



NSW Legislative Council Hansard

Local Government Amendment (Miscellaneous) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 23 May 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [8.35 p.m.], on behalf of the Hon. Tony Kelly: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Local Government Amendment (Miscellaneous) Bill reflects the Government's commitment to the ongoing reform of local government.

This commitment means that the Local Government Act is kept continually under review to provide a transparent and effective legislative framework for the administration of local government in New South Wales.

The amendments in this Bill address issues highlighted by the State Government agencies and peak industry bodies, including the Local Government and Shires Associations of NSW.

The Bill proposes changes that have arisen out of issues with the day to day operation of the Act and that require legislative amendment to improve the way these sections apply.

First, the Bill amends the Act in relation to the counting of votes at council referendums and polls.

The Act currently does not make it clear that in determining the outcome of a referendum or a council poll only formal, valid votes cast are to be counted.

The need for this amendment was highlighted when Warringah Council held a constitutional referendum seeking its residents' approval to change the number of wards.

The voting was extremely close and the outcome of the referendum was determined by the informal votes cast.

The need for the amendment became apparent when the Crown Solicitor prepared advice for the State Electoral Office.

The advice indicated that the Act could be understood to say that all votes should be counted whether they are valid or not when counting votes at a constitutional referendum or a council poll.

As a result of this anomaly in the Act, the informal votes were counted in the result and the constitutional referendum to change the wards of Warringah Council was lost.

To prevent any confusion and to avoid what is clearly an unintended situation, the Act will be amended.

The proposed amendment makes it plain that when counting votes at a constitutional referendum or a council poll, only the number of formal votes cast determines the outcome.

This will bring the voting at a constitutional referendum or a council poll into line with the way ordinary council elections, State and Federal elections operate.

The Bill will also clarify the requirements for a councillor who returns prior to the end of a leave of absence that has been approved by a resolution of Council.

Communities complain about these issues when there is a contentious development application before council and a councillor who has an approved leave of absence for illness or personal travel returns to make sure a DA has the support to be approved.

As it stands, the Act allows for a councillor to be absent from three or more consecutive meetings with the prior leave of the council or leave granted by the council at any of the meetings.

If the council did not grant the leave of absence, the civic office held by that councillor becomes vacant.

There have also been recent instances where councils accepted apologies from a councillor for absences from more than three consecutive meetings without making a formal resolution to grant the leave of absence.

This has created uncertainty in the mind of the council and the councillor as to whether a vacancy in civic office has occurred.

These types of media reports have naturally caused the community and councils to express their concerns.

The Bill will amend the Act to put the matters beyond doubt and to address community concerns.

In particular, the Bill provides that when a councillor applies for the leave of absence, that leave may only be granted by a council resolution.

Where a councillor attends and participates in the business of a meeting of council during a period of leave of absence, his or her leave is ended.

If the councillor wishes to return to the interrupted leave of absence, another resolution of the council approving the new leave of absence is needed.

Otherwise if a councillor misses three consecutive ordinary council meetings without permission, the office would be declared vacant under section 234, subsection "d" of the Act.

It is also proposed that a councillor should provide the general manager with a minimum of two days notice of the intention to attend and participate in a meeting of council during a period of leave of absence.

This is simply for administrative reasons so that the council staff can make sure the councillor returning can be provided with the necessary agenda papers before the meeting.

At the same time, I want to make it clear that if a councillor failed to give such notice it would not prevent a councillor from attending the meeting or voting at it.

Any business conducted at the meeting would not be invalidated because of the failure to notify the General Manager within two days of the meeting.

As Members would appreciate, this amendment is to make very clear what the requirements are for a leave of absence so that the community can have confidence in decisions of councils in these type of situations.

The Bill will also amend the Act to allow a council to resolve to apply to the Minister to dispense with a by-election where a casual vacancy occurs within 12 months of an ordinary council election.

