

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE AND PLANNING) 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) (16:19): I move:

That this bill be now read a second time.

It gives me great pleasure to introduce the Local Government Amendment (Governance and Planning) Bill. The bill is phase one of the Government's broader reform of the Local Government Act 1993. The bill begins modernising and streamlining the legislative framework for local government in New South Wales. The Government is committed to an updated legislative framework that will meet the needs of councils and their communities in 2016 and for many years to come. It is important to remember, however, that this is not a mere redrafting exercise. These phase one amendments introduce subtle but profound changes that will enable and encourage local government to reimagine itself and its purpose in our community.

The bill starts the journey away from process-focused local governance towards principle-focused governance. As our councils develop proficiency in using the tools this bill offers them, communities across New South Wales stand to benefit from local representation and governance that better reflects their values, their concerns and their priorities. The bill will assist councils to apply their resources more effectively for the benefit of the communities they serve. The system of local government in New South Wales has seen enormous change in 2016. What has been lost in the debate about boundaries, however, is the steady progress that is continuously being made by both the State and local government sectors towards improving the system that crosses these boundary lines.

New South Wales deserves a local government system that works well for everyone, not just a select few or select areas. How do we know it will be better? In part, because the proposals in the bill have been the subject of extensive consultation. Starting in late 2011, councils came together at Destination 2036 to discuss their long-term future. This forum led to the appointment by the Government of the Independent Local Government Review Panel and the Local Government Act Taskforce. Both the panel and task force reports recommended legislative change to support the work of councils and to ensure they could be fit for the future. The Government's 2014 response to those reports supported the development of modern, principles-based local government legislation.

In January this year the Government released an explanatory paper that outlined the specific amendments to be included in this phase one bill. At the same time, for more than 10 weeks an online survey inviting public comment on each amendment was open on the website of the Office of Local Government, and more than 160 submissions were received. I thank those who participated. An information webcast was also held in March, which I am advised was well attended by more than 120 separate site registrations. The Government has made sure that councils and their communities have had a chance to have their say on these amendments that will help to shape the new local government sector.

The phase one bill focuses on achieving the following major policy objectives: to embed strategic business planning principles across the broad range of council functions and practices; to promote independent and sustainable councils engaged with, and accountable to, their local communities; and to support a culture of continuous improvement in councils so they are able to deliver on the strategic goals agreed with their local communities. Schedule 1 [2] to the bill introduces new principles for local government, which will build a common understanding of what local government should and can achieve. These new principles bring up to date some of the ideas covered by the Councils Charter and introduce new concepts that better reflect the role of local government in the twenty-first century.

These principles are both guiding and aspirational. They are not intended as binding rules, but they set down in writing what we expect from local government. It is useful to have such principles in the laws that govern the way we govern ourselves at a local level. It is even more important as we find ourselves at a point of renewal across the sector. Turning to the particular provisions of the bill that will enhance the way councils are governed, Schedules 1 [6], [8] and [25] will establish distinct roles for mayors, general managers and councillors. The lack of clarity about these roles has been identified as an area requiring change. Better role definition will reduce confusion and help people to get on with their jobs and make things happen for their communities.

The bill contains other important measures to improve the governance of councils. Schedule 1 [7] increases the term of office for mayors elected by councillors from one to two years. This change

was recommended by the Independent Local Government Review Panel to enhance political leadership and support stable governance of councils. The Government agrees that this apparently small change will generate significant returns in good governance. Under schedule 1 [9] councillors will also be required to take an oath or affirmation of office to reinforce the serious nature of their role. Councillors will also be encouraged to obtain and maintain the skills necessary to do the job. The bill will introduce a new regulation-making power for induction and ongoing professional development for councillors. The Government anticipates making regulations that will provide guidance for such programs, including requirements for public reporting of councillor participation in these programs. The bill also specifies, in new section 232 (1), that it is part of the role of every councillor to make all reasonable efforts to acquire and maintain the skills necessary to perform the role.

The bill also facilitates the drafting and adoption of a new model meeting code, which will address existing procedural ambiguities and modernise procedural requirements. This change is effected primarily in schedule 1 [2] to the bill. The issue of integrity in local government administration has been a significant concern in recent times. While this bill does not change the substantive ethical obligations of councillors, it puts in place amendments that will, over time, improve councillor understanding about what is expected and required of them. In particular, under schedules 1 [52] to [76] to the bill and the consequential amendments, the pecuniary interest obligations of councillors will be consolidated with other ethical obligations in the model code of conduct.

The Local Government Act currently contains two parallel schemes for ethical obligations: those found in the code of conduct and those found in standalone pecuniary interest provisions. This is confusing. The amendments in the bill will move the pecuniary interest obligations out of the Act and into the model code of conduct, which is imposed on councils through regulation. This consolidation will help to lift councillor awareness of these responsibilities by keeping all ethical obligations together in a single statutory instrument. The transition to the new arrangements should be done in stages, however, to take into account the concurrent development of a new model code of conduct. The Government's intention is that the amendments in the bill should commence after stakeholder consultation and the finalisation of a new model code.

However, the bill prudently ensures that there is no risk of the ethical obligations of councillors being reduced if the amendments commence earlier for any reason. The bill provides that the current pecuniary interest obligations in the Act are deemed to be part of the model code from commencement. This will ensure that all current ethical obligations on councillors continue until a consolidated new code of conduct is ready for publication. I turn to strategic governance. This bill refocuses the existing framework for strategic business planning and reporting, making it central to all council activities. This will ensure council services are planned and delivered fairly and sustainably. Strategic planning and reporting has proven to be a very successful tool for councils to use to support their communities and carry out their functions. The panel and the task force endorsed it becoming the primary governance tool for councils into the future. The bill achieves this in three ways.

