



FIRST REPORT

OF

THE LEGISLATION COMMITTEE

UPON THE

DRAFT LOCAL GOVERNMENT BILL

AND COGNATE BILLS:

THE DRAFT LOCAL GOVERNMENT BILL

6 May, 1992

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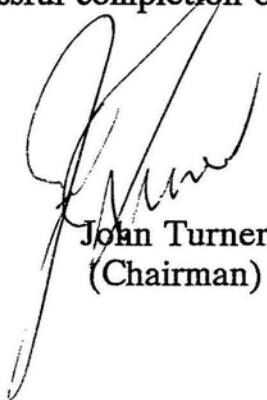
CHAIRMAN'S FOREWORD

It is with great pleasure that the Committee presents its First Report on the Exposure Draft Local Government Bill.

As Chairman I have been particularly fortunate in this inquiry to have had the benefit of the enormous experience of the members of the Committee. Mr Rixon was the President of Kyogle Shire Council from 1977 to 1980 and a Councillor from 1977 to 1983; Dr Macdonald has been an alderman with Manly Council from 1987 to date; Mr Harrison was a member of the Shellharbour Municipal Council for 20 years, serving as Mayor for 15 years; Mr Page was an alderman with Waverley Municipal Council from 1962 to 1987, including periods totalling nine years as Mayor; Mr Downy was a councillor on Sutherland Shire Council from 1983 to 1991. In my own case I served from 1980 to 1987 on the Greater Cessnock City Council, serving as Deputy Mayor in 1987.

The Minister for Local Government and Minister for Co-operatives, Mr Peacocke, by making the resources of his Department available to the Committee, contributed enormously to the successful undertaking of this inquiry. I wish to gratefully acknowledge the assistance given by officers of the Department and by the officers of the Parliament.

The Committee still has the cognate Bills to report upon and it looks forward to the successful completion of that second part of its inquiry.



John Turner
(Chairman)

INTRODUCTION

The current local government review process has been actively pursued for the last five years.

The proposed 1992 legislative package - the Local Government Bill, Harmful Pests Bill, Impounding Bill, Local Government (Consequential Provisions) Bill, Roads Bill and Traffic (Parking Regulation) Amendment Bill constitutes the outcome of one of the most extensive legislative reviews to be ever undertaken in New South Wales.

After the release of a number of preliminary discussion papers the Department of Local Government and Co-operatives released a Discussion Paper on Local Government Reform in August, 1991. Following that extensive public seminars were held and advertisements were placed calling for submissions. Nearly 900 were analysed. Out of this process the Draft Exposure Bills were produced and released in early 1992.

In order to ensure that the Draft Exposure Bills would be considered by a parliamentary committee as soon as they were released, the Minister for Local Government took the unusual step on 11 December, 1991, of moving a motion to suspend Sessional Orders to allow the transmission of the Bills to the Speaker by the Minister for Local Government out of session and upon their receipt, the Bills being deemed to be tabled and referred to this Legislation Committee.

The Committee was required to report to the House by 31 March, 1992. The Bills were received in January and in early February, the Committee held its first meeting. Since that time, the Committee's report - back date was extended to 6 May, 1992.

The Committee advertised in late February and received 36 submissions. In addition the Committee was referred the 1,100 submissions received by the Department on the Bills. In March and April, the Committee took evidence from peak local government organisations.

Armed with a substantial body of material and a short reporting deadline, the Committee decided to concentrate mainly on the following main areas of concern identified from the submissions received.

- **The voting system** - the Committee noted there was continuing widespread opposition to the equal value voting system proposed.
- **Voter veto** - the Committee was aware that these were two main community views, firstly those wanting it further constrained or deleted and those wanting it to apply to all matters and even to directing the council to undertake particular works or services or adopt particular policies.
- **Role of council and role of mayor** - there appeared to be a great deal of confusion about the current and proposed powers of the Mayor and the elected council. A commonly held view was that the Bill reduced the power of the elected body vis-a-vis the general manager. In the Bill however, the councillors will, as a body, hold all the powers of the council, and may delegate to the Mayor, general manager, committees, etc. In addition there is nothing in the Bill which precludes the delegation of policy making to the Mayor between council meetings.
- **Role of general manager** - under the Bill the general manager is to have statutory power to manage the day to day affairs of the council, appoint and dismiss staff, and to receive delegations from the council which may then be sub-delegated to other staff. This is a key element in the Bill as it gives both responsibility and the accountability to the same principal staff member.
- **Private works** - this clause was widely regarded as a new constraint on power.
- **Contract employment of senior staff** - most concerns seemed to relate to the transitional arrangements.
- **Powers of delegation** - there appeared to be some confusion about the scope of proposed clause 291.
- **Cost of change** - this issue relates to quarterly billing, transfer of staff to contracts, etc.
- **Councillor fees** - most of the submissions received on this issue expressed disappointment that councillors would only receive a fee per meeting and that mayoral payment would only extend to expenses related to the office.

- **Damages against a council** - there appeared to be wide opposition to the provisions on the grounds that councils are already in a difficult position regarding controversial developments, and that the measure could discourage serious consideration of legitimate opposition to some proposals.
- **Contracting out** - Under the Bill councils must go through a two step process. Some fears were expressed from country councils that they will be hostage to a limited number of contractors.

As set out in the introduction to the Exposure Draft, there is no doubt that the Bill's provisions provide an enhanced role for the community and increased operational flexibility for councils. The Bill gives local government a greater community focus and makes councils more accountable to its electors and Ministerial influence is diminished and the terms of the Bill to be kept as non prescriptive as was possible. These principles were constantly kept in mind by the members of the committee in their consideration of the Bill's provisions.

Lastly, the Committee wishes to commend on the Department and the Parliamentary Counsel's Office for producing a "user friendly" Bill.

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REPORT AND RECOMMENDATIONS

CHAPTER 1 - PRELIMINARY

Clause 4: Does this Act bind the Crown?

