

Local Government Amendment (Council and Employee Security) Bill.

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LOCAL GOVERNMENT AMENDMENT (COUNCIL AND EMPLOYEE SECURITY) BILL

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Bill introduced, read a first time and ordered to be printed.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [5.01 p.m.]: I move:

That this bill be now read a second time.

This bill contains important measures to assist local councils provide better services to their communities and better job security for their staff. It does so by seeking to provide more advantageous rating arrangements for local councils and by enabling the deferral of elections under certain circumstances where there is reason to believe that a newly elected council may not serve its full term. More importantly, the bill enhances employment protection for non-senior council staff in councils undergoing structural reform. The bill replaces the Local Government Amendment Bill 2003, which was introduced into Parliament in November last year, but did not pass the House. Since then, I have had further discussion, negotiation and consultation with stakeholders. The bill reflects those discussions. I have received a large number of letters from individuals, community groups, and the major stakeholders, including the United Services Union and the Local Government Association.

Support for these proposals has been received from a majority of stakeholders, and from the Shires Association, which has lent support for parts of the bill. I have also received correspondence from a number of councils, including Albury and Mudgee, and councils represented by the Country Mayors Association, seeking deferral of elections until regional reviews or investigations have been completed. As mentioned earlier, the time has passed the point where these provisions in the bill are not so urgently required, given that elections after this month will be now four years or so away. The bill proposes to give councils greater flexibility in their rating arrangements. Currently, a council may apply to the Minister to increase its general income from rates by a specific percentage or a special variation, above the rate-pegging limit. However, this does not guarantee that further special variations will be approved in future years. This can act as a disincentive for councils to attempt major projects, including environmental works.

Following discussion with the Local Government Association, I now propose to enhance the special variation, to allow councils to apply for a series of annual percentage increases above the rate-pegging limit for a period of up to seven years on a fluctuating basis. As is currently the case, the bill will ensure that councils must apply for these special variations and must meet certain guidelines before any variation is approved. Extending the time limit on the variation, and providing extra flexibility, will give councils greater certainty in their financial planning. This will have a positive flow-on effect to the community. The bill provides also that the Minister may only approve a special variation that is an increase in council's general income from rates, not a decrease. Further, if during the period of the special variation the percentage specified under rate pegging is greater than the percentage specified under the special variation determination, the greater amount will apply. This ensures no council will be worse off if it chooses to apply for a special variation under this provision.

A number of stakeholders viewed an early draft of the bill that proposed giving the Minister the power to vary or revoke a determination for a special rate variation, on his or her own initiative. I understand this has caused some concern. I want to make it very clear that this provision is not contained in the bill I have introduced today. Instead, a determination under the proposed section may only be varied or revoked at the request of a council, or if a council fails to comply with the

conditions of the variation approval, or with guidelines prepared by the director-general under the Act—in other words if they apply for a variation to do environmental works and then do not go ahead with those works.

As mentioned earlier, the bill proposes to enable the Minister to postpone local government elections in certain circumstances. Last night, I indicated to the House that I would not be seeking urgency for this bill. With elections due to be held on Saturday 27 March, it is clearly too late to delay election preparations. Similarly, the Minister should be able to defer an election when a council may be affected by an amalgamation or boundary change. In both of these situations, a council may be subject to new elections in a short time. The amendments will save affected councils and their ratepayers considerable money—funds better spent on services for the community. The amendments will also ensure that a council will be elected for its full term. In cases of areas undergoing structural reform, the amendments will help to avoid confusion as to which local government area electors are voting in. The Government would never seek to put a price on democracy, but we are mindful that council elections represent a significant expenditure for local councils and their communities. I remind members that had they passed the Local Government Amendment Bill 2003 last year, such provisions would have already been in place long before the current election processes commenced.

The Hon. Catherine Cusack: We couldn't, because you closed down. You went home.

