



Local Government Amendment (Cudgegong (Abattoir)

County Council Dissolution) Bill.

Second Reading

Miss CHERIE BURTON (Kogarah—Parliamentary Secretary) [7.39 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now read a second time.

This bill reflects the Government's continuing commitment to assist former employees of the Cudgegong (Abattoir) County Council, formerly trading as the Mudgee Regional Abattoir. The bill will also amend the Local Government Act 1993 to ensure accountability for the financial failure of the county council. The amendments will allow some or all creditors to be paid out after the winding-up of the abattoir operation. Most importantly, the bill will ensure that the former employees of the county council immediately qualify for financial assistance, which has so far been withheld by the Commonwealth. Currently there are unpaid employee entitlements estimated at \$2.5 million.

The purpose of the proposed amendments to the Local Government Act is to ensure that creditors of the county council may be paid out and, in particular, that employee entitlements receive immediate attention. The necessity for the amendments arises from the Commonwealth Government's refusal to release General Employee Entitlements and Redundancy Scheme [GEERS] funding to former employees of the abattoir until State legislation is passed that will ensure the Commonwealth has the means to recover the GEERS funding if the liquidation of the abattoir's assets provides the funds.

Under GEERS, the Commonwealth Government has absolute discretion to advance certain entitlements of Australian employees whose employment has been terminated because of their employer's insolvency. The Commonwealth can recover GEERS payments under parts 5.5 to 5.9 of chapter 5 of the Commonwealth Corporations Act from an insolvent company. Under these provisions, unpaid employees are given priority creditor ranking, after the winding-up and administration costs are paid, and the Commonwealth is entitled to stand in the place of these former employees in order to recoup any GEERS funds already paid out to those eligible.

However, former employees of insolvent statutory corporations such as the county council are not recognised under the Corporations Act and are not considered by the Commonwealth as eligible for GEERS funding. The Federal Government insists that it will not release GEERS funding to the former abattoir employees unless the State enacts legislation that will ensure that they assume priority unsecured creditor status. This bill will achieve the request by applying the winding-up provisions of parts 5.5 to 5.9 of chapter 5 of the Commonwealth Corporations Act to the county council.

The county council commenced operations in 1960. The governing body of the county council was comprised of four members elected from Mudgee shire councillors and two members elected from among the Rylstone shire councillors. As separate corporate and legal entities, county councils, like local councils, are responsible for managing their own affairs on a daily basis and must be guided by their own legal and financial advice. While subject to the Local Government Act, it is not the Minister's or the Department of Local Government's role to oversee or endorse a local or county council's business transactions and decisions. However, as part of the Department of Local Government's brief to monitor the financial health of local government, the county council was placed on the financial monitoring list as one of 30 councils in financial difficulty.

Throughout this financial monitoring, the county council's management expressed optimism that despite its difficult trading situation the abattoir could pull through. Nevertheless, on 3 September this year the county council became insolvent and its board members resigned. Mr Stephen Parbery was appointed as administrator of the county council under the Local Government Act. Mr Parbery met with Mudgee Shire Council on 8 September 2003, seeking \$2.1 million in financial assistance to keep the abattoir operating for the following six weeks. Mudgee council declined to provide the amount sought. It did agree to provide \$100,000 to cover immediate unpaid abattoir wages. Mr Parbery indicated to the Minister that without the required financial assistance there was no legal or financial alternative other than closure of the abattoir operation. On 9 September this year all of the abattoir employees were stood down.

Rabo Bank, the major creditor of the county council, is owed approximately \$5 million, and employee entitlements are estimated at \$2.5 million excluding any redundancy payments that may be payable. There are other significant creditors, including local businesses. It is quite clear that the assets of the county council will not meet its debts. Mr Parbery advised the Minister that due to the hopelessly insolvent state of the county council he intended to seek appointment as a receiver and manager of the county council under the Supreme Court Act 1970. Mr Parbery believed that with the dual powers of administrator and court-appointed receiver and manager he would be able to develop a strategy to maximise the return to creditors, including unpaid employees. Mr Parbery was appointed by the Supreme Court of New South Wales as receiver and manager of the county council on 11 September.

Expressions of interest have been sought for the sale of the abattoir facility. I understand there has been a high response rate and tenders close on 10 November 2003. Contributions have been made by Rabo Bank, Mudgee council and the Government towards general sale costs. Amendments such as those proposed in this bill are not without precedent in New South Wales. The Commonwealth Corporations (Ancillary Provisions) Act 2001 specifically allows States to adopt provisions of Commonwealth Corporations Law into State legislation and declare it to apply to legal entities otherwise not caught by that law. The New South Wales Government has passed the Corporations (Consequential Amendments) Act 2001 to specifically apply parts 5.5 to 5.9 of chapter 5 of the Commonwealth Corporations Act 2001 to the Centenary Institute of Cancer Medicine and Cell Biology and to the Garvan Institute of Medical Research. Those amendments are very similar to the amendments proposed in this bill.

The necessity for these amendments also arises from the insistence of the constituent councils that they are not legally responsible for the debts of the county council. The Mudgee Shire Council in particular has made a number of claims that are spurious at best. These claims are in relation to the re-writing of the old 1919 Local Government Act and the lost opportunity at that time to include provisions in the new 1993 Act that might make constituent councils responsible for a county council's outstanding debts. The Minister has taken the opportunity to review these claims and the legal advice obtained by Mudgee Shire Council. There is little acknowledgement or analysis of the powers presently contained in sections 213, 387, 397 and 398 of the Local Government Act that allow an apportionment of liabilities upon dissolution of a county council.