The majority of submissions received that the Crown should be bound by the Bill.

The Committee is concerned that, as the clause presently stands, the Government does not have a legal obligation to do what it does now by courtesy, that is, submit a development application to local council.

In particular, with respect to the requirement to obtain an approval to demolish a building, the Crown should be bound.

The Committee recognises the provision in clause 555 on dispute resolution and suggests the mechanism should provide for resolution of disputes between councils and all parts of Crown administration.

CHAPTER 3

WHAT ARE A COUNCIL'S FUNCTIONS AND WHAT IS ITS CHARTER

Clause 10: The Council's charter

The Committee is concerned that the list of matters which constitute a council's charter is expressed in a way which may lead to unnecessary litigation.

One suggestion is that the whole charter be included as a boxed note and therefore not form part of the Bill. The note would need to be linked to another provision, perhaps clause 8. The Committee acknowledges that the concept of the charter is valuable and its value would be lessened by turning it into a note.

Another suggestion is to let the charter stand in the Bill, clearly expressed as a statement of principles and possibly with a boxed note explaining that councils will be able to add to their charter, provided their additions are not inconsistent with the provisions of the Bill.

In any case the Committee suggests that the following be added to the charter:

- to ensure the equitable provision of and access to services and resources of the council by the community regardless of age, sex, religion, racial background, physical or intellectual disability or sexual preference.
- to develop and undertake a high standard of physical and social planning and enhance the physical environment and social fabric of the community.

The Institute of Municipal Management (NSW Division) recommended in their submission that the mandatory charter for Councils be omitted from the legislation altogether as it "could render councils liable for vexatious legal action for breach of their charter".

CHAPTER 4 - COMMUNITY INFLUENCE

Clause 11: Public notice of meetings

A slight amendment is suggested to this clause to make it clearer - the deletion of "its" and replacement with "all". This would ensure that councils gave adequate notice of committee meetings.

Clause 12: Who is entitled to attend meetings

The Committee recommends that by way of amendment to the Bill or by an Ordinance on meeting procedures, a provision be included to allow a mayor to accept a motion to exclude a councillor or any other person (a member of the press, the public, etc.) from a meeting on the basis of improper conduct.

The Mayor should have the power to execute any motion calling for the expulsion of any such Councillor or person.

The Committee suggests that what constitutes "improper conduct" should be left to the individual council.

The Committee accepts that clause 12 (2)(g) relates to security matters but believes that the clause is too open ended and needs clarifying.

It was suggested by one member of the Committee that clause (12) (2)(i) should be deleted.

Division 1: Voters' Veto (clauses 16 to 29)

The Committee is strongly opposed to the provisions relating to Voters' Veto and recommends that they be deleted.

Overseas experience (which suggests that the process is often abused), the cost, the fact that councils are faced with the ultimate referendum each four years (the people) and the maxim - let the managers manage - are arguments against such provisions being retained in the Bill.

The Committee supports the retention of council initiated polls and constitutional referendums as part of the Bill.

Agreement on this score from submissions is typified in the submission of the Council of the Shire of Sutherland which said: "The voters' veto proposal is unrealistic and impractical".

CHAPTER 5 - SERVICE FUNCTIONS OF COUNCILS

Division 1 - Public Land

The committee agrees that there should be a register of all council assets and that there should be provisions governing the use of community land but is concerned that:

- requiring plans of management for all parcels of community land will be costly and unduly burdensome on councils; and
- it is unclear what must be included in a plan of management.

The Institute of Municipal Management (NSW Division) was concerned that the provisions for classifying council land are "unduly cumbersome, time consuming and expensive".

The committee agrees with the Local Government and Shires Associations that if land is presently zoned for community purposes it should not have to be reclassified as proposed in the Bill. Consequently the Committee suggests that clause 42 (1) be amended to allow for land already zoned for community purposes to remain outside the reclassification process.

As such the Committee suggests that clause 42 (1) be amended so that the word "must" is deleted and the word "may" replaces it.

It is also suggested that clause 42 be further clarified in order to allow several small parcels of community land to be under the same plan of management.

Clause 50: Notice to be given of certain proposed works

The Committee agrees that the clause should be deleted along with the other provisions on voters' veto. In any case, clause 50 should be deleted because the notice requirement is covered by clause 305 (3). This clause requires a council's yearly draft management plan to include a statement of (all) capital works projects.

Provision should be made for emergency works as the current provisions of 305 will mean that 12 months notice will be given. This obviously would not be appropriate for emergency works.

Clause 51: Consideration of private sector alternatives

The Committee is divided on this clause. Some members considered the process should be optional and that in clause 51(1) "must" should be changed to "should" and the words "in the opinion of the council" should be added after the word "which".

Another alternative discussed was the deletion of the provision entirely and the use of its contents as the basis for developing guidelines on competitive tendering.

The Committee has difficulty with subclauses (4) and (5) which require the council to state at a council meeting not closed to the public the reasons for not accepting a competitive tender of another person (other than the council). The Committee feels that this meeting should be able to be closed to the public and council's reasons should be written into the minutes and made available to the public. The Committee was of the opinion that only qualified privilege at best is applicable to councillors and that full discussion in open council concerning tenders could lead to unnecessary litigation against the councillors.

Clause 56: Handing over of works

The Committee has concerns with this provision which provides that the Minister for Public Works is able to hand over any work before its completion. This clause should be tightened up to make it clear that the Minister must state what obligations (financial or otherwise) are also being handed over.

Sections 60 and 61: Powers of Minister during emergencies/Appointment of administrator

The Committee has concerns with the very broad powers conferred on the Minister for Public Works under these sections and notes that they seem to be out of context with the principle in the Bill of giving councils greater control over their affairs.

The Committee questions the need for these sections and recommends that, if retained, they be inserted in the Public Works Act as they more properly concern the administration of that Act.

