Local Government Amendment Bill.

LOCAL GOVERNMENT AMENDMENT BILL

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Bill introduced, read a first time and ordered to be printed.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [4.50 p.m.]: I move:

That this bill be now read a second time.

This bill reflects the Government's commitment to the local government reform program and to improving the way councils deliver services to their residents and ratepayers. This bill introduces amendments that will encourage councils to examine their operations and plan for the future without financial burden. The amendments will clarify existing structural reform mechanisms in relation to amalgamations and boundary alterations within the Local Government Act 1993 and improve community consultation, making the process open and inclusive. Overall, the amendments will provide a more streamlined process to facilitate structural reform of local government. This bill is designed to increase community consultation in regard to local government reform without burdening the public with expensive and time-consuming processes.

The bill confirms the recent initiative of allowing regional reviews to be conducted by independent facilitators. These regional reviews involve extensive consultation with ratepayers where there are a number of conflicting proposals for boundary changes or amalgamations across a number of councils. From these regional reviews recommendations may be made with respect to structural reform in these local government areas. The bill gives greater certainty to the form which proposals for structural reform are to take. By setting out the criteria that proposals should meet before being considered, a proposal for structural reform will have already taken into account those matters that the Boundaries Commission is also required to consider before reporting on a proposal.

The amendments provide a timetable for proposals to be called for and referred to the Boundaries Commission for comment and report. This provides clarity and transparency of process. It enables proposals to be referred in a timely fashion, and will reduce uncertainty for ratepayers and council employees alike. Where the parties to a proposed boundary change or amalgamation are in agreement, the amendments eliminate the need for costly and time-consuming public meetings, opinion polls, postal surveys or formal polls, if the Minister believes it is not in the public interest.

Public consultation remains an important feature of the process. There is ample opportunity for members of the public to comment on proposals in writing. If the proposal arises from a regional review, extensive public consultation will have already been conducted. The bill allows the Minister to put forward proposals to the Boundaries Commission for an alteration in the number of wards or the number of councillors on a council. Councils and the Director-General of the Department of Local Government may also put forward such proposals to the Minister for consideration and submission to the Boundaries Commission. The Boundaries Commission may then make a recommendation for the Minister to implement. The current provisions in relation to minor boundary alterations remain unchanged.

The amendments make it clear that the Boundaries Commission may receive assistance from the Department of Local Government to process and evaluate submissions and to prepare a report to the Minister. Where relevant experience is not available within the department, or where such assistance would unreasonably take up available resources, external resources may be engaged, with the approval of the director-general. Previously the Boundaries Commission has sought administrative assistance to process submissions and to prepare a report. These reports have been the subject of legal proceedings. It is unreasonable to expect a part-time commission to

undertake the assessment of a large volume of submissions, and to prepare the thorough and detailed report expected of it, without such administrative assistance.

Where there may be a large volume of proposals for structural reform put forward for the Boundaries Commission's consideration and report the Minister will be able to appoint temporary boundaries commissioners to assist the commission in discharging its duties in a timely fashion. The bill provides a timetable within which the Boundaries Commission will be required to assess proposals and submissions on those proposals and report back to the Minister. This will provide certainty for councils and ratepayers as to when outcomes of structural reform processes may be expected.

The current provisions of the Act allow the Minister to recommend to the Governor that a proposal be implemented with such modifications as arise out of the Boundaries Commission's report. Modifications to a proposal recommended by the Boundaries Commission have recently been the subject of costly and ultimately unsuccessful court proceedings by a council. The bill makes it plain that the Boundaries Commission may propose modifications or alteration to a proposal referred to it for consideration, provided those modifications do not amount to a new proposal. This will lessen the opportunity for the wasting of ratepayers' and taxpayers' money on frivolous court challenges. The bill allows for a local government area to be dissolved without the need for a public inquiry where the Boundaries Commission's report recommends dissolution on a proposal for structural reform. This will avoid delay to a proposal that has already been the subject of extensive public consultation by removing the need for a further costly and time-consuming inquiry process.

