



Local Government Amendment (Employment Protection) Bill.

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)) [4.30 p.m.]: I move:

That this bill be now read a second time.

This bill amends the Local Government Act 1993 in relation to the transfer of staff from one council to another where local councils are constituted or amalgamated, or where local council boundaries are altered. Currently, proclamations that alter the boundaries, or reconstitute or amalgamate local government areas, contain provisions to ensure that employees' conditions and entitlements are protected. However, there is no provision under the Local Government Act in its present form to ensure that employees' security of employment is not bargained away during the negotiation of the transfer of assets after boundary alteration or amalgamation or constitution. This places local government employees in a significantly more precarious position than other public sector employees.

Under the old Local Government Act 1919 provision was made for the transfer of employees where a new local council area was constituted or the boundaries of a local council area were altered. The old Act provided that council staff were to be transferred from the old council to the new, and that their terms of employment were to be maintained. Further, such employees were not to have their services terminated within three years of such a transfer, on the ground of redundancy arising from such a constitution or boundary alteration. The award or industrial agreement governing the employment of such employees was to remain in force until a new one was made. Accrued leave and long service leave and superannuation entitlements were preserved. This bill reintroduces some of those provisions into the Local Government Act 1993. Rather than the Minister for Local Government directing the allocation of resources, including employees, following a boundary alteration, amalgamation or constitution of local government areas, the Local Government Act will ensure this is done as a matter of course.

These employment protection amendments will apply only to non-senior staff of a council. The amendments will ensure that where an organisational restructure occurs within a council due to constitution, amalgamation or boundary alteration, lateral transfer provisions will be used to protect the existing employment conditions of staff. This will mean that councils must notify staff vacancies internally and select candidates from within, where an adequately trained pool of staff exists. Transferred staff will be preferred candidates for positions where they are suitably qualified to fill the position. The bill also prohibits forced redundancies within three years of the proclamation of a council restructure due to amalgamation, boundary alteration or constitution of a council. The bill also prevents councils from shedding staff in anticipation of such a restructure by ensuring that forced redundancies cannot be imposed on staff during the period a formal proposal for structural reform has been received and is under consideration.

The bill provides for the preservation of employment conditions, as if the transferred employee were continuing with the same employer. The bill preserves all leave and superannuation entitlements. These amendments reflect the Government's commitment to rural communities, where the local council is often the major employer in the area. Ensuring employment protection, particularly by prohibiting forced redundancies within three years of a restructure, will help ensure that the bush does not suffer additional job losses, which is especially important in this time of economic hardship fuelled by the current drought. A provision also exists to ensure that inappropriate determinations of the terms and conditions of employment of any staff that are made during the period a formal proposal for structural reform has been received and is under consideration are not binding on a new council, unless approved by the Minister.

The Minister may refuse to approve a council's determination only if the Minister is satisfied that the council's determination would result in an unjustifiable increase or decrease in the obligations of the new council in relation to transferred staff members. This will prevent councils from renegotiating inappropriate employment conditions for their staff in an attempt to influence the outcome of a proposal to restructure the council by way of amalgamation, boundary alteration or constitution. It will also ensure that a council that is to take on staff transferred from another council would not have to meet the cost of unexpected employment conditions. It is not intended to apply to new determinations of employment conditions where those changes are made in good faith, and a regulation making power exists to exempt routine determinations.

The bill also introduces important new measures to promote greater transparency and accountability in local government. These measures deal with the issue of preventing inappropriate "golden parachute" payments to councils' senior staff, including general managers. Termination payments will require ministerial approval before they can be made. This will ensure that a council cannot make unreasonable termination payments by way of redundancy or ex-gratia payment to senior staff. This provision will apply at all times—not only in cases of council restructure. A regulation making power has been inserted to allow the exemption of certain types of termination payments that satisfy industry standards—for example, the payment of untaken recreation leave. This ensures that non-controversial payments are not caught by this provision and avoids unnecessary administrative process. The Government is committed to ensuring a fair and transparent legislative framework to govern the employment conditions of staff in the local government sector in New South Wales. I commend the bill to the House.

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