



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEES

BUDGET ESTIMATES 2023-2024 **Answers to Questions on Notice**

Portfolio Committee No. 8 – Customer Service

Local Government

(Hoenig)

Hearing: Wednesday 6 March 2024

Answers due by: Tuesday 2 April 2024

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Minister for Local Government – Questions on Notice

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The Hon. SCOTT FARLOW: With respect to that, you're saying that the only code of conduct breach was from councillor Hindi, not from councillor Badalati. Is that correct?

Mr RON HOENIG: No. I think Badalati had breaches too, didn't he? They don't come to me—code of conduct breaches.

BRETT WHITWORTH: No, they don't come. We don't tend to talk about code of conduct breaches because of the importance of the process and recognising that we shouldn't be publicising them in such a way that they become weaponised. We can take on notice, if you'd like, any code of conduct information that we can provide about councillors, because there were three councillors in the ICAC report. We can do that about those three councillors. But, definitely, Councillor Hindi was subject to what we believed was serious misconduct which was worthy of an NCAT process. And, because he was also a former councillor by the time we were able to finalise the investigation reports, the NCAT was our option, in terms of enforcing that sanction.

ANSWER:

I am advised:

On 27 July 2020, Councillor Hindi was censured by Council for publicly alleging that a Council official had misused public money, speaking aggressively to a Council staff member, insulting a Councillor about her accent, and demeaning another Councillor.

On 26 October 2021, Councillor Hindi's sitting fees were suspended for 1 month for publicly alleging that a Council official had failed to disclose a significant non-pecuniary conflict of interest.

On 26 November 2021, Councillor Hindi received a reprimand and a 1-month suspension for publicly alleging that a Council official had released confidential information.

On 14 December 2021, the NSW Civil and Administrative Tribunal found Councillor Hindi to have committed five breaches:

- 1) publicly making an unfavorable personal remark about a Council staff member during a council meeting,
- 2) publicly alleging an improper motive on the part of the General Manager,
- 3) publicly imputing that the General Manager had improperly disclosed information,
- 4) publicly alleging an improper motive on the part of the GM, and
- 5) publicly alleging that the GM had tried to influence Hindi's votes.

A further NCAT decision is pending.

Neither Cr Badalati or Cr Samson have been found to have engaged in misconduct by the Office of Local Government or the NSW Civil and Administrative Tribunal. I am advised:

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The Hon. SCOTT FARLOW: Minister, to pick up from Dr Cohn's point there about Cootamundra-Gundagai, and the questions asked by the Hon. Rod Roberts as well, what is your time frame in terms of when you can make a final decision about whether there's a deferral? What's the last possible point at which at which you can make that decision?

Mr RON HOENIG: I'm not sure. I'll have to take that on notice.

ANSWER:

I am advised the Electoral Commission is being kept informed of the progress of the Cootamundra-Gundagai demerger proposal. Announcements about elections will be made in due course.

Pages 14-15

The CHAIR: Mr Whitworth, I know the last time we spoke you said the [SDCH] facility would likely be completed February-March 2025. Is that still the current time frame? That might be another question for Mr Walther.

DOUGLAS WALTHER: Because we are adjusting the project to fit the funding envelope, once we've got that final technical specification we can report back with a final date.

The CHAIR: There's no time line at this point?

DOUGLAS WALTHER: I'd probably have to take it on notice.

The CHAIR: If you could, thank you, even if it is a rough idea as to when you hope to have it completed.

ANSWER:

I am advised Public Works is working through the finalisation of the design, in collaboration with Sydney Dogs and Cats own design team. Once that is finalised Public Works will be able to put the project out for tender.

Pages 15-16

Dr AMANDA COHN: Minister, I've got a question about this proposed parliamentary inquiry into rate pegging. Given your stated desire for a bipartisan approach to the issue, why have you selected a Government-controlled committee and not this Committee, which requires cross-partisan collaboration, to make any recommendations?

Mr RON HOENIG: I don't know. I didn't actually make the selection. I let my staff make that. I probably sought a chair of a committee that was happy to take the poisoned chalice.

Dr AMANDA COHN: Now that I've asked the question, would you consider discussing it with members of this Committee, noting that this is a portfolio committee that examines the portfolio of Local Government?