The current provisions of the Act clearly provide that a proposal for amalgamation or boundary alteration may be proclaimed by the Governor. Such a proclamation may make provision for those things necessary or convenient for giving effect to the boundary alteration or amalgamation. Despite this clear provision, proclamations by the Governor have been the subject of court challenges by councils. This bill makes the current provision to make a proclamation even clearer. The bill removes the report of the Boundaries Commission, the Minister's recommendation based on that report and the proclamation of the Governor giving effect to that recommendation, from legal challenge.

Further, the bill makes it quite clear that more than one proclamation can be made to give effect to a proposal for structural reform, and that such a proclamation may authorise the Minister to make determinations pursuant to it. This codifies the current practise of structural reform by way of proclamation that has also been the subject of a costly court challenge. That challenge has resulted in an unfair amount of uncertainty and confusion within the community affected by the proclamation. The Government is committed to looking at what local government is, what it does and how it can be improved. I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

Leave granted.

To this end, I called on councils earlier this year to submit proposals for structural reform.

The responses reflect the Government's concept of local government structural reform as not being exclusively about boundaries.

This bill provides that where a proposal for structural reform is only concerned with the internal structure of a council, and not its physical area, a proclamation may be made giving effect to provisions that will put the reforms in place.

The proclamation making powers in the Act have been clarified to make it clear that they may make provision for the election of a Mayor and how many councillors a council will have.

The proclamation may also provide for the remuneration of those councillors.

Community consultative committees and long term rate pegging strategies can now also be dealt with in a proclamation.

Local government structural reform goes beyond boundaries. It is about putting in place a progressive system that stimulates participation by electors and their councils.

Change will only occur where a proposal demonstrates that electors will benefit from a more cost-effective and efficient council.

Existing provisions of the Act have been altered so that elections may be postponed where necessary for no more than 24 months.

This will avoid a situation where a council undergoing structural reform to its area, will also have to prepare for an election.

It will also help to avoid confusion by ratepayers as to which local government area they are voting in.

Further, it will ensure that an elected council will be elected for its full term.
The provisions in this bill allowing for the postponement of elections, refine the existing provisions within the Local Government Act.

The provisions have been extended to cover a situation where a council is the subject of a public inquiry under the Local Government Act.

Liverpool Council is currently the subject of a public inquiry that is examining serious allegations regarding the management of major projects within its local government area.

That council is due to have its elections in March 2004. Preparation for that election must commence next month.

The outcome of the public inquiry will not be known for some months yet. It would be a great waste of ratepayers' money to have a council elected only to have it face a recommendation by a public inquiry that it be dismissed.

The ability to postpone elections has been made retrospective until the 1 August 2003.

This is to meet the particular situation of Liverpool, but also to remove uncertainty as to the power to postpone elections for those local government areas which are the subject of current structural reform proposals.

The bill also delivers on the Government's commitment to ensure a transparent and accountable local government system.

The reputations of an entire council should not be tarnished because of the actions of one or a couple of councillors.

Most councillors are community-minded people who do a fantastic job for their communities. The Government wants to ensure these councillors are protected.

At present there are limited circumstances in which an individual councillor ceases to hold civic office due to misbehaviour.

They include circumstances where a councillor has committed serious corrupt conduct.

Yet there have been a number of cases in recent years where, because of serious misbehaviour from a small number of councillors, the Minister has had little option but to dismiss the entire council.

There are other cases where, while the council has not been dismissed, the behaviour of a few councillors has had a serious impact on the efficiency and effectiveness of the council.

Warringah Council was dismissed earlier this year after Commissioner Daly found, among other things, a persistent use of crude and offensive terms by some councillors. This behaviour was offensive to both the community, and the councillors themselves.

In 1999, Bega Valley Council was dismissed after a report highlighted a number of issues, including the intensity with which individual councillors pursued staff over errors or views, and frequent instances of councillors verbally abusing fellow councillors, council staff and members of the public during council meetings.

In 1994, Burwood Council was dismissed after a report concluded that the council could not conduct its meetings with dignity or decorum. There were reported instances of sexist and racial abuse and physical assault.

Conflict at one country council became so heated, there was almost an outbreak of physical

violence.

