



NSW Legislative Council Hansard

Local Government Amendment (Discipline) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 22 September 2004.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.16 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill addresses councillor misbehaviour in local government. It brings forward the provisions contained in schedule 2 of the Local Government Amendment Bill 2003, which received its second reading in this House but did not further proceed. Later I will explain certain departures and refinements to those original proposals.

The bill reflects the Government's commitment to the proper functioning of local government. The Government recognises that if community confidence in local government is undermined and councils cannot function in the best interests of ratepayers the State Government must intervene.

The bill sets out the standards of behaviour that the community expects of persons both in leadership positions in councils and working for councils. It will do this by introducing a comprehensive code of conduct that all councils will be required to adopt and apply. While the Act currently allows for a code of conduct to be prescribed, the new bill sets out an improved system for the adoption and application of a model code of conduct by councils that will link in with the new provisions on misbehaviour. I will outline those provisions later in this speech.

A model code of conduct is being drawn up with input from the peak industry bodies for local government in New South Wales, council representatives, the Independent Commission Against Corruption, the Ombudsman, and the Department of Local Government. We are confident that the foreshadowed code will assist councillors and councils to better understand their responsibilities in carrying out their functions on a day-to-day basis.

Not only will councils have minimum standards set out in the prescribed code; the bill also leaves room for councils to supplement those standards with their own provisions that are relevant to local conditions. This also permits councils to introduce more stringent provisions where they are appropriate. Councils will continue to be required to review their code after each election to ensure that it is consistent with the prescribed code and contains any other appropriate provisions.

It is expected that the vast majority of councillors will follow their code of conduct in good faith. No doubt they will welcome a code that assists them to clearly understand their responsibilities. However, the irresponsible actions of a few councillors can tarnish the good name of local government. This bill will ensure that irresponsible behaviour of councillors can be better dealt with by councils.

The bill sets out the sort of action or omission that will amount to misbehaviour. This includes the failure to comply with applicable requirements of the council's code of conduct, as well as acts of disorder that are committed by councillors during council or committee meetings. It is important that councils are able to restrain attempts by councillors to improperly disrupt council and committee meetings. Councillors

should not be able to get away with irresponsible behaviour that inhibits councils from getting on with their business.

It is also important that breaches of the Local Government Act and regulations and failures to act in accordance with the council's code of conduct by councillors can be properly disciplined by councils.

With this in mind, the bill permits a council to formally censure a councillor for misbehaviour. However, this power should not be seen as a way of stifling proper process and debate at council meetings, nor of preventing minority representatives from putting forward their views on matters before council. The bill therefore requires a formal censure resolution to follow the usual requirements for notice and to state the grounds on which the council is satisfied that the councillor should be censured. These requirements will provide proper transparency and accountability for council decisions.

If a councillor does not respond properly to the attempts of his or her council to stamp out misbehaviour, the Director-General of the Department of Local Government will be able to suspend that councillor for a period of up to one month, where that action is warranted. The suspension for a short period of a councillor who is involved in misbehaviour will allow both the council and the councillor concerned to re-assess the situation with a view to returning to more appropriate behaviour.

For more serious misbehaviour, the director-general will be able to refer the matter to the Local Government Pecuniary Interest Tribunal, which will be given new powers and appropriately renamed the Pecuniary Interest and Disciplinary Tribunal.

Councils, the Ombudsman, and the Independent Commission Against Corruption will each be able to indicate to the director-general that grounds may exist to warrant a councillor's suspension. In addition, the director-general will be able to request a report from a council about a councillor's alleged misbehaviour. Suspension from civic office is not an action that will be taken lightly.

The bill sets out the serious circumstances in which a councillor may be suspended from civic office for misbehaviour. Suspension may be warranted where there is a pattern of disruptive behaviour over a period of time that includes instances of misbehaviour, or if a single incident of misbehaviour is of a sufficiently serious nature. The power to suspend councillors in these circumstances will act as an appropriate deterrent to councillors becoming involved in misbehaviour in the first place.

The Government is aware of concerns that majorities on councils might misuse their referral power to silence minority representation. To prevent such misuse, the bill limits the circumstances in which councils can begin the process for suspension of a councillor. A council will be able to refer a matter to the director-general only if it has already formally censured the councillor or expelled the councillor from a meeting because of the relevant incident of misbehaviour. This constraint will also encourage councils to deal with issues of misbehaviour at a local level, whenever possible.

The director-general will either consider a departmental report or a report by the Ombudsman or the Independent Commission Against Corruption before deciding to exercise the power of suspension. In all circumstances, the councillor will have an opportunity to respond to allegations of misbehaviour.

However, in many circumstances suspension may not be the appropriate solution. The director-general can therefore refer a matter back to the council with recommendations as to how the council might otherwise resolve this matter. This is in line with the Government's belief that issues of misbehaviour are best dealt with at a local level by the council concerned.

Councils are autonomous bodies in their day-to-day operations, and the Government will therefore intervene in a council's affairs only when other solutions are not apparent. The bill encourages transparent decision making and accountability. The director-general must give reasons for a decision, whether it is to impose or not to impose a period of suspension, or to refer a matter to the Pecuniary Interest and Disciplinary Tribunal. If the director-general makes an order suspending a councillor from civic office,

the councillor will be able to appeal that decision to the Pecuniary Interest and Disciplinary Tribunal.

