LOCAL GOVERNMENT AND ELECTIONS LEGISLATION AMENDMENT (INTEGRITY) BILL 2016

First Reading

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

Second Reading

Mr PAUL TOOLE (Bathurst—Minister for Local Government) (16:20): I move:

That this bill be now read a second time.

I am pleased to introduce the Local Government and Elections Legislation Amendment (Integrity) Bill 2016. It is imperative that communities in New South Wales have confidence in the councillors they elect to represent them and the decisions they make on their behalf. Local councillors, through the decisions they make on behalf of local communities, exert significant influence on the day-to-day lives of the people of New South Wales. Among other things, they determine the local services provided to individual households, decide important changes to the built environment that define our towns and suburbs, and shape the cohesiveness and wellbeing of local communities.

New South Wales is extremely fortunate that the vast majority of its local councillors are exemplary citizens, determined to make a positive difference in their local community. They are passionate, informed and dedicated people who are unswerving in their commitment to advancing the economic, social and environmental wellbeing of their communities. We want to make sure we keep it this way. This Government has an undeniably proud and strong record of legislating robust ethical standards for local government that are underpinned by effective regulation and oversight to ensure such outcomes.

The DEPUTY SPEAKER: The Minister is introducing a bill. Seven Opposition members are on three calls to order and five of those members are interjecting. If members continue to interject they will be removed from the Chamber. The Minister will be heard in silence.

Mr Gareth Ward: Just disgusting.

The DEPUTY SPEAKER: I call the member for Kiama to order for the second time.

Mr Mark Coure: Throw him out.

The DEPUTY SPEAKER: I call the member for Oatley to order for the second time.

Mr PAUL TOOLE: For example, in 2012 the Government legislated reforms to the framework governing the ethical standards applying to individual council officials and the disciplinary regime for breaches of those standards by councillors. In 2013 the Government sought to address dysfunction and poor performance by councils by enacting an early intervention framework to allow a more rapid response to poorly performing councils and to drive improvement. This included new performance improvement orders to improve underperforming councils and the ability to suspend a council for up to six months if necessary.

Last year we introduced further reforms targeting councillor misconduct and poor performance which sought to deter and more effectively address councillor misconduct; streamlined the process for dealing with councillor misconduct to ensure faster but fair outcomes; limited the ability of councillors to participate in strategic land use planning decisions in which they and related persons have pecuniary interests; ensured a more effective response to serious corrupt conduct; maximised the effectiveness of performance improvement orders, and more effectively addressed council maladministration and its consequences. The people of New South Wales can be assured that in line with our commitment to ensuring effective and honest local government we will not stop there.

The measures contained in this bill are proposed in response to the community concern at recent events at Auburn, Hurstville and other councils and at the actions of the very small minority of elected officials who have allegedly misused their civic office to advance their personal business interests. They will form part of a broader package of measures that are designed to restore community confidence in local councils and to provide an ongoing assurance in the integrity of councils and the decisions they make. Firstly, the bill seeks to reduce the corruption risks associated with large political donations by extending the caps on donations that apply at the State level to local government elections. If legislated, this will see caps of $5,800 per annum for registered parties and groups and $2,500per annum for candidates, elected members and third party campaigners placed on political donations for local government elections. The bill prohibits the making and acceptance of political donations that exceed these caps for the purposes of local government election campaigns.

The caps on political donations for local government elections will mirror the existing caps on donations that apply at the State level. The local government caps are intended to operate independently of the State caps, recognising that some political parties and third party campaigners only operate at either the local or State level, whereas others contest elections at both levels. The bill introduces new requirements for local government campaign accounts to support the practical

operation of the local government donations caps and to ensure that they do not affect the funds available to parties for the purposes of Commonwealth election campaigns.

It is proposed that certain types of donations will be aggregated for the purposes of the cap in the same way as occurs at the State level—for example, donations to the same political party, group, councillor, candidate or third party campaigner within the same financial year are to be aggregated for the purposes of the cap; and donations made to councillors of the same party, groups of the same party and candidates of the same party during the same financial year will be aggregated for the purposes of the caps. This is intended to prevent donors from avoiding the cap that applies to parties by splitting a large donation between its endorsed candidates, groups or elected members. Consistent with the rules that apply at the State level, a candidate's contribution to finance his or her own election campaign is not a political donation and is not subject to the applicable cap on donations to the candidate.

