



# Legislative Assembly

## Local Government (Review Of Legislative Proposals) Bill Hansard

### Extract

06/09/2001

#### Second Reading

**Mr TORBAY** (Northern Tablelands) [10.02 a.m.]: I move:

That this bill be now read a second time.

The purposes of this bill are to introduce fairness into the relationship between State and local government, improve the transparency of government legislation, engender accountability in the legislative process and improve the effectiveness of government legislation. It is all too easy for governments, under advice from their departments and agencies, to introduce legislation without giving due consideration to the legislative impacts, particularly where practical responsibility for, and the costs of implementation, lay outside the State Government, in most cases with local government. There has been a raft of such legislation in recent years. In most instances resources to cover the costs of implementation have not accompanied the imposed responsibilities. The costs include administration, systems, enforcement and, in many instances, a requirement to engage additional specialist staff or external consultants. In the few instances where consideration was given, it was generally inadequate. These impositions are commonly referred to as unfunded mandates.

It can be argued that this imposition of responsibilities and hidden transfer of costs is somewhat dishonest from a public policy point of view. Under the current system the Parliament is not necessarily made aware of the transferred costs of the legislation. This bill seeks to change that. In the interests of fairness, transparency and accountability—all attributes of good government—it is imperative that a process is in place to ensure that a mechanism is in place to identify, assess and account for potential impacts. It would be irresponsible to oppose such a mechanism. We need to recognise that local government is a legitimate sphere of government. It is not a network of State Government branches or agencies—despite the apparent views of many of those in government and many of the bureaucrats who run our State agencies. Local government is a democratically elected sphere of government, with councils primarily accountable to their communities through the ballot box, not the State Government.

Local government is fiscally distinct from State Government. While it may operate largely under State legislation, the Local Government Act and the Planning and Environment Act, unlike State agencies it is not a financial dependant of the State Government. Councils are largely financed by the community through rates and charges, with additional government support primarily provided by Commonwealth financial assistance grants. Indeed, State government grants to local government represent only about 5 per cent of local government revenues and that has been declining as a proportion of total revenues.

While recognising local government as an autonomous sphere of government, it is also important to recognise that local government plays a critical role in the implementation of State, and to a lesser extent Commonwealth, government policy and programs. Much of the State Government mandate is delivered to the community through councils. The effectiveness of government policies and programs will be dependent, in many cases, on local government's capacity to implement them. Governments and their bureaucracies should not ignore this fact. This includes national competition policy—a complex issue that I will not stick my fingers into now.

We should also recognise the important role that local government plays in the provision of infrastructure and services in the community. For example, local government is responsible for the vast majority of roads and bridges in the State—83 per cent of total road length in New South Wales. It is responsible for virtually all water supply and sewerage infrastructure and services outside the Sydney and Hunter water districts. Local government owns and operates the majority of airports outside the metropolitan area, including large regional airports such as Williamtown, Wagga Wagga, Ballina and Dubbo. Local government is also responsible for waste services, parks and sporting facilities, the public library network and associated services, a large proportion of health and community services, and planning, environment and building regulation.

Local government has been increasingly taking on additional responsibilities, such as natural resource management, economic development, law and public safety. It is also taking on greater responsibility in traditional areas, such as waste management, health, community services and environmental management generally. The increased responsibilities have resulted from the combined effects of new legislation, the devolution of responsibilities from other spheres of government, the abrogation of responsibilities by other spheres of government and rising community expectations.

Communities are increasingly demanding that councils do more in areas, such as the environment, aged care, youth services, health services, job creation and economic sustainability, and councils must respond to these

demands. It should be remembered that by its very nature local government is the sphere of government that is closest to the community and the most responsive to the community. Councils do not shy away from these additional responsibilities. Councils are generally prepared to take them on, and they are often best placed to fulfil them efficiently and cost effectively, provided they have the resources. For a start, they are out there on the ground with administrative structures in place. They possess detailed local knowledge, cover the whole of the State and remain uniquely responsible to the community.

Local government is being starved of the financial resources required to meet these responsibilities. I will discuss this later. The Commonwealth Grants Commission [CGC] has recently acknowledged the growth in local government responsibilities and functions, legislated and otherwise. In its recent draft report entitled "Review of the Operation of the Local Government (Financial Assistance) Act 1995" the CGC acknowledged reports that the changes have resulted from devolution, raising the bar and cost shifting. Devolution is where another sphere of government gives local government responsibility for new functions, that is, unfunded mandates.

Raising the bar is where another sphere of government through legislative or other changes increases the complexity of or standard at which a local government must provide services, hence increasing its costs, also unfunded mandates. Cost shifting is where local government agrees to provide a service for another sphere of government but funding is subsequently reduced or stopped, leaving local government holding the bag for a service that the community expects; or where another sphere of government ceases to provide a service and must intervene in the interests of the community, that is, unfunded mandates by stealth, ambush or abrogation, and increased community expectations.

The commission's analysis of local government expenditure in the period 1961-62 to 1997-98 showed an increase in the relative importance of recreation and culture, and housing and community amenities. It showed an expansion of education, health, welfare and public safety services and, as would be expected, a decline in the proportion of expenditure on roads and property-related services. The CGC concluded that local government responsibilities have broadened and are increasingly providing human services. I would confidently assert that there has also been a substantial increase in environmental expenditure, although not readily identified in the standard financial classifications. An independent analysis by a respected body like the CGC supports local government assertions that responsibilities and functions have increased. Local government can no longer be dismissed in terms of roads, rates and rubbish. The analysis also supports the conclusion that, to a significant extent, this is the result of unfunded mandates.