Clause 62: Private works

The Committee is of the opinion that clauses 62(2)(b) is too restrictive and will be largely inoperable in rural areas and should be deleted. The Committee agreed that the clause should allow council to set an upper limit on the value of private work that can be carried out without a resolution of the council. All private works carried out by council should be reported to council and be minuted. A significant number of the submissions to the Department supported this view.

CHAPTER 6 - REGULATORY FUNCTIONS OF COUNCILS

Division 2 - Making and determination of applications for approval - generally

Clause 63: What activities, generally require the approval of the council

It was believed that the first dot point in subclause (f) should be deleted because of its uncertainty and impracticability.

Clause 77: Consultation and concurrence

The Committee supports the inclusion of provisions parallel to section 81 (Circumstances in which concurrence may be assumed) of the Environmental Planning and Assessment Act so councils are able to obtain concurrence in advance.

Clause 88: Can approvals be extended or renewed?

The Committee considers that an extension or renewal of an approval should only be granted during the term of the original approval.

Clause 94: Notice of application to erect building to be given to owners of adjoining land

The Committee is divided on this issue. The opinion was expressed that all neighbours both adjoining and near, should be advised as of right of an application for approval to erect a building. Some members consider councils should be required to form an opinion as to which owners will be detrimentally affected and notify only these owners.

Section 107: When can the Minister grant an approval in place of a council?

The Committee is of the opinion that the Minister should be obliged to publicly state reasons for calling in any application(s) on the grounds of public health and safety.

Clause 108: What orders may be given, in what circumstances and to whom?

The Committee requests the Minister to review the possibility of including backpackers' hostels specifically in item 4 of the orders table at clause 108 or ensure that a definition of "boarding house" is inserted in the Bill clearly including backpackers' hostels.

PART 4 - BUILDING CERTIFICATES

Clauses 137 to 139

The Committee feels that these clauses should be reviewed by the Minister in order to clarify the relationship between these clauses and section 123 (Restraint etc of breaches of this Act) of the Environmental Protection and Assessment Act.

PART 5 - APPEALS

Clause 143: Awarding of compensation concerning approvals

The Australian Institute of Environment Health (NSW Division) and the Australian Institute of Building Surveyor (NSW Chapter) in their joint submission to the committee stated that this clause "in its present form is unacceptable and needs significant clarification or deletion"

The Committee feels that this clause should be deleted because of its clear impracticality. At best if the clause is designed to ensure the public are not disadvantaged by a Council being influenced by a third party to an extent expounded in the clause, the clause should as stated above be significantly clarified.

CHAPTER 7 - ANCILLARY PROVISIONS

Clause 169: Councils to carry out fire-safety inspections on request of Director-General of Fire Brigades

The Committee recommends that, bearing in mind that councils are obliged, on request, to carry out such inspections, the clause should be amended to provide that councils may charge a fee to the Director-General of Fire Brigades for the service.

CHAPTER 8 - HOW ARE COUNCILS ESTABLISHED

Clause 179: Who may initiate a proposal

The Committee agrees with the proposal of the Local Government and Shires Associations that the appropriate number of electors who may propose that an area be constituted, altered or dissolved should be 10% of the enrolled electors or 250, whichever is the greater.

Clause 186: Who comprise the governing body?

The Committee discussed at great length the proposal in this clause that elected representatives be termed "councillors".

Whilst agreeing that there was a valid argument that each council should be able to choose whether to use the term councillor or alderman, the term councillor was preferred for reasons of consistency across the State.

In its submission the Council of the Shire of Sutherland called this move "sound".

Clause 187: How many councillors does a council have?

The Committee unanimously agreed that there should be an uneven number of councillors on each elected council.

The Committee considered that the maximum number of councillors should be 13 (as drafted). Some submissions argued that 9 was an appropriate maximum number. The Committee was made aware that the trend in other countries is towards constituting smaller local government organisations and generally believes that smaller bodies make for more effective decision making. It was generally considered that 5 was an appropriate minimum number of councillors.

Clause 188: What is the role of the mayor

Understandably, this clause and clause 264 (Functions of the general manager) were the subject of many submissions to both the Committee and the Department of Local Government and Co-operatives.

In recognition of this, the committee spent a considerable amount of time considering the content of those clauses and the relationship between them. The Committee agrees with the thrust of the reform that the general manager should be responsible for staffing matters.

The Committee agree that it is the council that rightly is the repository of all powers and may delegate them. The council determines what powers are delegated to the mayor and to the General Manager.

Clause 198: Amount and determination of fees (paid to councillors)

The Committee agreed that the clause, as currently worded, is too narrow and that it should be redrafted to provide that the councillor fee extends to any meeting the council may instruct a councillor to attend.

The submission of the Walcha Shire Council stated that the section "takes a limited view of a councillor's duties. There is no mention of payment of the fee for attending ... activities which are legitimate council business".

Clause 203: Governor may dismiss mayor and councillors

Clause 303 covers the issue of dissolution of county councils. The Committee feels that county councils should be covered by the same provisions on dismissal as other councils.

Clause 204: Governor may appoint administrator or order fresh election

The Committee is of the opinion that an administrator should be appointed for a set term.

The option discussed by the committee was that an administrator should be required to hold an election within 6 months of appointment unless the administrator has been appointed within 12 months of the date specified for the holding of an ordinary election, in which case the election would be held in the normal course.

The administrator should be entitled to request, with reasons an extension of his or her appointment, if the time allocated is insufficient to complete the work for which the administrator was appointed.

Clause 206: The administrator

The Committee considered clause 206 (1)(c) which states that employees not retained by the administrator cease to be employed by the council and recommends that the Minister review this provision with a view to incorporating the principle that, as a general rule, employees (other than contracted employees) should be re-employed by the administrator unless not re-employed by the administrator as a result of an investigation into the matters that gave rise to the dismissal of the council.

