NSW Legislative Assembly Hansard Full Day Transcript

Extract from NSW Legislative Assembly Hansard and Papers Friday, 10 June 2005.

Second Reading

Ms ALISON MEGARRITY (Menai—Parliamentary Secretary) [12.21 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now read a second time.

This bill represents the Government's continuing commitment to ensuring that the legislative framework for the administration of local government in New South Wales is transparent and effective and promotes community representation. Under the old Local Government Act 1919 the number of councillors elected to a council was determined by the Governor from time to time. Some councils in New South Wales had up to 21 councillors. The Local Government Act 1993 limited the number of councillors of a council to between five and 15. This reduction in number came about because it was recognised that smaller numbers of people are better able to work together for the good of the community. The Local Government Act currently allows a council to reduce its councillor numbers if approval to do so has been given by way of a constitutional referendum.

However, the approval of a constitutional referendum to reduce councillor numbers cannot take effect until the next ordinary election. The cost involved in holding a constitutional referendum outside an ordinary election or by-election is significant. Mindful of this cost, the bill proposes to allow councils to give 21 days public notice of an intention to consider a notice of motion to make an application to the Minister to reduce councillor numbers. Public consultation will include the council advertising the proposal in a newspaper circulating in the area and allowing the public to make submissions to the council on the proposal. The council will then be required to consider any submissions before it resolves to apply for approval to reduce the number of councillors.

If a council then passes a resolution to reduce the number of councillors it must send the Minister a copy of the resolution and a summary of the submissions it has received together with its application to reduce the number of councillors. Any such application by a council must be made within 12 months of the commencement of this Act. Councils will still be required to have a minimum of five councillors, and the reduction of councillor numbers will not take effect until the next ordinary election of the council. This means that if a council currently has 14 councillors and that council seeks approval to reduce that number to nine and the approval is granted, the current 14 councillors remain in office until the next ordinary election. At the next ordinary election only nine councillors will be elected.

If a casual vacancy occurs before the next ordinary election, a by-election will not be held to fill it. This means that the remaining councillors continue in office until the next ordinary election. However, a casual vacancy will not be allowed to go unfilled if it means that the number of councillors would be less than the reduced number approved. Further, a reduction in councillor numbers under the proposed amendments will not automatically change the number of the council's wards. If a council wishes to change its number of wards it will have to continue to seek approval at a constitutional referendum under section 16 of the Act.

The Minister would not approve any application for a reduction in the number of councillors from a council whose area is divided into wards if the number of wards for the area does not divide equally into the proposed number of councillors for the area. In his April 2001 report on local government Professor Sproats made the observation that the reduced cost of representation can create significant savings for councils. Professor Sproats found that it was possible to reduce councillor numbers on a council without any detrimental consequences to the community. I understand that a number of councils have expressed interest in being able to alter the number of councillors without the need to hold a constitutional referendum, because of the cost.

I am advised by the Department of Local Government that the most recent interest on this issue has come from the Strathfield Municipal Council. That council currently has nine councillors, including the mayor, and spends in excess of $200,000 annually on fees and expenses on them. As honourable members would know, two councillors of the Strathfield Municipal Council have recently resigned. It would be unfortunate to require that council to spend money on by-elections to replace two councillors when the councillors and the council staff are firmly of the opinion that its community could be better served by reducing the number of councillors to seven. But, I want to stress that this opportunity to reduce the number of councillors without a constitutional referendum is a one-off opportunity, and that the process will be driven by the councils themselves.

The bill also seeks to improve the accountability of councils when it comes to adopting a policy for the payment of councillors' expenses and the provision of facilities to councillors. This will be achieved by requiring councils to advertise annually in a local newspaper their policy in relation to the payment of councillor expenses and the provision of facilities to councillors. The advertisement will invite the public to make submissions on the policy

and allow them 28 days to do so. This public consultation must occur before a council adopts a policy, which it will be required to do every year. Councils will be required to send to the Director General of the Department of Local Government a summary of the submissions it has received together with a copy of the notice.

The Department of Local Government is drafting guidelines to assist councils to decide what types of expenses are appropriate for council to reimburse councillors and what type of facilities are appropriate for councils to provide councillors. These guidelines will not be prescriptive. The guidelines will recognise that there are differences between what might be appropriate to reimburse a councillor for travel in a large country council, where towns within the local government area can be as much as 100 kilometres apart, and what might be allowed for a councillor whose council area is in a city, with far less distance to travel and where convenient public transport is available. The guidelines would not then prescribe a limit as to how much a council should allow each councillor for travel expenses.

However, the guidelines will assist councils in formulating an appropriate facilities and expenses policy. In addition, councils will also be required to report, in their policy and in their annual reports, on the cost in paying the expenses and providing the facilities. As I said, the Minister has been working closely with the Local Government and Shires Associations to ensure a workable arrangement that encourages openness and transparency in relation to councils' policies on expenses and facilities, while ensuring that councils are not unreasonably burdened with the new consultation process. The Minister has assured the associations that consultation will take place on the draft guidelines prior to adoption. The expenses and facilities policy adopted by a council is always available to the public for inspection.

The bill seeks also to standardise employment contracts for senior staff of a council, which includes general managers. The Local Government Act was amended in 2003 to ensure that termination payments to senior staff, including general managers, were standardised and consisted of routine and non-controversial payments. As a result, there are no longer inconsistencies between employment contracts for senior staff in relation to termination payments. The next step is to standardise employment contracts for senior staff so they are employed under substantially similar terms and conditions. Naturally, salary and employment benefits will be left for individual senior staff members to negotiate with the councils who employ them. The standardisation of the employment contracts of senior staff of councils bring them into line with the approach taken to the employment contracts of senior executives in the public service. The bill will also ensure there will be less risk of senior staff being subject to unfair contracts.

