



Legislative Assembly

Local Government Amendment (Ethics Review Panel) Bill Hansard

Extract

14/03/2002

Second Reading

Mr BARR (Manly) [10.23 a.m.]: I move:

That this bill be now read a second time.

Honourable members will be aware that we have problems in local government and that the powers of the Minister are limited in that regard. At the end of the day the Minister has power to appoint an administrator, after having gone through due process of an investigation and public inquiry. But, short of that, the Minister's powers are limited and he also suffers the problem of limited resources in dealing with so many councils. The Local Government Act requires a high standard of behaviour of councillors. They are called upon to act honestly, and to exercise care and diligence in carrying out their functions. The community also expects a high standard of behaviour because councillors are routinely dealing with matters relating to people's personal property, their community land and many other assets.

In these dealings there is huge scope for direct and indirect benefits to councillors, for cronyism, impartial dealings, and outright fraud. Problems often occur when developers and real estate agents are involved with council. Members of this House have told me of the problems they have experienced with their local councils in respect of this issue. It is a prima facie conflict when real estate agents and developers actively work in commercial dealings in their own council area. We cannot exclude people from various professions from seeking election to council. Nevertheless, we have a prima facie problem that we have to deal with.

This problem has arisen in a local council area within my electorate, that is, Warringah Council. Warringah Council has been the subject of ongoing controversy about councillor behaviour. Complaints have included cronyism, bullying, secret dealings, favours given and patronage dispensed. The very culture of this council is tainted by the inextricable links between the real estate and development interests of councillors. The dissatisfaction of the community and a vast number of complaints about Warringah Council—the largest number of complaints about any council in New South Wales—have culminated in an investigation by the Department of Local Government, which is occurring at the moment.

It is this pattern of behaviour that brings our system of local government into disrepute. Honourable members will have seen in recent months newspaper headlines such as, "Squabbling Councils out of Order" and "Our Most Despised Councils". Those headlines are mild compared with the comments one gets from people in the street about their local council and about local government in general. The confidence of residents in their elected representatives is a fundamental underpinning of democracy. The public is disgruntled with a system that seems to reward councillors who have the skills or legal advice to sail close to the wind without quite crossing the line. The extent of cynicism and distrust felt in the community towards local government appears to threaten the credibility of councils as a whole. This situation has to be improved. That is what this bill seeks to do by the establishment of an ethics review panel.

To give honourable members a backdrop, in 1992, in the lead-up to the introduction of the current Local Government Act, ICAC conducted an investigation into local government, public duties and conflicting interests. ICAC's report recommended that New South Wales move from the previous system of self-regulation of pecuniary interest matters to the current system of regulation by independent bodies. That recommendation followed the recognition of widespread abuse under self-regulation, highlighted by some major scandals. The independent regulation of pecuniary interest has been with us for nearly nine years now. It is fair to say that it has had limited success. The regulatory bodies are deluged by a flood of complaints. Many of the complaints may be quite serious and all are heartfelt, but most do not meet the high standards of evidence or clear wrongdoing required for them to take action. I have discussed this matter with the Minister and I understand his reluctance to pursue cases that are anything other than open and shut. However, many cases that may be borderline in terms of the legislation are clearly unacceptable by general community standards.

I have previously brought to the attention of the House several examples of borderline behaviour. In one matter a councillor supported a development application by another councillor for a development that exceeded the local environment plan [LEP] guidelines in several respects. The next day that councillor used it as a precedent in his own case in a matter before the Land and Environment Court. His argument was that because the council had allowed other developments to exceed the guidelines, his own development should be allowed to exceed the guidelines as well, and that included the application he had moved in council. The Department of Local Government reviewed this complaint and found that it was not serious enough to warrant prosecution. I argue that, despite the legal niceties, there would be very few people who would consider that to be appropriate conduct for a councillor. A person involved in the interests of the public, both present and future, should not play the rules for his or her own

benefit in such an expedient way.

Pursuant to sessional orders business interrupted.



Legislative Assembly

Local Government Amendment (Ethics Review Panel) Bill Hansard

Extract

21/03/2002

Second Reading

Debate resumed from 14 March.

