

LOCAL GOVERNMENT AMENDMENT (LEGAL STATUS) BILL 2008

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Bill introduced on motion by Mrs Barbara Perry.

Agreement in Principle

Mrs BARBARA PERRY (Auburn—Minister for Local Government, and Minister Assisting the Minister for Health (Mental Health)) [4.35 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Local Government Amendment (Legal Status) Bill 2008. The bill achieves two important reforms for local government workers in New South Wales. The first of the reforms arises from the WorkChoices regime, whose adverse impact is still being felt by workers in this State. Local councils and county councils are bodies corporate under the Local Government Act. This corporate status might, in some circumstances, still expose them to regulation by the Federal industrial relations system. Quite simply, WorkChoices is not as fair for workers as is the New South Wales industrial relations system. Although the worst aspects of WorkChoices are now dead and buried, further legislation to repeal other unfair elements of WorkChoices will not be introduced until mid 2009, with the new system not being fully operational until mid 2010.

The New South Wales Government does not believe that council employees should have to wait any longer for certainty, and is committed to protecting New South Wales local government employees and their hard-earned rights and benefits. Councils and local government unions have strongly indicated they would prefer to remain within the State industrial system—a system that has delivered fairness and certainty for everyone. Councils in New South Wales have voted with their feet and made extensive use of the referral agreements provision inserted into the Industrial Relations Act in 2006. Section 146A permits an employer and a union to agree to refer industrial matters for resolution and determination by the Industrial Relations Commission of New South Wales.

Welcome as that cooperation is, it cannot take away the basic uncertainty regarding which system local councils belong in, so the New South Wales Government has decided that something needs to be done sooner rather than later. This bill will minimise the risk of New South Wales councils being caught up in the Federal system by changing their corporate status. Instead of being a body corporate, a council will be constituted as a body politic of the State and will have the legal capacity and powers of an individual. This change in legal status is not intended to affect the day-to-day operations of a council. It will not expose councillors to greater risk of personal liability. It will not affect the existing legal rights and obligations of councils or third parties who do business with them. Its only impact is to remove the possibility that a council might be characterised as a constitutional corporation and therefore as an employer for the purposes of the Commonwealth's Workplace Relations Act. It will ensure that a council cannot be subject to the Federal industrial relations legislation.

However, New South Wales laws that apply to corporations will continue to apply to councils as if they were bodies corporate. This means, for example, that section 50 of the Interpretation Act will continue to apply to a council. As a result, a council will continue to have a seal for the execution of documents and may sue and be sued in its council name. Councils also will continue to be subject to any statutory penalties or fees—such as filing fees—that may be imposed on bodies corporate, rather than being treated as natural persons. Earlier this year the Queensland Parliament enacted similar legislation to protect council employees in that State from WorkChoices. That legislation ensured that council workforces are covered by the State industrial relations system. Due to the different legislative schemes for local government in each jurisdiction the reforms are not identical. The bill will nonetheless achieve similar certainty for New South Wales council and county council employees.

The Government is aware of the recent Federal Court decision that held that a local council in Queensland, before the Queensland reforms were enacted, was not a constitutional corporation. Although this decision is encouraging, it does not resolve the issue finally, and the New South Wales Government does not believe that council workers should be left in legal limbo. At this time more than 50 New South Wales councils have not entered into common law agreements with their employees, and those employees remain exposed to the Federal system. This bill removes the spectre of this happening. It should be welcomed by local government employees across the State.

The Government will continue to encourage the Commonwealth to toss out the woeful remnants of WorkChoices and ensure clarity for the industrial regulation of local government around Australia. The bill also introduces a further important improvement for the conditions of employees in local government. It will allow a council to appoint temporary employees for up to two years to fill positions when permanent council staff are on parental leave. Currently the Local Government Act provides that when a council or general manager appoints a person to a position that is temporarily vacant because the holder of the position is sick, absent or suspended from duty the temporary appointment may not continue in that position for more than 12 months.

However, when the Local Government (State) Award 2004 was made it allowed staff to be granted parental leave for a period of up to 24 months. This means that if a staff member is on parental leave for 24 months the general manager can appoint someone to fill that position for only 12 months. At the end of that 12-month period the general manager would have to go through the process of appointing another person to that temporary vacancy. The bill allows persons to be directly appointed to a position without advertisement for a period of up to 24 months when the appointment is to fill a vacancy arising from the granting of parental leave. The local government sector has been given the opportunity to comment on this proposal.

The department issued a circular to all councils advising them of the proposal to amend the Act and inviting them to comment. Of the 65 councils and one county council that responded to the circular, 57 supported the proposal and only 2 opposed it. Five councils did not indicate a position. The United Services Union also supports this proposal. I now turn to another aspect of the bill. Currently section 358 of the Local Government Act provides that a council can form a corporation or other entities with the approval of the Minister for Local Government. Applications to form corporations by councils are not very common and are usually sought only for non-core activities requiring specialised management. Currently there are certain things I take into account when I consider these applications.

The bill seeks to make it mandatory for the Minister for Local Government to consider certain criteria in granting requests by councils to form corporations or other entities. To achieve this the bill proposes a new regulation-making power to be included in section 358 of the Act. The criteria to be considered will be specified in the regulation. These criteria will be based on the administrative criteria previously developed by the Department of Local Government and applied by Ministers. For example, currently a council must demonstrate that its proposal is consistent with the functions of the council, the proposed entity will be legally separated from the council, the council is financially viable and, importantly, the proposal will result in existing council staff being transferred to the employment of the corporation on conditions that are consistent with the previous employment with the council.

Councils are also required as part of the applications to provide information on whether a newly proposed entity will guarantee the continued employment of transferred staff for a period of at least three years. The regulation will be amended to specify the matters similar to those mentioned above so that a Minister approving an application by a council under section 358 will have to have regard to those matters. This bill demonstrates the Government's continued commitment to support the local government sector by enabling it to carry out its functions in a sustainable manner based on the principles of good governance. I commend the bill to the House.