I note that the Government intends to pursue local government expenditure caps as part of a broader review of the State's election funding legislation. The Government has committed to undertake that review as soon as the Joint Standing Committee on Electoral Matters reports on its review of the Schott report on political donations. In support of the proposal to extend donations caps to local government elections and to deter non-compliance with the Election Funding, Expenditure and Disclosures Act 1981, it is proposed to disqualify persons from holding office in a council for two years who have been convicted of an offence by a court under that Act. This means that persons will not be able to stand as a candidate for election for two years after they have been convicted. Where they already hold office in a council, their office will become vacant. The same disqualification period currently applies to persons who have been convicted of electoral offences under the Local Government (General) Regulation 2005.

Secondly, to ensure that candidates for election to a council are fit and proper persons to hold office in the council, it is proposed that persons who have been convicted of an offence in any Australian jurisdiction carrying a sentence of five years or more imprisonment will be disqualified from holding office in a New South Wales council for seven years after being convicted of the offence. This will complement the existing disqualification on persons holding office in councils while serving custodial sentences. Thirdly, it is proposed to repeal section 448 (g) of the Local Government Act 1993.

This provision operates to exempt council officials from the obligation to disclose a pecuniary interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument that does not affect the permissible uses of land the council official or related person has a proprietary interest in and land adjoining, adjacent to or in proximity to that land. It was on the basis of this provision that the Supreme Court overturned a finding by the NSW Civil and Administrative Tribunal [NCAT] that former Councillor Salim Mehajer of Auburn City Council had breached his obligations under the Local Government Act to disclose a pecuniary interest he had in amendments to floor space ratios and height limits under the Auburn Local Environmental Plan 2010 and to remove himself from consideration of the matter.

An independent valuation found that the former councillor obtained a benefit worth $1 million as a result of the changes that he failed to disclose. The Supreme Court found that because the changes did not amount to a change in permissible use under section 448 (g) he was not obliged to disclose the benefit he stood to gain from them. While legally correct, this outcome jars with community values. The exemption contained in section 448 (g) serves no ongoing identifiable public policy purpose and should be repealed. Fourthly, the bill seeks to establish a more effective deterrent to those who seek to personally profit from the office they hold in a council.

There are existing significant penalties under the Local Government Act for a failure by a councillor to disclose pecuniary interests in matters under consideration by a council and to remove themselves from consideration of the matter. Penalties available to the NCAT for pecuniary interest breaches by councillors include suspension from office for up to six months, suspension of payment of the councillor's fee for up to six months and disqualification for up to five years. However, these are an ineffective deterrent in circumstances where a councillor stands to make a significant financial windfall as a result of the breach.

To provide this deterrent, it is proposed to allow the Chief Executive of the Office of Local Government to apply to the Supreme Court for an order that a councillor, who has been found to have participated in the consideration of a matter in which they had a pecuniary interest in breach of their obligations under the Local Government Act, pay to the council an amount equivalent to the financial benefit they received as a result of the council's decision in relation to the matter in question or that the council hold a security with respect to any such amount. As I mentioned earlier, this bill forms part

of a broader package of measures designed to provide local communities with greater confidence in the integrity of their local councils and the decisions they make.

In addition to the measures contained in this bill, amendments have been made to the Local Government (General) Regulation 2005 to provide greater visibility by the community of candidates and elected councillors with interests in property development. They do this by requiring candidates and elected councillors to disclose if they benefit from income derived from property development by declaring if they are a property developer or a close associate of one in each of the following: candidate information sheets submitted under section 308 of the Local Government Act, which are published online prior to an election; and statistical information sheets submitted under clause 289 of the regulation, which are kept by general managers and are available to the Office of Local Government.

It is also proposed to implement additional reforms, either through changes to the Model Code of Conduct for Local Councils in NSW, which is prescribed by regulation, or by later amendments to planning rules. These will include the introduction of continuous disclosure obligations on councillors and senior officials in relation to their pecuniary interests, as opposed to annual returns. It is further proposed to require councils to delegate the determination of "planning applications" made by councillors, the general manager, their spouse or a relative or in which they have a financial interest to a person, body or organisation independent of the council.

To minimise any undue cost or inconvenience to the council and the applicant in determining what should otherwise be a routine development application, this requirement will not apply to development applications relating to the principal place of residence of a councillor, the general manager, their spouse or relative. To allow councils to identify planning applications made by councillors, the general manager their spouse or a relative or in which they have a financial interest, applicants will be required to disclose whether they, or another person who has a financial interest in the application, are a councillor or the general manager of the council or their spouse or relative. It will be an offence to knowingly fail to disclose this information.

The proposals contained in this bill and the additional measures I have foreshadowed, will help to restore public confidence in the integrity of local government elections and planning decisions made by local councils. Importantly, they do this in a way that is more effectively targeted at the risks they seek to address, without needlessly infringing constitutional limits on laws that burden participation in the political process. I commend the bill to the House.