

26 FEBRUARY 2012

PROOF

Bill introduced on motion by Mr Donald Page, read a first time and printed.

Second Reading

Mr DONALD PAGE (Ballina—Minister for Local Government, and Minister for the North Coast) [3.45 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Local Government Amendment (Early Intervention) Bill 2013. The object of the bill is to put in place a more effective framework for addressing dysfunction and poor performance in local councils and to drive improvement. Of course, dysfunction and poor performance are rare, and most councils do an excellent job of serving their communities. The people of New South Wales should be proud of the efforts and behaviour of the overwhelming majority of councillors and council staff who demonstrate a commitment to the highest standards of community service and ethical conduct. However, most members of Parliament will be all too aware of recent media coverage of a few dysfunctional and poorly performing local councils. In particular, we have seen media reports of individual councillors who persistently engage in disruptive behaviour that impedes the effective performance of their councils and we have also seen groups of councillors in bitter disputes that get in the way of the council meeting the needs of its communities. I frequently receive requests from members of the community asking me to do something about this type of behaviour in their local councils.

Councils themselves want to put a stop to behaviour that tarnishes the reputation of local government and stops councils delivering for their communities. Members will remember that in response to those concerns the Local Government Act was recently amended to improve the regulation of the conduct of individual council officials. Briefly, the amendments gave effect to a more robust regulatory framework for the model code of conduct for local councils in New South Wales by, firstly, improving the efficiency and effectiveness of investigations by the Division of Local Government; secondly, strengthening penalties for misconduct; thirdly, strengthening the implementation of the code of conduct by councils; and, fourthly, ensuring fairness.

This bill seeks to address collective dysfunction and poor performance by councils. Unfortunately, the powers for dealing with poor performance that are currently available under the Local Government Act are limited and unwieldy. They basically allow for either an investigation by the Division of Local Government or, as a power of last resort, a public inquiry, which can then lead to the dismissal of the council. The whole process can take up to 18 months. Public inquiries generally follow a long period of dysfunction, often lasting for years. While this is going on, ratepayers often have to put up with suboptimal service and the reputation of individual councils and local government as a whole suffers as a result. Early intervention in these situations may have helped. There have been no fewer than 10 public inquiries in recent years, costing millions of dollars. Had the Government had powers to act sooner to bring about improvement in those councils, the problems could have been resolved more quickly to the benefit of the community.

At the same time, it is often the case that council dysfunction does not ever reach the level of needing a public inquiry. Examples include situations where the councillors cannot properly manage the poor performance of the general manager or where a group of councillors deliberately deprives the council of a quorum, which results in the frustration of the council's business. In these circumstances an early intervention with softer and more flexible options encouraging council-led improvement would be much more appropriate.

The bill puts in place an early intervention framework to drive improvement. It proposes to do this in the following ways: stronger powers to gather information from councils to identify dysfunction; new powers to issue a performance improvement order; new powers to suspend a council for up to three months, with a possible extension of a further three months if required; and changes to the existing powers of investigation and public inquiry to ensure consistency with the new order-making and suspension powers. I will deal briefly with these in turn.

In relation to information gathering power, it is proposed to strengthen and broaden the existing power by allowing the director general or the Minister to require or direct a council, a councillor or the general manager of the council to provide any relevant information concerning the council or its operations. Failure to comply with the direction to provide information would constitute an offence. The new power will enable the Division of Local Government to quickly assess any deficiencies in councils' operations, determine the most appropriate and effective intervention measure, and prevent the situation from worsening.

Secondly, it is proposed to introduce a new power to enable the Minister for Local Government to order a council to improve. A performance improvement order will be used where the council is failing to properly apply administrative or procedural frameworks or to comply with legislative requirements, where there is a significant adverse impact and where softer options, such as writing a letter requesting compliance, have failed. To assist councils in complying with the order, the Minister will have an option of appointing an adviser or a panel of advisers with the necessary qualifications and experience. The council will be required to cooperate fully with the advisers.

A new performance improvement order will also allow the Minister to determine what constitutes a quorum at a council meeting, where failure to attain a quorum is frustrating the business of council. The new power will provide an important early intervention tool and encourage councils to drive their own improvement. This shows an important commitment to finding local solutions for local problems in line with the goals of this Government's NSW 2021 State Plan. Importantly, giving notice and ensuring that the council is afforded an opportunity to be heard before making a decision satisfies the requirements of procedural fairness. The order will be made public to ensure greater public accountability for poor performance. When an order is issued, the council must report on any actions and initiatives undertaken by the council that demonstrate the council's compliance with the order.