For example, where a council's term is due to end in September 2008 and a casual vacancy occurs after 1 October 2007, it will be open to a council to resolve to seek my approval, as Minister, not to fill that vacancy.

Currently, section 294 of the Act allows a council to apply to the Minister to dispense with a by-election where the vacancy occurs 6 months out from the ordinary election.

Previously it was 9 months.

In 2003, the Act was intended to be amended to extend that period of time to 12 months.

That proposal, together with other legislative amendments, was contained in a Local Government amending Bill during 2003.

However, when the Bill reached the Upper House it was amended in relation to when ordinary elections for councils were to be held.

An unintended consequence of the amendment was that the period in section 294 was reduced to 6 months instead of increased to 12 months.

Councils are required to meet the costs of ordinary elections and by-elections held for their local government areas.

This means that the costs are borne indirectly by ratepayers.

Given the recent concern by councils and the community over the costs involved in holding elections, it is appropriate to give effect to the Government's original intention and extend the period to dispense with by-elections to 12 months.

It must be remembered that the decision to apply to the Minister requesting that an election be dispensed with is

entirely up to the council, who should reflect community concerns on the issue.

The next amendment in the Bill proposes that general managers must inform councils when the council receives a fine, penalty notice or a cost order from a court.

Recent Promoting Better Practice reviews and public inquiries of councils have revealed that not all councils are advised of those matters by their general managers.

The Act gives to the general manager of a council the principal responsibility for the efficient and effective operation of a council's organisation.

It is the general manager who is responsible for the day-to-day management of the council.

However, there is nothing in the Act to make it plain that the general manager is also responsible for ensuring that a council is kept informed of its financial exposure to penalties or the like for a failure to comply with legal and financial obligations.

Instances have arisen in the past where councils have received a penalty notice or fine from the Australian Taxation Office or the Environment Protection Authority or orders for costs have been made by the Land and Environment Court and the councillors have not been advised.

The Act will be amended to provide that a General Manager must promptly report to a council meeting the fact and the reasons why a council has received a penalty notice or the like from government agencies, or where a court or tribunal makes an order as to costs against a council.

As the democratically elected representatives of the people councillors must be able to keep track of the council's financial situation to undertake their duties appropriately on behalf of the community.

This amendment allows councillors to be fully informed and places a legal obligation on the General Manager to report these matters to the councillors at the next meeting of the council.

The final amendment relates to the electronic payment of rates.

The Bill will amend the Act to allow a council to serve rates and charges notices electronically as an alternative to the post if a ratepayer elects that mode of service.

This proposal was developed by the Department of Local Government in collaboration with the Business Solutions Unit of the Local Government and Shires Associations.

The proposal gives effect to the Government's 2003 State Election policy for local government to amend the Act to allow for electronic payment of rates to benefit NSW families and businesses when paying their rate notices. Based on the existing legislative provisions relating to the issuing of rates and charges notices, the Bill will allow ratepayers to choose to receive their rates and charges notice electronically by e-mail.

The new provisions will allow councils to require those ratepayers to agree to the council's terms and conditions for electronic issuing of rates and charges notices.

If a ratepayer chooses to receive rate notices electronically then they will have to provide their written consent.

If the ratepayer changes their mind then that change will also be required to be notified in writing.

This will ensure certainty as to a ratepayer's choice.

The Department of Local Government will be drafting guidelines for councils around issuing rate notices by e-mail.

These guidelines will address issues like a requirement that a council must test an e-mail address before issuing a rate notice to ensure the e-mail address is valid.

I am pleased to advise the House that these reforms have met with strong support from the Local Government and Shires Associations and rating professionals.

Councils believe that the electronic issuing of rates notices will add to efficiency in local government and reduce costs.

This will mean better services to ratepayers.

I can advise the House that the Local Government and Shires Association has been given a copy of the Bill.

The proposals in this Bill aim to clarify and strengthen the day to day operations of the Local Government Act to give the community confidence in the processes of councils.

I commend the Bill to the House.