First, new section 8C introduces new principles of integrated planning and reporting that apply to all councils, ensuring the pivotal role of integrated planning and reporting for local governance is established. These principles synthesise the fundamental elements of integrated planning and reporting to establish clear policy guidance for councils and communities. It is noteworthy that new section 8C (a) provides that regional priorities, such as may be developed between adjoining councils in conjunction with the Government, are to be considered in a council's strategic business planning. This does not mean, however, that regional priorities should outrank council consideration of local priorities.

Second, the bill makes some specific refinements to the operational provisions in the Local Government Act to increase its coverage. For example, amended section 404 will provide that all council activities, not only those mentioned in the community strategic plan, come under the umbrella of the integrated planning and reporting framework and so are covered by a council's delivery program. Councils will also be required under new section 402A to adopt a community engagement strategy for all of their activities other than business-as-usual operations, not just the activities referred to in the community strategic plan, as is currently the case. This reform will ensure that communities have a genuine opportunity to be heard on all the important work that councils do. Third, the bill puts a clear responsibility on mayors and councillors to engage productively in a council's integrated planning and reporting processes. These new, explicit expectations are contained in new section 226 (g) and new section 232 (1) (c).

The bill also contains important new measures to support the financial transparency of councils in the future. Councils will be required to establish an internal audit function as a driver for improved council performance. Some councils already have audit and risk committees, but item [43] of schedule 1 to the bill will ensure that in the future an audit, risk and improvement committee is a

mandatory good governance practice for all. The bill also introduces a principles-based approach to the regulation of councils' financial governance practices that reflects the principles of sound financial management set out in the Fiscal Responsibility Act.

Most importantly, under the amendments introduced by the bill, councils will become subject to oversight by the Auditor-General for their general audits and those of their subsidiary entities from this financial year. This is a major reform that brings New South Wales into line with most other Australian jurisdictions and New Zealand, and that will provide greater consistency and certainty across the sector. It will also ensure that reliable financial information is available that can be used to assess councils' performance and for benchmarking.

The Auditor-General is independent of the Government. She is accountable directly to the Parliament in relation to the exercise of her functions. The Auditor-General will be free to engage private sector auditors to assist her with her new responsibilities. The Audit Office anticipates that such contractors would be engaged after a competitive tender process. This is also similar to other jurisdictions. I am advised that the expectation of the Audit Office is that the majority of council audits will be delivered through contracted auditors who are accredited by the Auditor-General, with the Auditor-General conducting a small number in house. The Audit Office has committed to working with councils' current audit firms, where they are accredited, over the transition period.

While it is important that the bill makes it clear when the current arrangements end, every effort will be made to ensure that there is a smooth transition to the new arrangements. The Auditor-General will also be empowered to conduct sector-wide performance audits to identify trends and opportunities for improvement across the sector. This is similar to her powers in relation to State Government agencies and will be a very important new source of guidance for both councils and the State Government.

Item [47] of schedule 1 to the bill establishes the option for the Minister to appoint a financial controller to councils at financial risk. This is broadly similar to the position in Queensland. The new power is able to be used only in circumstances where the Minister is also empowered to issue a performance improvement order. The bill also provides scope for further regulations to be made to prescribe specific financial criteria that the Minister must consider, should that be necessary or desirable. The purpose of this new power is to broaden the suite of options available to the Minister to improve council performance in cases of real financial sustainability risk without resorting to the step of appointing an administrator.

The bill also includes a process for prescribed councils to voluntarily streamline some governance structures. Although supporting regulations are yet to be considered by the Government, this would be a mechanism to permit rural and remote councils with small populations to reduce the number of councillors, abolish wards and/or reduce the number of meetings below the current thresholds in the Act. These were measures that some councils proposed in their Fit for the Future submissions to the Independent Pricing and Regulatory Tribunal [IPART] in June 2015. The bill provides an avenue for the Government to give these proposals careful consideration.

The bill also contains measures to reduce some of the regulatory burden on councils. For example, the bill integrates State of the Environment reports into strategic business planning so that there is no requirement for councils to prepare a separate State of the Environment report. Instead, the environment is to be considered holistically when councils are planning to deliver their functions. Councils will also be able to delegate the provision of financial assistance to community groups, as well as delegate more routine tendering functions to general managers, while ensuring that any major decision on outsourcing that might affect current council staff remains a decision for the councillors.

The bill also removes the requirement that general managers report annually to council on senior staff contract conditions, since all such staff are now employed on standard contracts. Another red-tape reduction measure is to remove the requirement for an annual council expenses policy and to replace it with a requirement to adopt a policy in the first 12 months of a new council term. These policies are published online and rarely varied, so there is no utility in an annual process. The bill also provides all councils with an option to use universal postal voting for elections. At present, this may be done only via regulation.

The bill also contains some housekeeping elements to address legislative ambiguities, such as clarifying that the civic office of councillor will become vacant if the councillor is elected as mayor; aligning the role of administrators with the newly defined roles of mayor and councillors to address a further legislative ambiguity; clarifying that the count-back provisions of the Local Government Act do not commence until a prescribed future time, to allow the supporting regulations to be finalised; and clarifying the status of a determination of a council's category by the Local Government Remuneration Tribunal.

My thanks go to the members of my ministerial advisory group: the United Services Union, Local Government NSW and the Local Government Professionals' Association. They provided extremely constructive feedback on the phase one proposed amendments. Their feedback has greatly informed the development of this bill. I welcome similar positive stakeholder engagement as the Government develops future phases of reform to the Local Government Act. I commend the bill to the House.

Debate adjourned.