The Hon. TONY KELLY: I will show the Hon. Catherine Cusack the Opposition's press releases. Under the provisions proposed in this bill, elections may be postponed in three situations: first, when an amalgamation proposal or boundary proposal affecting a council is being formulated or is under consideration; second, when a council is subject to an investigation or public inquiry under the Act; or, third, when a proposal for structural reform is being considered by the Boundaries Commission. The ability to defer elections will avoid the situation where a council undergoing structural reform will also have to prepare for an election, when new elections may be called within a short time. Furthermore, it is important that the provisions be extended to cover a situation where a council is the subject of a public inquiry or investigation under the Local Government Act. Walgett Shire Council is currently the subject of a public inquiry that is examining serious allegations regarding its ability to function. The mayor of that council asked me at the West Division Shires Conference two weeks ago to try to defer its elections. That council is due to have its elections in less than two weeks.

The outcome of the public inquiry will not be known for some time yet. I regret that I have not been able to gain support for the deferral of this election and I regret that ratepayers' money is being spent to have a council elected, only to possibly have it face a recommendation by a public inquiry that it be dismissed. There has been some confusion over an earlier draft of the bill that suggested that elections could be deferred only if the Minister was satisfied that certain criteria applied. I want to clarify that this bill does not make any mention of the requirement that the Minister must be satisfied that the criteria have been met. Instead, it simply states that the criteria must have been met.

The bill proposes that elections may be deferred for 12 months in the first instance, and not more than 24 months at the absolute maximum. However, the Minister may revoke a postponement. In this case elections will be held not less than three months and not more than six months after the date of the revocation. That is not intended to give the Minister additional power; rather it represents a balance between the need for flexibility to accommodate the individual situations of councils and their communities and the need for certainty in the electoral planning process.

The bill contains important provisions to extend the employment protection measures conferred in the Local Government Amendment (Employment Protection) Act 2003. It takes the step of extending employment protection measures to all non-senior staff at councils affected by structural reform by way of amalgamation, boundary alteration or constitution of a new area. Before I elaborate on the content of the amendments I want to clarify the status of non-senior contract staff employed by councils in relation to employment protection provisions. All non-senior staff, including those on fixed-term contracts—with the exception of those who are on fixed-term contracts for particular projects—are covered by the employment protection provisions proposed by the bill and those currently in the Act.

I am referring, for example, to health surveyors, directors of corporate services and so on, who have a permanent job but whom councils have put on a contract. They do not comply with the definition of "senior staff member" under the Act because they are under senior executive service [SES] level 1. So these provisions will not apply to someone who has a contract to build public toilets that might not take three years to build. Construction and projects contracts are separate from the normal staff contracts that I am talking about.

The Hon. Catherine Cusack: The look-alike council employees?

The Hon. TONY KELLY: I do not think health surveyors, directors of corporate services and engineers in this State would like to be referred to as look-alike council employees. The only council staff members who will not receive these employment conditions are those who are defined as senior staff—except those, as I said earlier, who are employed for a specific project. In the dictionary to the Local Government Act 1993, as amended, "senior staff" are defined as:

The general manager of the council and the holders of all other positions identified in the council's organisational structure as senior staff positions.

In order to be identified in the council's organisational structure as senior staff, a staff member must be employed at SES level 1 or above. That means that a staff member must be earning more than \$125,000 per annum. Non-senior staff who are employed under performance-based contracts are not captured within that definition, with the exception, as I have said, of those project contract staff. Consequently, they are covered by any employment protection provisions that relate to non-senior staff. It is the Government's intention that these provisions be applied in the same way to non-senior staff on fixed-term contracts. For example, if a non-senior staff member had served one year of a two-year contract when affected by structural reform, the period of employment would be extended for the three-year period.

Any renegotiation of a contract during this period should occur only to continue or improve the terms and conditions. As I said earlier, the bill extends employment protection provisions to all non-senior staff at councils affected by structural reform by way of amalgamation, boundary alteration, or constitution of new area. The bill makes it clear that the entitlements of all affected non-senior staff members will be preserved and that they will continue under the same terms and conditions that applied immediately before the transfer day. In addition, there will be no forced redundancy of any affected non-senior staff member for three years after transfer. All affected staff will have access to protections afforded under the lateral transfer and external advertising restriction provisions of the Act.