The CGC concluded that where the source of financial pressure is the result of changing policies or actions of other spheres of government, it would be appropriate for that sphere to acknowledge local government's need for greater financial assistance. Examples are the Protection of the Environment Operations Act, the Local Government Amendment (ESD) Regulation, stormwater management planning, the Local Government (Approvals) Amendment (Sewage Management) Regulation, the Waste Minimisation and Management Act, the Contaminated Land Management Act, environmental objectives for New South Wales waters and the Marine Parks Act.

I would hope that I am largely preaching to the converted when it comes to recognition of the important roles and responsibilities of local government. I would be disappointed if there were not a high proportion of members who have served—and in some instances still do—on councils. However, it does seem that some members tend to forget their local government roots in the heady atmosphere of this Chamber. Financial constraints for local government and unfunded mandates resulting in increased responsibilities and functions are placing an unsustainable burden on local government and local government resources. Many honourable members will know first hand that local government finances are severely strained, and becoming increasingly more so.

This is the result of several factors. First, Commonwealth Financial Assistance Grants to local government have remained static in real terms and have fallen as a proportion of Commonwealth tax revenue from around 2 per cent of income tax in the 1980s to less than 0.6 per cent now. There has been no provision for increased responsibilities, mandated or otherwise. I note that Federal Assistance Grants were originally introduced by the Whitlam Government in specific recognition of the important roles and responsibilities of local government. To its credit, the Fraser Government honoured this commitment. Local government Federal Assistance Grants peaked under the Fraser Government and have been declining ever since. Second, there has been a steady decline in the proportion of State Government grants to local government as a proportion of overall revenue from around 12 per cent of local government revenue in 1974-75 to around 5 per cent now. Third, the mandate is unfunded, which is at the core of this bill. Fourth, the revenue raising capacity of local government is severely limited.

The Commonwealth and to a lesser extent State governments have a broad range of taxing options available, many of which are growth linked—for example, income tax, company tax, payroll tax, stamp duties and poker machine taxes. Local government has only one tax option, that is, rates, which would be a growth tax in the absence of rate pegging. Rates make up about 50 per cent of council revenue in New South Wales, although this varies across different councils. Other major components are user charges and fees, and grants, which represent about 17 per cent of average revenue. Last, but not least, is rate pegging. It has been soundly argued that rate pegging is both an unnecessary and inefficient constraint on local government. New South Wales is the only State that maintains rate pegging; even Jeff Kennett backed away from the idea of rate pegging.

In other States rates are kept in check by the ballot box—as they should be. As a democratically elected sphere of government, local government is accountable principally to the electorate, not to another sphere of government. No other State has found the need for heavy-handed intervention by the government. The arguments

against the current system of rate pegging range beyond the immediate scope of this bill, so I will not elaborate on them all. However, rate pegging is at the heart of the problem of unfunded mandates. As many honourable members would be aware, rate pegging limits the annual increase of council's general revenue, which is largely rate revenue. Unfunded mandates must be funded from general revenue. Obviously this means that while councils are forced to incur costs imposed through government legislation they do not have the option of recouping those costs through rates.

Local government is, in effect, caught in a vice. Governments and their agencies may think this is a clever and cost-effective way of implementing legislation, but they are deluding themselves. At the end of the day something must give. Ultimately, the combined effects of rate pegging, unfunded mandates and other financial pressures on local government mean that infrastructure and service provision are compromised. I cannot accept that white-anting councils and their communities is a legitimate way of funding State Government policy agendas. The Minister for Local Government has said much about the financial viability of some councils. He would benefit by having a good look at the cause of financial stress.

This bill concerns only the costs and responsibilities imposed on local government as a consequence of New South Wales Government legislation. This is only one source of increased responsibility, but it is a major source over which local government has the least control because we are talking about State Government mandated impositions. However, it is one that the New South Wales Parliament can do something about. The Commonwealth also imposes unfunded mandates on local government and I would like a similar bill introduced into the Federal Parliament. This bill may serve as a model for appropriate Commonwealth legislation. It is true that the problem of unfunded mandates is not unique to New South Wales, although local government in this State is uniquely constrained in how it can fund the mandates. There will be more on this issue later.

Again, I would like other States to adopt similar legislation if they do not already have appropriate mechanisms. New South Wales legislation again could be the model. It is appropriate for New South Wales to set the precedent for good governance in Australia. This type of legislation is not without precedent outside Australia. For example, the United States Unfunded Mandates Reform Act of 1995 requires Congress and federal agencies to consider the costs and benefits to state, local and tribal governments and to the private sector before imposing federal requirements that necessitate spending by these governments or the private sector. The Act authorised an appropriation to carry out the provisions of the legislation. As I mentioned earlier, a raft of new legislation and regulations have been introduced during the term of this Government. Generally speaking, that is a credit to the Government and I compliment it on its impressive legislative record. However, the failure to explicitly and adequately recognise the cost implications to local government is not to the Government's credit; this deficiency could be easily remedied.