The Institute of Municipal Management (NSW Division) stated in its submission that this clause "should clearly limit the powers of the administrator to dismiss staff to those powers held by a council . . . "

Clause 209: Membership of Boundaries Commission

The Committee agrees with the suggestion of the Local Government and Shires Associations that the Associations should simply have the power under clause 209 (2)(c) to nominate 2 of their own representatives to serve on the Commission.

One member of the Committee believed the proposal in the clause was sufficient.

CHAPTER 9 - HOW ARE PEOPLE ELECTED TO CIVIC OFFICE

Clause 218: Double candidature

The Committee was generally opposed to the provisions relating to double candidature.

The Committee recommends retaining the status quo in regard to candidates standing for election. In particular, that a candidate may stand for and be elected to both the offices of mayor and councillor where the mayor is elected at large by the community.

Clause 219: Voting system for election of the mayor by all the electors of the area

The Committee agreed that this clause should be amended to provide that votes should be counted using the preferential system.

Clause 220: Voting system for election of councillors - equal value voting

In view of the vast number of submissions received by the Department of Local Government which were opposed to equal value voting, the Committee is of the opinion that this system should not be adopted. The Committee could not unanimously agree which alternative system should be adopted. This attitude appears to be reflected across the State - different areas favour different systems.

Some members of the Committee feel that perhaps the clause should be amended to provide for electors in their respective areas to decide the method of election at a constitutional referendum. This would require an amendment of clause 32. It is anticipated that if a referendum system were used the choice would be between proportional, preferential or equal value voting. Other members strongly supported the retention of the present system.

Clause 232: When is the election day for the election of the mayor by all the electors?

The Committee is of the view that clause 232 (2)(b) should be amended to make it clear that the Governor should appoint to the vacant office of mayor, a councillor nominated by the council.

Clause 244: Qualifications to be made public

The Committee believes that this clause should be deleted and the existing Local Government Act provision retained. The clause is also discussed later in the report in the section on disclosure of pecuniary interests.

CHAPTER 10 - HOW ARE COUNCILS STAFFED

Clause 264: Functions of the general manager

The Committee has already stated that it agrees with the principle in the Bill that the general manager should be responsible for the staffing matters of the council.

The Committee recommends that the words "and may approve or ~~dis~~approve of delegations by the council to any other staff" should be ~~deleted~~ from the second dot point in subclause (2) because it is a ~~derogation~~ from the proper powers of the council.

Clause 267: Nature of contracts for senior staff

In order to preserve the discretion of the council in this matter, the ~~committee~~ recommends that the words "are to" should be replaced by ~~"may"~~. The committee believes that all councils will require senior staff to ~~agree~~ to performance based contracts in any case.

One reason for such an observation was that, because of the remoteness of ~~some~~ council areas, councils may not be able to attract senior staff ~~prepared~~ to sign a contract of employment.

As a general comment, the committee believes that the phrase "senior staff" ~~should~~ be replaced by "executive staff" in the Bill in order to make it ~~perfectly~~ clear that it is those staff covered by the executive band of the ~~new~~ industrial Award for staff who may be required to be employed under ~~a~~ contract. The Committee endorses these recommendations made by the ~~Institute~~ of Municipal Management.

Clause 270: Appointment of the public officer

The Committee understands that the public officer to be appointed by each council is a purely formal position which, depending on the size and nature of each council, will not necessarily be full time. It will not be a new career path for any particular profession.

The Committee agrees that it is appropriate for the general manager to appoint the public officer of the council because the position, though important, will not necessarily be held by a senior staff member. One member of the committee feels that, because of the symbolism attached to the position, the council should make the appointment.

Clause 272: Advertising of staff positions

The Committee raised a series of questions with the Department on the requirement to advertise senior positions both for initial appointment and for reappointing incumbents at the end of contract periods.

The Department assured the Committee that a full package of transition arrangements was being formulated at present in consultation with relevant industry and union bodies, and that an Implementation Group was being established with representation from both groups to assist in this process.

Clause 273: Appointment to be by merit

The Committee recommends that in subclause (2) the words "council or general manager" be replaced by "decision".

Clause 276: Restriction on appointment of a former mayor or councillor

The Committee recommends that this clause be redrafted to read "A person who has held civic office must not be appointed to any paid position on the staff of the council within 6 months after ceasing to hold the office. A purported appointment is void." This would avoid any implication that a former mayor or councillor could not undertake voluntary or other unpaid work on behalf of the council.

CHAPTER 11 - HOW DO COUNCILS OPERATE

Clause 283: Calling of extraordinary meeting on request by councillors

The Committee has one concern about this clause, namely that it should be extended to explicitly provide that the mayor had the power to also call an extraordinary meeting.

Clause 286: Who presides at meetings of the council?

The Committee recommends that subclause (3) should be amended to provide that, in addition, the mayor have a casting vote in the event of votes being equal.

Clause 287: What constitutes a decision of the council?

The Committee recommends that the existing provisions concerning rescission motions should be recreated, by way of either an amendment to the Bill or inclusion in an ordinance on meetings.

Clause 289: Certain circumstances do not invalidate council decisions

The Committee recommends that the Minister should consider whether an additional non-invalidating circumstance should be included, namely the situation of a member voting on a matter whilst having a pecuniary interest in that matter.

Clause 291: General power of the council to delegate

The Committee is unsure of the meaning of dot point 7 in subclause (1) - the council's power to delegate the making of an application, or the giving of a notice, to the Governor or Minister - and suggests that the point be redrafted.

CHAPTER 12

HOW ARE COUNCILS MADE ACCOUNTABLE FOR THEIR ACTIONS

Clauses 315, 316 and 318:

The Committee agrees with the submission of the Local Government Auditors Association that, for greater precision, the word "accounts" should be replaced with "accounting records".

Clause 320: Auditors term of office

The Committee has been informed that the Department of Local Government is re-evaluating this clause in the light of the suggestion of the Local Government Auditors Association.

The Local Government Auditors Association do not support compulsory tendering for the reappointment of auditors because of the expense involved and suggest that if a council is satisfied with its existing auditor, it should be able to renew the appointment for up to 4 years without having to call for tenders.