The tribunal is an independent body with a wealth of experience in dealing with councillors and others who are alleged to have failed to comply with the pecuniary interest provisions of the Local Government Act. It is therefore the appropriate body to be given the responsibility of considering matters of councillor misbehaviour.

To assist the renamed tribunal with its increased responsibilities, the bill will allow the deputy tribunal member to hear matters at the same time as the tribunal member. Where the director-general refers a misbehaviour matter to the tribunal, it will have complementary powers to the powers it currently exercises in pecuniary interest matters. This means the tribunal will be able to suspend a councillor from civic office for a period of up to six months in serious cases.

The tribunal will also be able to counsel or reprimand a councillor in less serious circumstances. A new power will enable the tribunal to suspend a councillor's right to be paid any fee or remuneration to which the councillor would otherwise be entitled, for a period of up to six months, without actually suspending the councillor from civic office. This power will not prevent councils from making payments outside the suspension period. However, the bill confirms that a council may not pay any fee or remuneration to which a councillor would otherwise be entitled in respect of any period of suspension, unless the Local Government Act specifically allows for this to occur. This will give the tribunal greater flexibility to ensure that councillors are appropriately and adequately sanctioned for irresponsible behaviour. As with pecuniary interest matters, the councillor concerned will have a right of appeal to the Supreme Court against the tribunal's decision.

The director-general will be able to refer requests from councils to the tribunal only where the relevant councillor has previously been suspended for misbehaviour. This will prevent any council from lobbying the director-general to refer matters to the tribunal when this is not appropriate. For example, complaints may be made about a councillor for factional or political reasons, rather than as a result of actual misbehaviour. The Government recognises the important role of the Independent Commission Against Corruption in dealing with particularly serious actions by councils and councillors. The bill consequentially amends the Independent Commission Against Corruption Act 1988 to make a substantial breach of an applicable requirement of the code of conduct a disciplinary offence for the purposes of that Act.

The Government recognises that councils are largely autonomous bodies that are accountable to their own electorate for the manner in which they conduct themselves. The primary responsibility for managing councillor misbehaviour therefore lies with individual councils. To reinforce this responsibility, and to prevent politically motivated referrals of misbehaviour to the director-general, the bill allows for the expense of investigating and dealing with misbehaviour matters to be borne by the councils themselves.

The Director-General of the Department of Local Government will be able to charge a council with the reasonable expenses of any investigation into misbehaviour matters that are referred to him by the council. Following consultation with the Local Government and Shires Associations of New South Wales, I have refined the original proposal regarding cost recovery. The bill allows a council to apply to the Administrative Decisions Tribunal for a review of the amount charged by the director-general if the council considers it is unreasonable. The right of review provides further accountability and transparency. Councils can be confident that they will be charged only with the reasonable expenses of departmental work relating to their misbehaviour matters.

I have also accepted that it is in the public interest for certain serious matters of misbehaviour to come before the Pecuniary Interest and Disciplinary Tribunal. In those circumstances, the expenses of dealing with the matter before the tribunal will not be charged to the council. The local community will not appreciate any waste of council resources on dealing with matters that could be resolved by the council, or that amount to factional or political grandstanding. Rather, the local community can generally expect councils to resolve misbehaviour issues. The power to recover expenses will be an additional incentive for councils to prevent councillor misbehaviour or to resolve matters at an early stage. However, it should not prevent councils that are unable to resolve continued disruption and serious misbehaviour from

referring matters to the director-general.

Councillors and other council staff should be aware that they are dealing with finite public resources that are provided for the needs of the local community. Where councils incur deficiencies or loss due to the negligence or misconduct of a councillor, the general manager of a council or any other staff member, it is important that those persons can be made accountable for their actions or omissions.

To clarify that the Director-General of the Department of Local Government can permit a departmental representative to surcharge the person responsible for such negligence or misconduct in appropriate cases, the bill removes the need for culpable negligence to be proved.

The meaning of "culpable" in this context is unclear and has provided a barrier to the appropriate use of the surcharging power. The bill will remove that unintended obstacle. However, this amendment will apply only to alleged negligence or misconduct occurring or committed after its commencement. It is anticipated that this power would only be used in circumstances of serious negligence or misconduct. A right of review to the Administrative Decisions Tribunal already provides safeguards against any inappropriate use of this power.

The bill clarifies that neither a councillor nor a council may direct a member of staff of a council as to the content of any advice or recommendation. However, this will not prevent the council or the mayor from directing the general manager to provide advice or a recommendation. This minor amendment recognises the different roles of councillors, mayors, the general manager, and other staff of a council, and prevents inappropriate approaches to staff by councillors.

The Department of Local Government already undertakes various investigations into local councils and councillors under the Local Government Act. The bill makes clear that the director-general can also authorise preliminary inquiries about the activities of local councils to help decide whether to exercise any of the formal powers of investigation under the Act.

In conclusion, the bill will encourage councillors and councils to act in the best interests of their local community, free from any disruptive and irresponsible behaviour by individual councillors.

The bill will be welcomed by all those concerned about the proper functioning of local government in New South Wales, and I commend it to the House.