Mr BARR (Manly) [10.02 p.m.]: The purpose of this bill is to provide greater certainty to members of the public and to councillors on the appropriate conduct of councillors and council. A vast grey area exists when dealing with the behaviour of members of local government. Although the Minister for Local Government has the ultimate sanction of dismissing council, his only powers are those of persuasion. There is a lot of public concern about the conduct of councillors and many perceive councils as getting away with things. I will couch my speech in positive terms in an attempt to improve the standards and conduct of councils and councillors and to give the public greater confidence in the conduct of councillors. The Minister floated the notion of a sin bin, which I think was quite impractical. In many council areas with a ruling majority, it could be used to its advantage against the minority. We must be careful about that.

Let me give honourable members the background to this legislation. To understand the operation of this bill we must examine the existing regulatory system and determine how the proposed ethics review panel would fit in. Several bodies deal with serious breaches of conflict of interest or pecuniary interest in local government. These include the Independent Commission Against Corruption [ICAC], the New South Wales Ombudsman, the Minister and the Department of Local Government and the Pecuniary Interest Tribunal. ICAC has a wide power to investigate corrupt conduct. Its brief includes local government and I understand that it deals with a large number of complaints and allegations. However, the focus of ICAC is on corruption in the sense of a breach of public trust which leads to inequality, wasted resources and wasted public money, which is serious. This kind of blatant and serious wrongdoing is a fairly small proportion of the complaints against councils.

On a spectrum of actions and responses the remedies available to ICAC represent one extreme along with the Pecuniary Interest Tribunal. The Pecuniary Interest Tribunal has the power to prosecute breaches of pecuniary interest and, as I mentioned earlier, it has chosen to focus exclusively on the most serious and blatant cases. The last time I spoke in debate on this bill I said that the Department of Local Government received 788 complaints about councils and councillors in the 2000-01 financial year. Of those complaints 168 related to pecuniary or conflict of interest issues, yet only one of those complaints was prosecuted and taken to the Pecuniary Interest Tribunal. Towards the other end of the spectrum, which is marked by the ineffective code of conduct and self-regulation, are the New South Wales Ombudsman and the Department of Local Government. Both bodies receive and investigate complaints about behaviour that may be less blatant and less serious than those considered by the ICAC or the Pecuniary Interest Tribunal.

The Department of Local Government is widely considered in the minds of the public to be the State Government watchdog over local issues. It receives a huge number of complaints and calls for information and assistance. The problem is that the department and the Minister have powers that are not suited to handling routine complaints. Although they can advise councils and exert some pressure to improve the situation, they hold no sanctions or power to require actions for less serious complaints. The only recourse is for the department to hold a public inquiry into a council and for the Minister, if appropriate, to sack a council and appoint an administrator. Naturally that is done only in the most serious circumstances. But borderline or unethical behaviour does not have any remedy as such.

The Ombudsman investigates and reports on complaints about the conduct of New South Wales departments or agencies, or their employees. Councillors are not employees, so that presents a problem. The Ombudsman investigates conduct that may be illegal, unreasonable, unjust or oppressive, improperly discriminatory, based on improper motives or irrelevant grounds, or based on the mistake of law or fact. The problem is that the powers are not set up to address the behaviour of councillors other than through conciliation. Where the problem is not structural but is cultural or individual, many complainants are unsatisfied with the outcomes achieved by the Ombudsman. During the 2000-01 financial year the Ombudsman received 3,438 complaints about local councillors. Obviously he investigated those complaints but there was some dissatisfaction about the outcomes.

The ethics advisory panel that I have proposed aims to supplement rather than conflict with the jurisdiction of these bodies. Although they have a wide range of powers and interests, it is clear that they have failed to clean up local government to the degree expected by the community. Once again, I do not want to be negative about local government as many councillors put in long hard hours, are totally honest and try to do the right thing. Nevertheless, there is a perceived problem on the part of the community about many council areas. We need to address this problem. One way to address the problem is to look at ethical standards and provide a body that assists the public

and assists councillors in improving and lifting their game and lifting standards. So the bill will create an ethics review panel. The functions of this panel will be:

- (a) to review the probity and ethical behaviour of councillors,
- (b) to ascertain whether councillors are complying with their duty under section 439 to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions ...
- (c) to review the compliance of councillors with their relevant codes of conduct adopted by their councils under section 440,
- (d) to make recommendations and provide advice to councillors on the ethical implications of their conduct,
- (e) where the Panel considers it appropriate, to publish recommendations ...
- (f) to report to Parliament regarding the ethical behaviour of councillors and any other matters considered by the Panel.