Clause 323: Annual reports

The Department of Local Government is taking up the suggestion of the Local Government and Shires Associations that the idea of a Community Report be investigated in lieu of an annual report being provided to ratepayers. The committee agrees that the concept should be developed further by the Department.

PART 4 - GOVERNMENT SUPERVISION

The Committee suggests that this heading be replaced with a more appropriate heading such as "ROLE OF MINISTER/DIRECTOR-GENERAL"

CHAPTER 13 - HONESTY AND CONFLICT OF INTEREST

The Committee recommends that the provisions of this Chapter and Schedule 2 dealing with disclosure of pecuniary interests be reviewed by the Minister in the light of the recommended guidelines contained in the report recently released on this subject by the Independent Commission Against Corruption.

The Committee recommends that the requirement in clause 2 of Schedule 2 to disclose interests in real property in the primary return should be restricted to real property within New South Wales.

One member of the Committee is strongly of the view that the pecuniary interest disclosure provisions should also apply to candidates for election to council.

CHAPTER 14 - HOW ARE COUNCIL'S FINANCED?

The Committee notes that the provisions of the Bill largely reproduce and refine the existing situation, rather than propose radical change. However, the Department of Local Government and Co-operatives has received a great many submissions on the subject of rating and the Minister has indicated his willingness to consider alternatives. Advice to the Committee is that these submissions will be considered along with the Oakes Report, the Rating Task Force and this Committee's report.

After a great deal of discussion, the Committee agreed with the Local Government and Shires Associations' submissions, which propose that there should be the potential for two components in ordinary residential rates, a minimum amount and an ad valorem amount.

It is proposed that a council would firstly make a publicly recorded decision as to what percentage of a particular category's rate yield (between 0% and 50%) it intends to raise by the minimum rate. Councils should be subject to a prohibition on raising more than, say 50%, of its rates from the minimum rate.

A council would then make a separate calculation to determine the ad valorem rate which would apply to those assessments liable to pay more than the minimum.

By councils being able to adjust the minimum rate from year to year and category to category, Ministerial involvement in setting maximum minimum rates and giving exemptions should not be an issue.

The Committee endorses this approach. The Committee, however, does not express a firm view on the maximum percentage permitted to be raised from minimum rates.

The Committee agrees with the general thrust of the Bill that a council should have authority to determine the amount of rates, including the minimum rate, that will be paid because it is ultimately responsible to its electors.

Clause 342: Categorisation of land for purposes of ordinary rates

The Committee recommends that there be six categories of land under this clause - residential, commercial, industrial, farmland, mining and other. The category "other" would include land which is being used for mixed purposes.

The word "dominant" in subclause (2) should be defined.

Clause 349: Rate may be the same or different within a category

The Committee is concerned that the Bill does not assist councils to any great degree in rating "hobby farms". Clause 349 (2)(a) states that the category "farmland" may be further categorised for rating purposes according to the intensity of land use - a criteria that may be related to the income which is generated from the use of the land.

In areas defined as "rural" in Local Environment Plans, differential rates are determined according to the size of the land and not the use to which it is being put. The concept of "intensity of use" introduced in the Bill goes some of the way in assisting councils to arrive at the appropriate rate for a particular parcel of land, however it is a subjective measure and the

Committee is of the view that the Bill should allow for councils to use both concepts of intensity of use and area in determining the rate payable by owners of hobby farms.

Clause 357: What land is exempt from rating?

The Committee believes that government trading enterprises should be liable to pay rates.

Clause 378: Liability of an occupier

The Committee believes that the Minister should review this clause in the light of the principle that a tenant's rights should not in any way be jeopardised by being made liable for the debts which the landlord owes to the council.

Clause 380: Reduction for eligible pensioner solely rateable

The Committee recommends that the clause should make it clear that the reduced amount of rates payable by eligible pensioners may also be able to be paid on a quarterly basis.

Clause 388: Reimbursement of councils by Parliament

Clause 380 provides that one half of the rate of an eligible pensioner is to be written off by the council. Clause 388 states that the State Government is required to pay to the council one half of the amount written off.

There was discussion that the Federal Government who has constitutional responsibility for the aged should contribute to the reimbursement provisions of this clause.

One member of the Committee suggests that a council should receive a 100% reimbursement from the State Government of amounts written off the rates of eligible pensioners. The Committee does not agree with this proposal but recommends that eligible pensioners be included in clause 391 of the Bill which provides for postponement of rates. Rates due but uncollected should then be payable as a debt due by the estate on the death of the eligible pensioner.

CHAPTER 15 - OFFENCES

Offences generally

The Committee understands that the Minister is reviewing the question of whether certain of the offences in this Chapter should be relocated to other legislation or deleted because they may be adequately covered in other legislation.

Penalties generally

The Committee understands that the Minister is reviewing the penalty provisions in this Chapter to remove such anomalies as 5 penalty points being provided for in clause 436 (injuring flora and fauna) but only 2 penalty points in clause 440 (injuring or obstructing the public).

Clause 436: Injuring flora and fauna in public places

The Committee recommends that the words "or removes" be added after the word "disturbs" in order to make the clause clearer.

Clause 439: Breaking glass in public places

The Committee recommends that subclause (2) be redrafted to make it clearer.

Clause 440: Injuring or obstructing public in public places

The Committee recommends that the word "annoy" be deleted because it is subjective and too uncertain to constitute an offence.

Clause 442: Use of life-saving equipment

The Committee recommends that the word "uses" in this clause be replaced by the word "misuses".