In addition to extending the important provisions currently in the Act, this bill proposes new protections for non-senior council staff. The bill proposes to extend lateral transfer protections for non-senior council staff from 12 months to three years. That means an extension of the period in which councils must notify staff vacancies internally, and select candidates from within, where an adequately trained pool of staff exists. This will help to develop career paths within councils. The bill also contains amendments that will prevent non-senior council staff from being based outside the general locality in which they were based immediately prior to the transfer. This will have effect for three years following the transfer, unless the staff member gives written consent, or if it can be proved that relocation would not cause unreasonable hardship because of the distance required to be travelled.

These employment protection provisions will be retrospective to 1 January 2004. In other words, they will cover everybody involved in the current round of reform. This will ensure that workers from councils that underwent structural reform earlier this year are given the same level of protection under the Act, once a new council is elected later in the year, as any other local government employee. Currently, their employment protection is guaranteed by proclamation. This bill also clarifies that retrospectivity will not apply to appointments made between 1 January 2004 and the date of the bill's assent. This means that if a transferred staff member from any of the councils affected by structural reform during this period was appointed to a position under the lateral transfer or restriction on external advertising provisions of the current Act, he or she would continue to hold that position.

The Government is well aware that in many small rural communities the council is the major employer. That is why this Government is committed to maintaining core numbers of staff in rural towns that have been affected by structural reform. Under this bill councils must ensure that the number of regular staff of the council employed in a rural centre is maintained at not less than the previous number of regular staff, as far as is reasonably practicable. These provisions will apply in towns where there are 5,000 residents or fewer. However, a regulation-making power will exist to allow the extension of the protection of core numbers to larger—but not smaller—towns, where needed. So if there is a township with 5,011 people, the Minister will be able to extend these provisions to that town.

So towns will not be specifically excluded just because they happen to have two additional people on census day. That is especially relevant to towns with a population of just over 5,000. The figure of 5,000 residents or fewer reflects a statement made by the Premier at the Shires Association

conference last year. I want to clarify that that figure of 5,000 residents is intended to relate to centres of population that are "identifiable towns or contiguous built up areas surrounded by or adjacent to non-urban areas", not the outlying areas around a town or a council area. Villages located 10 miles away would not be included; only the township will be included. There has been some confusion amongst stakeholders as to how long this provision is applicable.

Let me make it quite clear that there is no time limit on this provision to maintain core numbers in rural centres. The Government is committed to supporting small rural centres for the long haul. The bill also extends these core employment protection provisions to all regular staff inclusive of permanent casual staff; that is, staff engaged on a regular and systematic basis for a sequence of periods of employment during the period of the last six months and who have a reasonable expectation of continuing employment. I am pleased that these changes to the Local Government Act reflect the Government's ongoing commitment to recognising and protecting the rights of permanent casual workers in New South Wales.

I am confident that these amendments will protect non-senior council staff affected by structural reform. The Government will be watching closely and will continue to consult with stakeholders to make sure that those measures provide adequate protection, particularly with regard to the relocation of staff and the maintenance of core staff numbers in rural centres following structural reform. A number of councils are currently investigating resource-sharing arrangements. I applaud their initiative and continue to encourage councils to explore innovative ways to reform their structure and provide better services for their communities. However, I want to make it clear that the Government does not support councils undertaking voluntary structural reform in a way that seeks to limit the employment protection provisions available to the staff under the Act. I remind councils that the Government is committed to ensuring that the rights of local government workers are protected. If councils try to shirk their responsibilities to their staff, the Government will be forced to step in and make sure that they do not.

The amendments in this bill provide greater security and certainty in local government. They represent a good balance between flexibility and certainty for councils, their staff and their communities. The proposed amendments reflect the consultation that I have undertaken with key stakeholders, and have the support of peak local government bodies, the union and numerous councils and communities around the State. Without this bill, local councils and their ratepayers will have to bear the cost of additional elections into the future, local government staff will not have access to the sort of employment protection they deserve, and rural communities will not have the guarantee that core numbers of council staff will continue to be based in town. I urge honourable members to be mindful of this fact when casting their votes on the bill. I commend the bill to the House.

Debate adjourned on motion by the Hon. Don Harwin.

Subjects: [Local Government](#); [Local Government Elections](#); [Industrial Relations](#).

Speakers: [Kelly, The Hon Tony](#).

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