At another council, councillors have been thrown out of meetings by police.

A yet another council, a councillor imitated a goosestep in the chamber and shouted 'Heil Hitler' at the Mayor.

Clearly, this type of behaviour can have a serious detrimental impact on the communities concerned. And it continues to damage the reputation of local government.

This bill creates an explicit power to allow a council to censure a councillor for misbehaviour, by way of a formal resolution.

This codifies the current common law position.

A power has been created to allow a council to apply to the Director General to suspend a councillor for one month, where there has been misbehaviour serious enough to warrant such action.

This will serve as a circuit breaker and enable a heated situation to cool down.

The ICAC and the Ombudsman will be able to refer allegations of misbehaviour to the Director General, and recommend that the councillor be suspended.

The Director General will consider such a recommendation, and may suspend a councillor for one month, if necessary.

Before the Director General can suspend a councillor, he or she must examine the circumstances, and provide the councillor complained about with a copy of the allegations made against them. That councillor must also be given the opportunity to respond.

A councillor who is suspended by the Director General can appeal the suspension.
The Local Government Pecuniary Interest Tribunal, to be re-named by this bill the Local Government Pecuniary Interest and Disciplinary Tribunal, will hear such an appeal.

The tribunal is a part-time tribunal, so the bill provides for the deputy tribunal member to sit at the same time to allow for the better management of case loads.

The powers of the tribunal have been widened. In addition to dealing with appeals regarding suspension, the tribunal will also be able to discipline councillors where they have previously been suspended for one month, but have not ceased their misbehaviour.

In those cases, the tribunal will be able to reprimand or counsel a councillor, suspend payment of a councillor's fees for up to six months, suspend the councillor's right to participate in meetings for up to six months or suspend both fees and rights to attend meetings for up to six months.

This will ensure that a serious breakdown in council operations caused by the serious misbehaviour of a councillor, can be dealt with without having to dismiss the entire council.

The bill further strengthens the provisions of the Act to set a standard of negligence or misconduct before a councillor can be surcharged.

In 1997, Maitland Council was dismissed after it was found that the conduct of the elected members of council had not been compatible with the charter set out at Section 8 of the Local Government Act 1993. There was criticism of the conduct of elected members, particularly in their dealings with staff.

The Department of Local Government has had to step in at Ku- ring-gai Council, where a councillor had treated the general manager in a manner that was hostile, confrontational and antagonistic.

The bill will amend the Act to prohibit a councillor from directing or influencing a staff member in the performance of his or her duties.

The current provisions of the Act allow for the preparation of a model code of conduct. Councillors and staff are obliged to comply with this code of conduct.

The bill provides for a new code of conduct that will set a minimum set of behavioural standards. It will be mandatory for councils to adopt this code as a minimum code of conduct.

Councils will be able to tailor their code to meet their individual circumstances where necessary, so long as any supplementations are not inconsistent with the model code issued by the Minister.

The new code of conduct is currently being drafted in consultation with a reference group including the Local Government and Shires Associations, the Local Government Managers Association and councillors.

It is expected that the new code will be completed in time to apply to the new councillors elected at the ordinary elections next March.

Councillors and staff will be obliged to comply with this code of conduct.

A serious or substantial breach of this code will be a disciplinary matter such as to attract the jurisdiction of the ICAC.

This will meet concerns previously raised by the ICAC about their ability to deal with breaches of the code of conduct that may amount to corrupt conduct.

Various provisions of the Act allow complaints to be made to the Director General in relation to a council's activities and conflicts of interest, including pecuniary interest. Those sections also permit the investigation of those complaints.

The bill amends the Act to make it plain that the Director General may make preliminary enquiries for the purpose of deciding whether or not to exercise powers under the Act to investigate.

A similar amendment was recently made to the Ombudsman Act.

The Government is committed to reforming local government for the benefit of ratepayers and residents.

This bill achieves the legislative clarity and consistency necessary to make sure that this reform process is open and inclusive.

I commend this bill to the House.

Debate adjourned on motion by the Hon. Don Harwin.

Subjects: Local Government; Electoral Law .

Speakers: Kelly, The Hon Tony.

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