PROCEEDINGS OF THE COMMITTEE

No. 1

Wednesday, 19 February, 1992
At 1.30 p.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Downy	Mr E. Page
Mr Harrison	Mr Rixon
Dr Macdonald	Mr Turner

The Clerk of the Legislative Assembly opened the meeting and read the following:

"Portion of entry number 8, Votes and Proceedings of the Legislative Assembly, 11 December, 1991:

Mr Peacocke moved, That—

- (1) So much of the Sessional Order on Legislation Committees be suspended as would preclude:
 - (a) the transmission to the Speaker, by the Minister for Local Government and Minister for Co-operatives, of the draft Local Government Bill, Harmful Pests Bill, Impounding Bill, Local Government (Consequential Provisions) Bill and Roads Bill;
 - (b) upon receipt by the Speaker, the Bills being deemed to be tabled for the information of Members, and their referral to a Legislation Committee; and
 - (c) such Legislation Committee comprising six Members, namely - Mr Turner, Mr Downy, Mr Rixon, Mr E. Page, Mr Harrison and Dr Macdonald.

- (2) The provisions of any Parliamentary Committees Enabling Act passed this session shall apply to the Legislation Committee.
- (3) The Committee report by 31 March 1992.

Question put and passed.

Election of a Chairman

Resolved, on motion of Mr Rixon, seconded by Mr Downy:
"That Mr Turner be elected Chairman of the Committee".

Mr Turner made his acknowledgments to the Committee.

Procedural Motions

Resolved, on motion of Mr Page, seconded by Mr Harrison:
"That the procedural motions, as circulated, be agreed to".

Staffing Arrangements

The Chairman informed the Committee that Mr Swinson (Deputy Clerk) and Mr Lawrie (Manager, Parliamentary Archives) had been appointed to the Committee as Clerk and Project Officer respectively.

The Committee agreed that the Minister for Local Government be requested to make the services of Ms Jan Clark (Senior Policy and Research Officer) available to the Committee on a needs basis.

Visit to Department of Local Government

The Chairman reported that the Department of Local Government had invited the Committee to inspect the Local Government Reform Taskforce operations.

Draft Advertisement

The Committee considered a draft advertisement, and subject to minor corrections, agreed to its placement in newspapers.

Invitation to make Submissions

The Committee agreed to invite 44 organisations associated with local government (as set out in a list provided to Members) to make submissions.

Submissions to Department of Local Government

The Committee agreed that the Minister for Local Government be asked to provide summaries of all submissions his Department receives on the bills.

Timetable

The Committee agreed to a timetable to facilitate its report to the House by 31 March, 1992.

The Committee agreed to request a presentation from officers of the Department of Local Government on 6 March, 1992; that 10 March, 1992, would be the closing date for submissions and that the next deliberative meeting of the Committee would be held on 17 March, 1992.

There being no further business, the Committee adjourned at 2.35 p.m. until Friday, 6 March, 1992, at 10.00 a.m.

No. 2

Thursday, 27 February, 1992
At 11.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)

Mr Harrison

Mr E. Page

Dr Macdonald

Mr Rixon

An apology was received from Mr Downy.

The Minutes of the Committee meeting held on 19 February, 1992, were accepted.

The Committee reconsidered the question of advertising for submissions and agreed that the advertisements were to proceed as planned.

There being no further business, the Committee adjourned at 11.15 a.m. until Friday 6 March, 1992 at 10.00 a.m.

No. 3

Friday, 6 March, 1992
At 10.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)
Mr Downy Mr E. Page
Mr Harrison Mr Rixon

Dr Macdonald

The Committee received a briefing from the following Officers of the Department of Local Government on the Bill and its cognates -

Mr Ian McKendry	-	Co-ordinator Legislative Review
Ms Beverley Forner	-	Manager, Policy and Research
Ms Jan Clark	-	Senior Policy and Research Officer

The Committee agreed to hold hearings on Friday 20 March, 1992, from 11.30 a.m. to 5.00 p.m. and that representatives of peak organisations be invited to appear. The Chairman and the Clerk to organise the program.

There being no further business, the Committee adjourned at 12.50 p.m. until Friday, 20 March, 1992, at 9.30 a.m.

No. 4

Tuesday, 17 March, 1992
At 10.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)
Mr Downy Mr E. Page
Mr Harrison Mr Rixon
Dr Macdonald

The Minutes of the Committee meetings held on 27 February and 6 March, 1992, were accepted.

The Committee considered a proposed program for hearings and after discussion decided that the hearings scheduled for Friday, 20 March, 1992, should proceed but that the Chairman should seek an extension of the report back date in order for more days to be made available for hearings.

The Committee agreed that if an extension is granted, additional hearings be held on Friday, 27 March and Friday, 10 April, 1992.

The Committee agreed to invite Mr Bill Henningham, Mr Michael Mobbs, the National Environmental Law Association and representatives of the Hunter Regional Association of Councils to give evidence.

There being no further business, the Committee adjourned at 4.55 p.m. until Friday, 20 March, 1992, at 10.00 a.m.

No. 5

Friday, 20 March, 1992
At 10.30 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)

Mr Downy	Mr E. Page
Mr Harrison	Mr Rixon

Dr Macdonald

The Minutes of the Committee meeting held on 17 March, 1992, were accepted.

The Chairman informed the Committee that the Minister for Local Government had offered to extend the Committee's report back date on the Local Government Bill to 8 May and that the date on the cognate bills would also be extended. The matter could be put to the House this week.

Resolved, on motion of Dr Macdonald, seconded by Mr Page, That the offer of extension be agreed to by the Committee, and that this be communicated to the Minister for Local Government and Co-operatives.

The Committee received a further briefing from officers of the Department of Local Government.

The Committee agreed that the Parliamentary Draftsmen concerned with the Bills and the Roads and Traffic Authority should be invited to give evidence.

At 11.30 a.m. the public were admitted.

GEOFFREY PETER TEBBUT, (Chairman) and JOHN GORDON (Accounting Sub-Committee) of the Local Government Auditors Association, sworn and examined.

Evidence concluded, the witnesses withdrew.

FAYE MARIE LAWRENCE, President of the Association of Local Government Librarians, sworn and examined.

Evidence concluded, the witness withdrew.