The review panel may also instruct, advise and assist councils, councillors and members of staff of councils on ways to improve ethical behaviour and practices. The panel may educate councils, councillors, members of staff of councils and the public on strategies to improve ethical behaviour and practices of local governments. The panel may also educate and disseminate information to the public on the detrimental effects of unethical behaviour in local governments and the importance of maintaining the integrity of local governments. The panel must prepare annual reports of its operations, and furnish a report to the Minister. The report must include, among other things, a description of the matters referred to the panel, a description of matters investigated by the panel, recommendations for changes in the laws of the State or administrative action the panel considers should be made as result of the exercise of its function. The report must also include any other general recommendations regarding the ethical behaviour of councillors, code of conduct and other ethical issues relating to local government, and a description of its activities during the year relating to educating and advising functions.

The annual report of the local government's ethics review panel is to form part of the annual report of the Department of Local Government, which is submitted to Parliament. The panel is a non-judicial body. One of the aims of the legislation is to provide a non-judicial-type approach to dealing with this difficult, large, grey area in local government. The Department of Local Government has been reluctant to prosecute matters before the Pecuniary Interest Tribunal unless the matter is an open and shut case. If the department pursues action before the Pecuniary Interest Tribunal and does not succeed, its armoury and ability to persuade councils is weakened and it is regarded as a toothless tiger. The department, because it does not want to use resources and create precedents that make it more difficult to oversee local councils, has been reluctant to pursue matters before the Pecuniary Interest Tribunal. Hence, very few cases have come before the tribunal. I cited one from 2000-01. The new panel will advise councils and councillors, and it will receive and examine complaints from the public or other councillors about the conduct of a councillor.

The primary sanction of the panel will be to name the councillor and the issues in its annual report or other reports. It is not a judicial issue and no other penalty will apply. It is important to maintain flexibility when trying to control the conduct of councillors in their workings with the council. Members of this Chamber have told me that in many councils developers who actively pursue development activities in the local government area also sit as councillors. The public sees, prima facie, a conflict of interest. Many communities are concerned that these developers get an inside running. Because they are councillors and, therefore, get to know the workings of the system they have an advantage in the local government area. It would be undemocratic, and perhaps legally impossible, to try to preclude people from various occupations seeking election. Everyone should have the right to stand for council, but the issue is what their interests are when they come to the council and how they use or abuse those interests.

Of all the tiers of government, local government is the area in which people are most able to exert influence and gain benefits from being on the council. We have not yet adequately addressed that problem. Hopefully, this bill will resolve the problem. The panel will have the power to delegate officers to take evidence and the ability to take natural justice proceedings. Such proceedings will be informal, in a similar way to the hearings of the Independent Commission Against Corruption. Third parties will be protected. Officers of the panel will be able to administer an oath and require documents to be presented, similar to the power of departmental representatives under section 431 of the Local Government Act. It is intended that investigation officers from the Department of Local Government will be able to act for both the department and the panel at the same time, if necessary.

The panel will report to Parliament each year under privilege, setting out the matters it has dealt with and making any general or specific recommendations it might consider necessary. The panel will have the power to make general recommendations regarding the ethical behaviour of councillors, specific ethical issues and councils code of practice. It also reports on behaviour of individual councillors. It will have the power to counsel individual councillors on their behaviour, either confidentially or publicly. The panel will have disciplinary powers, including recommending that a councillor make an apology, or take appropriate action and issue reports on individual councillors. The Ethics Review Panel will have the power to refer matters to the Director-General of the Department of Local Government for investigation, as well as the Ombudsman and ICAC.

The panel will also have the discretion to adopt a general education awareness-raising role, which may

include preparing guidance material, running education seminars and counselling. This is an important bill. We must grasp the nettle on this long-running matter. Clearly the department has not yet been able to deal with this matter to the public's satisfaction. We must give the public certainty about councils and councillors and the way they behave. If we do that we enhance the democratic process of this very important tier of government, local government. The starting point for any democratic system is a strong, viable, local government system. I am hopeful that both the Opposition and the Government will support the bill. I know they are still running the slide rule over it. I commend the bill.