LOCAL GOVERNMENT AMENDMENT (RED TAPE REDUCTION) BILL 2014

Bill introduced on motion by Mr Paul Toole, read a first time and printed.

Second Reading

Mr PAUL TOOLE (Bathurst—Minister for Local Government) [5.14 p.m.]: I move:

That this bill be now read a second time.

I am proud to introduce the Local Government Amendment (Red Tape Reduction) Bill 2014. The bill proposes a number of amendments to the Local Government Act 1993 and the Local Government (General) Regulation 2005. It represents the first step in the delivery of the most comprehensive reforms to local government seen in this State for a generation. The proposals in the bill comprise the early amendments to the Act and regulation foreshadowed by the Government in its response to the recommendations of the Local Government Acts Taskforce. The proposals are the first legislative changes being made in the program to create Fit for the Future local government. The Fit for the Future program, announced by the Government on 10 September, is the most significant investment the State has ever made in the local government sector, to ensure New South Wales has strong, modern councils to deliver the housing, jobs and local infrastructure that people need.

The Fit for the Future program includes a commitment to introduce a new, enabling principles-based Local Government Act that will seek to prescribe outcomes rather than processes—outcomes that will enhance local governance and benefit local communities. In particular, the Act will be designed to enshrine integrated planning and reporting principles as its central framework; reduce unnecessary red tape and prescription; enhance community engagement; embed the principle of fiscal responsibility; improve financial and asset planning; and strengthen representation and leadership.

The changes proposed in this bill represent a significant down payment on the achievement of these important legislative goals. They are designed to reduce unnecessary regulatory burden on councils and to cut the red tape that sometimes hinders the capacity of councils to operate in a way that is more cost-effective and collaborative and best adapted to meet local needs. The changes will also allow councils to engage more effectively with their communities, utilising technologies more appropriate to the twenty-first century and will support councils to become fit for the future.

First, the bill seeks to promote regional and collaborative procurement by removing the existing prohibition on the ability of councils to delegate the acceptance of tenders. Under the Local Government Act, councils are required to invite tenders before entering into certain contracts. The Act states that where a council is required to tender prior to entering into a contract, only the elected council can accept or reject a tender. This prevents councils from being able to delegate this function to a regional organisation of councils or any

specialist procurement service providers engaged by groups of councils to undertake complex procurement on their behalf. This means that, in practice, where councils undertake joint procurement requiring a tender process, each of the participating councils is required to separately resolve to accept the tender. Given the differences in the meeting cycles of councils, this is a process that could take up to two months.

The proposal contained in the bill to remove the restriction on the delegation of the acceptance of tenders will allow group purchasing by councils, without the need to go back to each individual council for endorsement. This will allow regional organisations of councils and future regional joint organisations to enter into contracts on behalf of councils—something that is essential for ensuring efficient local government that is fit for the future. Importantly, the capacity to undertake group purchasing will deliver benefits in economies of scale, greater purchasing power and the capacity to utilise procurement to drive regional economic development strategies.

Second, the bill seeks to lift the prescribed tendering threshold for councils to the same $250,000 threshold that applies to State government agencies, for those councils that have demonstrated that they have sufficient scale and strategic capacity to become fit for the future. Councils are exempt from the requirement to invite tenders in relation to contracts involving an estimated expenditure or receipt of an amount of less than $150,000. The prescription of this threshold is premised on an assumption about the potential risk to all councils, regardless of their size or capacity, posed by a financial outlay in excess of this sum and a view that the most appropriate means of addressing this risk is by forcing councils to comply with the onerous and overly prescriptive tendering requirements currently prescribed under the Act and regulation. In local government, one size does not fit all and it should be noted that councils will have in place internal procedural requirements to ensure that procurement involving outlays below the prescribed tendering threshold is still undertaken in a manner that ensures the delivery of value-for-money outcomes based on principles of transparency, competition and probity.

< 29>

The third of the proposed amendments reflected in this bill is designed to allow New South Wales councils to support registered Australian Disability Enterprises by being able to procure their services directly without having to go to tender. The New South Wales Government is working to increase government-purchasing opportunities to support businesses that employ people with a disability. These businesses are known as Australian Disability Enterprises. The Public Works and Procurement Regulation 2014 seeks to deliver this policy objective by simplifying the purchasing of goods and services by State government agencies from approved Australian Disability Enterprises. This means that New South Wales government agencies may purchase goods and services directly from approved Australian Disability Enterprises on the basis of a single written quote, including goods or

services provided through whole-of-government contracts. Councils currently are not able to support this policy objective by being able to procure directly from registered Australian Disability Enterprises without having to go to tender. The amendments proposed in the bill will enable councils, like State government agencies, to support registered Australian Disability Enterprises by removing the requirement to invite tenders in relation to contracts for the purchase of goods and services made with an entity approved as a disability employment organisation under the Public Works and Procurement Act 1912.