Mr RON HOENIG: I'd have to take that on notice. There is such a queue of people wanting upper House committees to look at things. Being able to negotiate agreement with the chairs, I'm told, can be fraught. I can assure you that it would not have been done on the basis to achieve a political result, because the last thing I want to do in this portfolio is cause political decisions to be made. There's been enough of that.

Dr AMANDA COHN: I appreciate you taking it on notice. I'm noting that there are many members of this Committee who hadn't heard of it before today, so I'm not sure it was ever discussed with this Committee.

ANSWER:

The Parliamentary Inquiry on the ability of local governments to fund infrastructure and services was established on 14 March by the Legislative Council Standing Committee on State Development.

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Dr AMANDA COHN: This issue [council organised rainbow balls and drag story time events have had to be cancelled due to threats of violence] has impacted LGBTQIA+ communities themselves. There's been a tangible mental health impact when these events have had to be cancelled. But it's also placing a huge burden on council staff, who are the ones actually receiving these threats and having to manage these issues. What support can be provided to councils and council staff to make sure that these events can go ahead safely and that staff feel supported?

Mr RON HOENIG: They're law enforcement functions, aren't they? But I'll take it on notice. I'll talk to the police Minister; I'll talk to the multicultural affairs Minister as well. I'll have a talk to the member for Sydney and just see whether or not there's something that can be tangibly done to provide support.

ANSWER:

I am advised:

The NSW Police Force maintains a good working relationship with the LGBTQIA+ community, providing support (including through the Gay Lesbian Liaison Officer and LGBTIQ+ Liaison Officer programs) and ensuring safety at events as appropriate. Any threats of violence should be reported to the Police.

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The Hon. AILEEN MacDONALD: I just have one question. Could you provide the terms of reference for the [rate peg] LC inquiry on notice to this Committee?

Mr RON HOENIG: Yes, as soon as they're finalised or have gone off or whatever. Yes, I'm happy to do that. I'm happy to provide it to you individually too, if you want it. There is no secret.

ANSWER:

The terms of reference are available at:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3040#tab-termsofreference>

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Dr AMANDA COHN: There is a \$17 million capital works fund for existing early childhood education in areas of need, which was announced alongside the new public preschools. I understand that was announced by the education Minister. It's very welcome. Are there any equivalent measures planned to support council-run early childhood education?

Mr RON HOENIG: I'd have to take that on notice. Why would a council childcare centre or a pre-school be in a different category to anybody else? I don't know the answer to that question. But I am very supportive, and it's about time that the Government started recognising education for early childhood, because that recommendation has been floating around overseas for a long time.

Dr AMANDA COHN: Absolutely. That's a really good step in the right direction from the education Minister, and I acknowledge that. It's relevant that Local Government NSW has been calling for some time for council-run early childhood education and care facilities to be eligible for all funding opportunities and grant programs that are otherwise available in the early childhood education ambit, so I would appreciate that response on notice, or any representation to the education Minister.

Mr RON HOENIG: Okay, I shall. I'm happy to take it on notice.

ANSWER:

Questions around eligibility for funding, and more broadly on how early childhood education is funded, should be directed to the Minister for Education. The local government portfolio does not provide funding to council-run early childhood centres.

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The Hon. AILEEN MacDONALD: If the registered organisations cannot be provided with the tender details when the process is still confidential, what requirements are there for registered organisations to act reasonably in indicating their satisfaction regarding the industrial arrangements?

BRETT WHITWORTH: Again, I feel that's quite a hypothetical question. There seem to be a number of questions that you have. We're more than happy to take these on notice.

KIERSTEN FISHBURN: I think we will take these on notice. There are a few matters in there that I'd like to get my general counsel to have a look at before we provide the advice back.

ANSWER:

Please see answers to supplementary question 5.

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The CHAIR: I'd like to go to Dr Filmer and Mr Tracey. In regards to the number of inspections within the pound system—and I know, Dr Filmer, you gave me that data recently—can I get an update on the routine inspection numbers, if there's been any additional inspections since the last estimates hearing?

KIM FILMER: I've only got data for the financial year, so I'll have to take on notice anything for the recent financial year. Just to clarify the time frame. From last budget estimates?

