTS COMMISSION

Schedule 5 contains provisions relating to the appointment and the terms and conditions of office of the commissioners of the Grants Commission. It also specifies the procedures to be followed at meetings of the Grants Commission (currently, see 1919 Act, sections 218D–218F).

SCHEDULE 6—REGULATIONS

Schedule 6 specifies matters in respect of which regulations under the proposed Act may be made.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 7 contains savings, transitional and other provisions consequential on the enactment of the proposed Act.

DICTIONARY

The Dictionary defines words and expressions for the purposes of the proposed Act. The 1919 Act contains a number of definitions in section 4 and defines other terms in various provisions found throughout the Act.