The Government is of the view, which has been confirmed by Crown Solicitor's advice, that these sections provide for the dissolution of the county council, and the concurrent apportionment of its assets, rights and liabilities, to be achieved by way of the Governor's proclamation. Such a proclamation must be preceded by the public notice and consultation provisions set out under sections 384 and 385 of the Act. Importantly, the power to apportion a county council's assets, rights and liabilities at the point of its dissolution has remained essentially unchanged since the 1919 Act. This bill provides the opportunity to reinforce that power. Dissolution of the county council will occur in the near future upon the advice of the administrator.

The constituent councils should now be held accountable to the creditors for the downfall of the abattoir. The county council was created by the constituent councils to be a separate legal and trading entity, subject to the Local Government Act. It was controlled by members elected from among the councillors of the constituent councils. By refusing to accept responsibility for the debts of the abattoir, Mudgee council would be prepared to turn its back on the unfunded employees entitlements and the local businesses, which are creditors.

In the event that the county council's liabilities are apportioned to the constituent councils, and those councils then refuse to meet those liabilities, the many unsecured creditors will be faced with no option but to either commence Supreme Court proceedings or forgo the debt. This bill will make it clear that in the event of a Governor's proclamation dissolving the county council, the Governor may appoint a nominee to direct the constituent councils as to how those liabilities are to be dealt with. I want to emphasise that any apportionment of liabilities will not occur until the consultation requirements of the Act are discharged so that the Minister has every opportunity to properly consider the arguments and respective financial positions of the constituent councils and the outstanding creditors.

Until the abattoir land and buildings are sold, and until the Minister is advised of final recommendations with respect to dissolution of the county council, no-one should pre-empt the outcome of this matter. The Government may have had differences with the Deputy Prime Minister on the way the GEERS funding should be expedited to assist the former employees of the abattoir. But I do not disagree with his view that the county council was established, and ultimately controlled, by those members elected by the constituent councils. The constituent councils, and in particular Mudgee Shire Council, might argue technical points of legal separation, but this does not absolve them of their legal and moral responsibility to the former abattoir workers and other creditors.

In this regard, the Government would welcome any moves by the constituent councils, in particular Mudgee Shire Council, to sympathetically and immediately meet any outstanding employee entitlements not covered by the GEERS funding. The Government is committed to assisting the former employees of the abattoir and their families. This is reflected in the Treasurer's decision to defer any claim on the almost \$1 million in liabilities owed by the county council to Government agencies, including Country Energy, until such time as employee entitlements have been paid out in full.

The Government may not be able to influence meat and livestock prices or mitigate the devastating effects of the drought, but it does have a strong record of assisting the abattoir, its workers and their communities. On many occasions it has facilitated proposals and met requests by the county council to improve its financial position. In 1997, under the administration of the then Minister for Local Government, special legislation was enacted at the request of the county council to enable it to secure loans for expansion by mortgaging its lands. In September 2001 the former Minister for Local Government consented to the county council participating in the formation of a joint venture company to manufacture bio-pharmaceuticals. According to abattoir management, the venture promised good financial returns to the abattoir.

In March 2002, pending sale of the abattoir, ministerial consent was given to the abattoir's incorporation as a company. The sale subsequently fell through and incorporation did not proceed. On the request of the county council in August this year, the current Minister for Local Government provided a letter addressed to the Australian Securities and

Investments Commission [ASIC] indicating that he had no objection to a proposal to register the county council as a company under the Corporations Act. The county council sought registration by ASIC so that it may appoint a voluntary administrator under the Corporations Act. This would provide, among other things, a moratorium from creditors' claims. It is understood that ASIC rejected the application.

The Government continues to assist workers and families in regional New South Wales through the meat industry restructuring initiative. Also, the Mudgee community has been declared eligible for assistance through the Regional Economic Transition Scheme. It is my understanding that without the proposed amendments the former employees of the abattoir and the other unsecured creditors of the county council will receive an estimated dividend of only 25¢ in the dollar, depending on the final sale price of the abattoir land and buildings. In conclusion, this bill delivers the key conditions sought by the Commonwealth Government before it will release the GEERS funding. The former workers of the abattoir should get their entitlements within a month of the passage of these amendments. I commend the bill to the House.

Mr GEORGE SOURIS (Upper Hunter) [7.54 p.m.]: The Government has asked the Opposition to proceed with this bill with haste so that it can be sent to and proceed through the Legislative Council this evening. This legislation will enable the Commonwealth Government to make payments under the General Employee Entitlements and Redundancy Scheme [GEERS] to satisfy unpaid entitlements of the former employees of Cudgegong abattoir. I received a copy of the bill late this afternoon and I have listened to the second reading speech. I noted in the second reading speech a provision in the bill that goes beyond enabling the Commonwealth to pay unpaid employee entitlements. Proposed clause 3 (2) (a) of schedule 9 states:

(2) Any such proclamation may include provisions:

(a) transferring the liabilities of Cudgegong (Abattoir) County Council to Mudgee Shire Council or Rylstone Shire Council (or to both) ...

The bill is not solely for the purpose of enabling the Commonwealth to make payments to employments under GEERS. This proposed clause provides that, upon liquidation any remnant unsatisfied, unsecured creditors would become liabilities of Mudgee Shire Council and/or Rylstone Shire Council. That is an entirely separate issue, and one that I would want to debate. The bill is not as the Government purported earlier today. I seek the leave of the House for an adjournment to undertake discussions with departmental advisers prior to resuming my second reading contribution.

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