WILLIAM ARTHUR HENNINGHAM (Solicitor and Local Government Consultant) and MICHAEL THOMAS MOBBS (Solicitor), sworn and examined.

Evidence concluded, the witnesses withdrew.

MICHAEL GEORGE SCHUPPE (Secretary) and PETER JOHN CHALMERS of the Australian Institute of Ordinance Inspectors, sworn and examined.

Evidence concluded, the witnesses withdrew.

The Committee deliberated.

There being no further business, the Committee adjourned at 4.47 p.m. until Friday, 27 March, 1992, at 9.30 a.m.

No. 6

Friday, 27 March, 1992
At 9.30 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)

Mr Downy Mr E. Page
Mr Harrison Mr Rixon

Dr Macdonald

The public were admitted.

JOHN ANTHONY FLANNERY, President, Institute of
Municipal Management;

TERRENCE STANLEY BARNES, Senior Vice-President,
Institute of Municipal Management; and

GRAHAM ROY TOWLE, Chief Executive Officer, Institute
of Municipal Management, all sworn and examined.

Evidence concluded, the witnesses withdrew.

MARGIE O'TARPEY, Executive Director, Australian
Institute of Environmental Health and Australian Institute of Building
Surveyors, affirmed;

IAN NEIL JOSEPH GLENDINNING, President, New South
Wales Chapter, Australian Institute of Building Surveyors, sworn;

MURRAY JOHN McCAFFERTY, President, Australian Institute of Environmental Health, sworn and all examined

Evidence concluded, the witnesses withdrew.

CHRISTOPHER ALAN WATSON, Honorary Secretary, Local Government Engineers Association;

GARY JAMES DE COURCEY, Industrial Relations Officer, Local Government Engineers Association of New South Wales;

IAN ALEXANDER ROBERTSON, Secretary, Health and Building Surveyors Association;

ROBERT JOHN BALL, Chairman, Industrial Panel of the Local Government Clerks Association;

ALAN FREDERICK CHEGWIDDEN, Secretary, Local Government Office of the Federated Municipal and Shire Council Employees Union, all sworn and examined.

Evidence concluded, the witnesses withdrew.

JOHN HAYWARD MANT, Solicitor, sworn and examined.

Evidence concluded the witness withdrew.

MURRAY KIDNIE, Secretary, Local Government and Shires Association of New South Wales, affirmed;

STEPHEN ROBERT WARD, President, Shires Association of New South Wales, sworn;

PETER ROBERT WOODS, President, Local Government Association of New South Wales, affirmed;

DOUGLAS JOHN McSULLEA, member of the council of the association staff, sworn and all examined.

Evidence concluded, the witnesses withdrew.

There being no further business, the Committee adjourned at 4.50 p.m. until Friday 10 April, 1992, at 9.30 a.m.

No. 7

Friday, 10 April, 1992
At 9.30 a.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)

Mr Downy
Mr Harrison

Mr E. Page
Mr Rixon

An apology was received from Dr Macdonald.

The public were admitted.

STEPHEN BERRY AUSTIN, President, Environmental Law Association, New South Wales Branch, sworn and examined.

Evidence concluded, the witness withdrew.

HELEN MARY RUSSETT and CHRISTOPHER JOHN MOONEY, Representatives of the Australian Society of Certified Practising Accountants, sworn and examined.

Evidence concluded, the witnesses withdrew.

The public withdrew.

The Committee deliberated.

Officers of the Department of Local Government were in attendance.

There being no further business, the Committee adjourned at 4.20 p.m. until Tuesday 28 April, 1992, at 3.00 p.m.

No. 8

Wednesday, 29 April, 1992
At 3.30 p.m., Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)
Mr Downy Mr E. Page
Mr Harrison Mr Rixon

An apology was received from Dr Macdonald.

Officers of the Department of Local Government were in attendance.

The Committee deliberated.

The Committee adjourned at 10.30 p.m. until Thursday, 30 April, 1992, at 10.00 a.m.

No. 9

Thursday, 30 April, 1992
At 10.00 a.m. Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)
Mr Downy Mr E. Page
Mr Harrison Mr Rixon
Dr Macdonald

Officers of the Department of Local Government were in attendance.

The Committee deliberated.

The Committee adjourned at 12.05 p.m. until Tuesday, 5 May, 1992.

No. 10

Wednesday, 6 May, 1992
At 1.00 p.m. Parliament House, Sydney

MEMBERS PRESENT

Mr Turner (Chairman)
Mr Downy Mr Harrison
Mr Rixon

Apologies were received from Dr Macdonald and Mr Page.

The Minutes of meetings held on 20 and 27 March, 10, 29 and 30 April, 1992, were accepted.

A copy of the Chairman's Draft Report, having been transmitted to each Member of the Committee, was accepted as being read.

The Committee proceeded to consider the Draft Report.

The Draft Report, as amended, was agreed to.

Resolved, on motion of Mr Downy, seconded by Mr Rixon, That the Draft Report, as amended, be the Report of the Committee.

The Committee adjourned at 1.30 p.m., sine die.

**EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY**

Legislative Assembly, Votes and Proceedings No. 36, Wednesday 11
December 1991. (50th Parliament, 1st Session)

**LEGISLATION COMMITTEE ON THE LOCAL GOVERNMENT
REFORM BILL AND OTHER BILLS**

Ordered, on motion of Mr Peacocke, That—

- (1) So much of the Sessional Order on Legislation Committees be suspended as would preclude:
 - (a) the transmission to the Speaker, by the Minister for Local Government and Minister for Co-operatives, of the draft Local Government Bill, Harmful Pests Bill, Impounding Bill, Local Government (Consequential Provisions) Bill and Roads Bill;
 - (b) upon receipt by the Speaker, the Bills being deemed to be tabled for the information of Members, and referred to a Legislation Committee; and
 - (c) such Legislation Committee comprising six Members, namely—Mr Downy, Mr Harrison, Dr Macdonald, Mr Page, Mr Rixon and Mr Turner.
- (2) The provisions of any Parliamentary Committees Enabling Act passed this session shall apply to the Legislation Committee.
- (3) The Committee report by 31 March 1992.