The CHAIR: Until now.

KIM FILMER: Okay.

ANSWER:

I am advised that between 12 September 2023 and 6 March 2024 there have been two additional routine inspections of pounds by the Department of Primary Industries.

Pages 41-42

The Hon. SCOTT FARLOW: In October of 2023 new DA withdrawal guidelines were implemented for councils. Has there been any assessment done of how those are working?

BRETT WHITWORTH: I did ask for an update to the data. Unfortunately, I wasn't necessarily given the data that I was—sorry, that sounds like I was saying, "Please give me the data I want."

The Hon. SCOTT FARLOW: I get what you mean. You sometimes ask for things and you get something else back in response.

BRETT WHITWORTH: Yes, I wanted to have an understanding so we could see the change from the last point of data that we provided to the Committee at the previous estimates to now. I will continue to pursue that, but when I got it I looked at it and went, "No, no, this is giving me the data from 2020-21 through to now."

The Hon. SCOTT FARLOW: So you weren't able to see any impact or the like. **BRETT WHITWORTH:** Not to see any impact, yes.

The Hon. SCOTT FARLOW: If you can take that on notice and endeavour to get that updated data, that would certainly be helpful.

BRETT WHITWORTH: Yes.

ANSWER:

I am advised:

Between 1 October 2022 to September 2023 there were 4,143 withdrawals. Between 1 October 2023 to 14 March 2024 there were 953 withdrawals.

Before the release of the Guideline on DA Withdrawals there were 345 withdrawals on average per month. In the 5.5 months since the release of the Guideline there were 173 withdrawals on average per month.

Based on this early data and a relatively short time period, the release of the Guidelines has appeared to reduce the average number of DA withdrawals.

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The CHAIR: Something else I noticed when I looked at some of the more recent statistics against the year prior is that, while we're seeing cat euthanasia dropping, am I right to say that dog euthanasia has had a small increase?

BRETT WHITWORTH: Can we take that on notice? I'd like to be able to check the numbers, beyond just looking at it myself.

The CHAIR: Yes, absolutely. If you could check the numbers and then on notice just let me know if you have any sort of information, if that has increased, as to why that might be potentially increasing.

BRETT WHITWORTH: We did see quite a significant drop in dog euthanasia rates as a result of the amendments to the Companion Animals Act and the obligation to undertake a rehoming process. If it's doing a slight uptick, we would like to probably understand that.

ANSWER:

I am advised:

In 2022/23, 2,174 dogs were euthanised which represented 10.6% of total dogs released from pounds. In 2021/22, 2,018 dogs were euthanised in 2021/22 which represented 10.1% of total dogs released from pounds.

Pages 45-46

The CHAIR: Mr Whitworth, you said a couple of times today that councils have an obligation to have access to some kind of a pound facility. I'm just wondering which Act or regulation that is under?

BRETT WHITWORTH: The Companion Animals Act.

The CHAIR: Can you point me to the relevant section of the Act?

BRETT WHITWORTH: The relevant section? **The CHAIR:** I'm happy for you to take that on notice.

BRETT WHITWORTH: Yes. I would be happy to take that on notice. I suppose the general principle is that the Companion Animals Act provides a number of regulatory powers for local government to operate and enforce. One of those is to deal with dangerous dogs. One of those is to deal with the collection of animals that are lost or—I probably don't have the right—

MELISSA GIBBS: Section 5.

BRETT WHITWORTH: I'm being told it's section 5, but we can also provide that and a bit more detail in our response.

The CHAIR: Yes. If you could give me a bit more detail because it sounds like what you're saying now is that the obligation is that they have to collect an animal, or something, rather than specifically to have access to a pound, or am I—

BRETT WHITWORTH: If they collect an animal, they have to take it somewhere.

The CHAIR: Yes, there has to be a location.

ANSWER:

Under the Companion Animals Act 1998 (CA Act), councils are responsible for managing companion animals in their local areas. Among councils' various functions under the CA Act, they are required to seize and hold companion animals. These responsibilities create the obligation for councils to provide or maintain "place approved by a council as a place for the holding of animals" (section 5 of the CA Act).