The fourth of the proposed amendments is designed to ensure that councils continue to enjoy the efficiencies and cost savings associated with being able to procure goods and services under State Government prequalification schemes without the need to tender. The Local Government Act exempts councils from the requirement to tender where they enter into a contract under a standing offer or prequalification scheme established by the Federal and New South Wales governments and certain prescribed entities, such as Local Government Procurement and Procurement Australia. As a result of recent changes in State Government procurement practices, many prequalification schemes established by the New South Wales Procurement Board no longer specify a rate.

Questions have been raised about whether councils can still use prequalification schemes established by the New South Wales Procurement Board and other prescribed entities where no rate is specified. Potentially, this would prevent councils from being able to continue to use State Government prequalification schemes, thereby precluding them from achieving the efficiencies and cost savings delivered by use of these standing offers. The bill addresses this risk by clarifying that the current exemption from tendering will continue to apply where councils use standing offers or prequalification schemes established by any entity nominated in the Act or prescribed by the regulations even where no rate is specified.

The fifth set of amendments is designed to facilitate more effective engagement by councils with their communities by updating the notification requirements prescribed under the Act and regulation to allow the use of twenty-first century technologies that are better aligned to contemporary behaviours and expectations. There are a range of circumstances in which the Local Government Act and regulation currently require councils to give notice to their communities or particular sections of their communities by advertising in newspapers. Given the reduced circulation of newspapers and the increased use of other forms of social media and other electronic means of communication, this is no longer an effective way for many councils to communicate or engage with their communities. It is also one that needlessly imposes a significant red tape and cost burden on many councils without necessarily achieving the desired outcome of communicating or engaging with the audience at which the message is targeted.

Therefore, it is proposed to update the advertising requirements in the Act and regulation

by requiring councils to publish advertised information on their websites and either in a newspaper or in such other manner as the council considers appropriate for the purposes of bringing the advertised matter to the attention of all potentially interested persons. It is important to note that these amendments reflect the proposed approach for the development of a new Local Government Act that will see outcomes rather than processes being prescribed. The final set of proposed amendments seeks to reduce the frequency with which councils are required to adopt policies governing the payment of expenses and the provision of facilities to their councillors from annually to once in each term of the council within the first 12 months of the council's term. The current requirements that these amendments seek to improve on again reflect a disconnect between prescribed process and actual outcomes.

The Act currently requires councils to annually adopt a councillor expenses and facilities policy and to exhibit it prior to doing so even where no changes are made. Councils also are required to forward a copy of the policy or amendment together with the details of all submissions received to the Chief Executive of the Office of Local Government. These requirements were designed to operate as pre-internet transparency and accountability mechanisms. The existing requirements for annual adoption and notification needlessly impose a red tape burden on both councils and the Office of Local Government that does little to add to accountability or transparency in the payment of expenses and facilities to councillors. A number of alternative mechanisms ensure accountability and prevent misuse more effectively and in ways that impose less administrative burden on councils.

In particular, the Office of Local Government has issued guidelines to regulate the content of councillor expenses and facilities policies. Under the Act, council policies are required to comply with these guidelines. The regulation places limits on the payment of certain types of expenses and the use of council-owned vehicles. Additionally, under the Government Information (Public Access) Act 2009, councils now are required to publish their policies on their websites where they are accessible to anyone at any time, and councils are required to publish detailed information about the payment of expenses and the provision of facilities to their councillors in their annual report. It is therefore proposed to amend the Act to require councils to adopt an expenses and facilities policy once in each term of the council within 12 months of an ordinary election. The policy is to be adopted at an ordinary council meeting that is open to the public. Councils are to place the policy on public exhibition for 28 days prior to adopting the policy and to consider submissions made by the community prior to adopting the policy.

Where councils make a substantial amendment to the policy, the council is to put the amended policy on public exhibition for 28 days and to consider any submission made by the community prior to adopting the policy. The amended policy is to be adopted at an ordinary meeting that is open to the public. Councils would no longer be required to provide

copies of their policies to the Chief Executive of the Office of Local Government. Each council's policy will be accessible to the Office of Local Government and, more importantly, to members of the community on its website.

To conclude, I am confident that councils and local communities will welcome the proposed amendments contained in this bill. The amendments, if passed, will deliver immediate benefits to councils in red tape reduction, improved efficiencies and lower compliance costs. Importantly, they also will deliver benefits to local communities in greater transparency, and more effective and meaningful engagement and communication by their councils. Importantly, the amendments proposed in the bill are the first step in creating legislation that will support Fit for the Future local government better able to meet the needs of local communities. I commend the bill to the House.

Debate adjourned on motion by Mr Guy Zangari and set down as an order of the day for a future day.