Legislative Assembly, Votes and Proceedings No. 16, Thursday 26 March 1992. (50th Parliament, 2nd Session)

LEGISLATION COMMITTEE ON THE DRAFT LOCAL
GOVERNMENT BILL AND COGNATE BILLS

Mr Moore moved (by leave), That the reporting date for the Legislation Committee upon the Draft Local Government Bill and cognate bills be extended to 6 May 1992.

Question put and passed.

LIST OF SUBMISSIONS RECEIVED

In addition to the 1,100 submissions referred by the Department of Local Government, the Committee received the following submissions:

- S 1 Eya & Push - Ms Jean Vallentine
- S 2 The Council of the Shire of Sutherland - Mr J.W. Rayner
- S 2A The Council of the Shire of Sutherland (Further Submission)
- S 3 Local Government Auditors' Association of New South Wales - Mr Geoffrey Tebbutt
- S 4 Mr A. Sneddon
- S 5 Walcha Shire Council - Mr Rob Callaghan
- S 6 Southern Sydney Regional Organisation of Councils - Ms Mellissa Gibbs
- S 7 Lake Macquarie Ratepayers Action Group - Mr Doug Cummings
- S 7A Lake Macquarie Ratepayers Action Group - (Further submission)
- S 8 Glen Innes Municipal Council - Alderman D.P. Donnelly
- S 9 Rockdale Municipality - Mr S.J. Blackadder
- S 10 Institute of Municipal Management (New South Wales Division) - Mr Graham R. Towle
- S 11 The Council of the Shire of Sutherland - Mr J.W. Rayner
- S 12 Bathurst City Council - Mr C. Pitkin
- S 13 Mr Fred G. Kirkwood
- S 14 Australian Society of Archivists, New South Wales Branch - Ms Sandra Mowbray
- S 15 Ashfield Council, New South Wales - Alderman John Ward
- S 16 Hume Shire Council - Mr A.J. Quinn
- S 17 Australian Institute of Environmental Health (NSW Division)
Australian Institute of Building Surveyors (NSW Chapter)
- Ms Margie O'Tarpey

- S 18 Mr L.P. Fisher
- S 19 New South Wales Coal Association - Ms Meredith Hellicar
- S 20 Local Government Electricity Association of New South Wales
- Mr T.L. Miller
- S 21 Marrickville Municipal Council - Mr P. Chambers
- S 22 Ratepayers' Action Group (RAG) - Mr N. Korner
- S 23 New South Wales Local Government Unions
- Mr Graham R.Towle
- S 24 Mr B.M.G. Remond
- S 25 New South Wales Farmers' Association - Mr Graham R. Fell
- S 26 Proportional Representation Society of Australia
- Mr Bogey Musidlak
- S 27 The Vacluse Progress Association - Mr Michael Rolfe
- S 28 Local Government Property Managers Group - Mr Tim Elliott
- S 29 The Motor Inn and Motel Association of New South Wales
- Mr G.E. Farrar
- S 30 Mr John Hague
- S 31 Federated Municipal & Shire Council Employees' Union of
Australia (New South Wales Division) - Mr J. Merchant
- S 32 Mossy Point Community Association - Mr Stan Lewis
- S 33 Ethnic Affairs Commission of New South Wales
- Mr Stepan Kerkyasharian
- S 34 Canberra and District Association of Eurobadalla Shire
Ratepayers - Mr J.E. Bullen
- S 35 Eurobodalla Ratepayers' and Residents' Association
- Mr H.A.W. Southon
- S 36 NSW Country Mayors' Association - Mr N.J. Lethlean

LIST OF WITNESSES

20 March, 1992

TEBBUTT Geoffrey Peter, Chairman, Local Government Auditors Association

GORDON John, Accounting Sub-Committee, the Local Government Auditors Association

LAWRENCE Faye Marie, President, Association of Local Government Librarians

HENNINGHAM William Arthur, Solicitor and Local Government Consultant

MOBBS Michael Thomas, Solicitor

SCHUPPE Michael Thomas, Secretary, Australian Institute of Ordinance Inspectors

CHALMERS Peter John, Australian Institute of Ordinance Inspectors

27 March, 1992

FLANNERY John Anthony, President, Institute of Municipal Management

BARNES Terrence Stanley, Senior Vice-President, Institute of Municipal Management

TOWLE Graham Roy, Chief Executive Officer, Institute of Municipal Management

O'TARPEY Margie, Executive Director, Australian Institute of Environmental Health and Australian Institute of Building Surveyors

GLENDINNING Ian Neil Joseph, President, New South Wales Chapter, Australian Institute of Building Surveyors

McCAFFERTY Murray John, President, Australian Institute of Environmental Health

WATSON Christopher Alan, Honorary Secretary, Local Government Engineers Association

DE COURCEY Gary James, Industrial Relations Officer, Local Government Engineers Association of New South Wales

ROBERTSON Ian Alexander, Secretary, Health and Building Surveyors Association

BALL Robert John, Chairman, Industrial Panel of the Local Government Clerks Association

CHEGWIDDEN Alan Frederick, Secretary, Local Government Office of the Federated Municipal and Shire Council Employees Union

MANT John Hayward, Solicitor

KIDNIE Murray, Secretary, Local Government and Shires Associations of New South Wales

WARD Stephen Robert, President, Shires Association of New South Wales

WOODS Peter Robert, President, Local Government Association of New South Wales

McSULLEA Douglas John, member of the Council of the Associations staff

10 April, 1992

AUSTIN Stephen Berry, President, Environmental Law Association, New South Wales Branch

RUSSETT Helen Mary, Representative, Australian Society of Certified Practising Accountants

MOONEY Christopher John, Representative, Australian Society of Certified Practising Accountants