I am advised that in accordance with this broad definition, councils may establish and operate their own pound or enter into arrangements with neighbouring councils and/or other organisations to provide pound services on their behalf. Regardless of the arrangement, the relevant council retains responsibility for all companion animals seized or held by, or on behalf of, that council.

Pages 50-51

The CHAIR: In regard to the ongoing investigation by the Animal Welfare League, is that closed now?

KIM FILMER: If it's in that time frame, yes. According to the data I've got here, which is for the 2022-23 financial year, all of the investigations are closed.

The CHAIR: Could I get you to just check that on notice? In regard to the ongoing investigation that you mentioned at the pound inquiry, what was the outcome of that specific investigation?

KIM FILMER: I can chase that up for you, yes. I will take that on notice.

ANSWER:

I am advised the Animal Welfare League have informed the Department of Primary Industries that they attended the facility during April 2023 and did not identify any breaches of the Prevention of Cruelty to Animals Act.

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The CHAIR: The 24N notice that was issued by the RSPCA—do you know which pound this was issued to?

KIM FILMER: Yes, that was to the Bourke pound.

The CHAIR: What was the basis of the 24N notice?

KIM FILMER: I haven't got that detail here.

The CHAIR: Could I ask you to take it on notice?

KIM FILMER: I can. I may or may not be able to provide that information.

The CHAIR: That's okay—whatever you are able to provide, and whether that notice was actually complied with, to any knowledge that you may have.

KIM FILMER: Well, there has been no infringement notice and so, according to this data, there's no further action required. I'd say that would mean it has been actioned.

The CHAIR: Has there ever been a prosecution of a council pound for a breach of POCTAA or the regulations, ever, to as far as the records go? I get it; I'm happy for you to take that one on notice.

KIM FILMER: I'd have to take that on notice because, as I said, I've got data here from the 2021 financial year, so the last three financial years, and certainly in that time there's no indication—actually, there's one PIN; not a prosecution but a PIN issued back in 2021.

The CHAIR: In regard to the 24N notice at Bourke, could I also ask you to take on notice when that was issued, and then also any other details that you're able to supply to us in regard to that?

KIM FILMER: That was issued on 19 November 2021. As I said, I think that's the same question as you asked me before. I can see if I can find out any more details, but I may or may not be able to get that for you.

ANSWER:

I am advised:

The 24N notice was issued to Bourke pound because:

- There was no available isolation area for animals in cases of infection or suspected infection; and
- Some cats did not have sufficient room to stretch and move freely.

The 24N notice was complied with, within the required timeframe.

There have been no prosecutions of a council pound for breaches of the Prevention of Cruelty to Animals Act. Any evidence of animal cruelty in a Council pound should be provided to the animal welfare enforcement agencies for appropriate action.

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Dr AMANDA COHN: How has that process been communicated to the public? I think particularly local government councillors are feeling a lot of pressure from the community about the urgency of replacing mulch quickly and being able to reopen parks. Are you supporting the councils by actually communicating this stuff to the public?

DOUGLAS WALTHER: In terms of the specific details around the protocol and how that's been relayed to councils, the EPA and SafeWork have been meeting with affected councils and providing that information to them. I could probably take on notice, or potentially for the Environment estimates tomorrow, how far along the EPA are in those specific discussions with councils. I know meetings were had with the City of Sydney earlier this week to relay that with them. I'm just not sure of the status of Penrith and Inner West.

ANSWER:

I am advised:

Regular communication has been occurring between the taskforce and impacted Councils and LGNSW. In addition to specific communication with impacted councils, the 'protocol' referenced in the hearing has now been made public for all councils to use when managing contaminated mulch.

The Contaminated Mulch Management Plan (CMMP) provides clear guidance to manage the contaminated mulch placed across sites in NSW. The CMMP will ensure a consistent and safe approach for the assessment and removal of mulch contaminated with asbestos fragments and building and demolition waste.

This CMMP has been developed by a technical working group with representatives from NSW Public Works Advisory (PWA), the EPA and SafeWork NSW. The CMMP has been developed in line with the NSW Work Health and Safety Regulation 2017 (WHS Regulation) and relevant Codes of Practice, or the requirements under other relevant legislation.