

LOCAL GOVERNMENT AMENDMENT (LEGAL STATUS) BILL 2008

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Second Reading

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Emergency Services) [6.23 p.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.

It gives me pleasure on behalf of the Government to introduce the Local Government Amendment (Legal Status) Bill 2008.

The bill implements two important reforms for local government workers in New South Wales.

The first of the reforms is designed to deal with the consequences of the Work Choices regime, the adverse impact of which is still being felt by workers across New South Wales.

Local councils and county councils are bodies corporate under the Local Government Act. This corporate status might, in some circumstances, still expose them to the Federal industrial relations system and its regulations.

Quite simply, the New South Wales industrial relations system is fundamentally fairer than WorkChoices.

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 fully operational until mid 2010.

The New South Wales Government believes that council employees should not have to wait any longer for certainty. We are determined to protect New South Wales local government employees and their hard earned rights and benefits.

Councils and local government unions have made it clear they would prefer to remain within the State industrial system, a system which 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 now.

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 and will not affect the existing legal rights and obligations of councils or third parties who do business with them.

Its only impact will be to remove the possibility that a council might be characterised as a constitutional corporation and therefore 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.

New South Wales laws that apply to corporations, however, 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 will also 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 Queensland from WorkChoices. That legislation ensured that council workforces are covered by the Queensland industrial relations system.

Due to the different legislative schemes for local government in each jurisdiction, the reforms are not identical. This bill, however, will nonetheless achieve similar certainty for New South Wales council and county council employees.

The Government is aware of the recent Federal Court decision, which held that a local council in Queensland, before the Queensland reforms were enacted, was not a constitutional corporation. Although this decision was welcome, it did not resolve the issue finally and the New South Wales Government believes that council workers should not be left in legal limbo.

At this time, there are more than 50 New South Wales councils that have not entered into common law agreements with their employees and those employees remain exposed to the Federal system.

This bill removes the possibility of this happening. It will be welcomed by local government employees across the State.

The Government will continue to encourage the Commonwealth to toss out the sad 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 2 years to fill positions where permanent council staff are on parental leave.

Currently, the Local Government Act provides that where a councillor 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 appointee 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 only appoint someone to fill that position for 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, where 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 1 county council that responded to the circular, 57 supported the proposal and only two opposed it. Five councils did not indicate a position.

This bill demonstrates this Government's continued determination 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.