Thirdly, it is proposed to provide the Minister with a power to suspend all councillors for a period of up to three months if the Minister believes, on reasonable grounds, that such suspension is warranted. Currently the Local Government Act does not contain a power to suspend whole councils. Rather, it provides for the suspension of individual councillors or a dismissal of the full council by the Governor following a public inquiry. The power to suspend a whole council exists in a number of other jurisdictions including Western Australia

and Queensland. Put simply, the proposal could be characterised as a "time-out". This power would work well in situations such as where a group of councillors walk out of meetings on a regular basis to deprive the meeting of a quorum. This leads to disruption in a council's decision-making process and ultimately to a breach of public trust by the council. In these circumstances a short time-out could be called with, for example, a requirement that the councillors attend training sessions to work toward re-establishing themselves as a cohesive, effective and representative decision-making body. Again, to ensure procedural fairness, the council will have 14 days to respond to the notice to suspend.

In the majority of cases the suspension of councillors would follow a previously issued performance improvement order. This is because the strategy will always be to use the softest intervention option first to encourage council self-improvement. Where a suspension of a council is ordered, the Minister will appoint an interim administrator, to be paid for by the council, to exercise all the functions of the council during the period of suspension. At the end of the suspension period the interim administrator will provide the Minister with a report and recommendations to assist the elected council to restore its effective governance. The maximum initial period for which a council may be suspended is three months. However, in more serious cases the suspension period may be extended for a further three months. To prevent misuse, a council will not be able to be suspended on more than two occasions, where the suspension is related to the same factual circumstances. The implication is that if things are that bad we should be seeking to hold a public inquiry after the second suspension. The new suspension power is a vital sanction underpinning the emphasis on council-led improvement. It sends a strong signal that poor performance will not be tolerated and where there is an urgent need to protect the public interest, the Government will act.

Fourthly, new supplementary powers are also proposed to integrate the new powers with the existing powers and interventions available under the Act. It is proposed that investigations and public inquiries that relate to a recurring problem with the administration of a council will be funded by the council. A recurring problem means any facts or circumstances with respect to the council, its work or activities that have been the subject of a previously issued performance improvement order, suspension order or both. This potential cost will hopefully serve as a further deterrent to ongoing disruptive behaviour by councils.

It is further proposed that a report prepared as part of a formal investigation be that of the director general rather than of a departmental representative. This will ensure consistency with the legislation governing other investigative bodies such as the Independent Commission Against Corruption and the Ombudsman and will contribute to fairness, integrity and good public administration. As an additional measure to enhance the process of conducting public inquiries, it is proposed that the Minister will have a discretion to suspend a council during the conduct of a public inquiry. The suspension power will be exercised if the Minister believes, on reasonable grounds, that the continued operation of the council during this time is not in the public interest.

Finally, where following a public inquiry into the affairs of a council the council is not dismissed the Minister will have power to issue a performance improvement order. This is in addition to the existing power of the Governor to make orders on the Minister's recommendations. Where a council fails to comply with the order the option of dismissal by the Governor on the Minister's recommendation will be retained without the need to undergo a second public inquiry. This proposal will expand the currently available options of no action, on the one hand, or dismissal, on the other hand, and will serve as an effective

measure to encourage councils' compliance with the performance improvement order. In addition, it will avoid substantial expense that would otherwise be incurred by the Government in conducting a second public inquiry.

This Government has built a positive and collaborative relationship with local government. Most councils operate successfully and meet the needs of the community. Where they do not, however, it is important that the Government has the ability to take action to ensure councils deliver local and State priorities and make decisions that are in the best interests of the communities they serve. There is widespread support for the Government taking this action, including from the Local Government and Shires Associations. The President of the Local Government and Shires Associations, Keith Rhodes, said on radio:

We think it [early intervention] is a terrific idea.

He went on to say:

The LGSA has backed this from the first time the Minister's office raised this idea with us.

Councils have called on the Government to act to prevent poor behaviour and performance from damaging the reputation of councils and disrupting services to the community. The recently published New South Wales Auditor-General's report, "Monitoring Local Government", also supported the need for government to have greater powers in tackling poor performance. The report concluded that the Act provides the Government with few options to intervene in a council, other than dismissing all the elected councillors, and that these arrangements may not provide effective oversight of council operations and timely warning of performance issues. It recommended additional powers in this regard.

New councils are in place following the 2012 local government elections. This Government has shown a commitment to local representation and, for the first time in 17 years, there are no councils under administration. We want to keep it that way. It is my hope that by addressing dysfunctional councils up-front, as provided in this legislation, we will reduce the need to dismiss councils in future. I strongly emphasise that the focus of the proposed intervention frameworks is on deterrence and improvement. The measure of their success will be that the powers conferred on the Minister and the division under them will be exercised with decreasing frequency, if at all. I commend the bill to the House.

Debate adjourned on motion by Ms Carmel Tebbutt and set down as an order of the day for a future day.

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