The bill also seeks to make a minor clarification to the operation of the pecuniary interest provisions of the Act. The Local Government Act and the model code of conduct for local councils in New South Wales require that certain interests must be declared by councillors, staff, and delegates of councils. However, the Act goes on to exclude certain interests from being declared in relation to matters that are being considered. The sorts of interests that do not have to be declared include an interest as an elector, an interest as a ratepayer or a person liable to pay a charge, or an interest as a non-office holding member of a club or non-profit organisation.

Some councillors are uncertain that, where they do not have to declare an interest in a matter, they can discuss and vote on the matter. The bill removes doubt from the minds of councillors. It makes it clear that where a councillor does not have to declare an interest in a matter before council, the councillor may participate in the discussion of the matter and vote on it. Recent amendments to the Act have required councillors, staff, and delegates of a council to comply with a new model code of conduct. The model code of conduct requires councillors, staff and delegates to declare non-pecuniary conflicts of interest.

A pecuniary interest is not the converse of a conflict of interest, and vice versa. The bill seeks to make it clear that where a councillor, staff member, or delegate is satisfied they do not have a pecuniary interest in a matter before council they should also refer to the code of conduct to ensure they do not have a conflict of interest. One of the ways a pecuniary interest may arise in a matter before a council is where another person with whom a councillor or staff member or delegate is associated has the pecuniary interest.

For example, the associated person could be a spouse or de facto partner, a relative, or a partner or employer of the staff member, councillor or delegate and could have a pecuniary interest in the matter being considered by the staff member, councillor, or delegate. Because of the way the Act is currently worded, there has been some confusion as to whether a pecuniary interest could arise, because a person associated with a person associated with the councillor, staff member or delegate has a pecuniary interest in the matter being considered. It is important to have clarity on such an important issue. The bill removes this confusion by making it clear who an associated person is for the purposes of pecuniary interests.

The bill also gives to the Local Government Pecuniary Interest and Disciplinary Tribunal a power to refer matters of contempt that occur in the face or hearing of the tribunal to the Supreme Court. In a number of recent matters before the tribunal, persons the subject of a complaint have frustrated and delayed the work of the tribunal. This has occurred where there has been a refusal to co-operate with the tribunal or other parties, and where the persons have been abusive to the tribunal. There have also been instances of persons who are not the subject of complaints, but who have been required to give evidence or provide documents refusing to do so.

These delays and frustrations have led to increased costs by the postponement of hearing days and delay of the finalisation of matters.

Allowing the tribunal to report matters of contempt to the Supreme Court will act as a strong deterrent from such behaviour happening in the future. Further, if such behaviour did occur, the existence of the power would act as a persuasive reason to reach a resolution of any issues. This power is not unusual and is often given to tribunals in New South Wales.

The bill also amends the Freedom of Information Act in relation to the Department of Local Government's investigation and complaint-handling functions. The Department of Local Government examines complaints in relation to breaches of the pecuniary interest provisions of the Local Government Act. The department is also responsible for investigating formal complaints and reporting the results of the investigation to the Pecuniary Interest and Disciplinary Tribunal.

The department can also investigate councillors for alleged misbehaviour. The department also monitors and investigates complaints made to the Minister and the director-general, which allege maladministration by local councils. The department also receives referrals from the Independent Commission Against Corruption and the New South Wales Ombudsman in relation to matters those agencies consider more properly dealt with by the department. The department also investigates complaints about local councils contravening competitive neutrality principles of the national competition policy. The Freedom of Information Act 1989 currently applies to all aspects of the department's functions, including those I have just mentioned.

This is somewhat unusual and anomalous for an agency that has such significant complaint-handling and investigative functions. The bill seeks to amend the Freedom of Information Act to exempt the department in relation to its complaint-handling and investigation functions where the department is carrying out examinations of complaints or investigations. This does not mean that all complaints received by the department are exempt, only those that relate to particular types of complaints or investigations. These include complaints and investigations relating to pecuniary interest matters or complaints and investigations in relation to acts of misbehaviour or maladministration. These types of complaints and investigations will often involve sensitive issues and personal or private matters that are properly exempted from public disclosure under the Freedom of Information Act. That they are not currently exempt may serve to frustrate or hamper current or future investigations.

The Freedom of Information Act already exempts other agencies that have investigation and complaint-handling functions similar to those of the Department of Local Government. Towards the end of last year the Government sought to regulate the involvement of local councils in public-private partnerships. Since then it has become apparent that some types of public-private partnerships, in circumstances where no legal entity is formed, would not be required to follow the necessary review process. To ensure that all public-private partnerships involving councils are required to follow the appropriate process, this bill makes a minor amendment to the definition of "public-private partnerships". The new definition includes all arrangements between a council and private person to provide public infrastructure or facilities where the council retains an interest, liability or other responsibility, or to deliver services in accordance with the arrangement. While the definition will be broad, it is intended that contracts that are required to follow a tendering process and other run-of-the-mill arrangements will be excluded from the requirement to follow this review process by regulation. In general, major contracts between councils and private parties will either need to follow the tendering process or the review process for public-private partnerships.

Another minor amendment will therefore remove the need for contracts for the formation of public-private partnerships to follow a tendering process. However, guidelines will ensure that councils still test the market to obtain value for money when entering a public-private partnership. Another minor amendment will clarify that the Minister's power to call in public-private partnerships will be used only where the council has not already complied with the guidelines that are established under the Act. Finally, the bill will clarify that a quorum for the Project Review Committee only requires a majority of the permanent members of that committee. These minor amendments will ensure that the regulation of council involvement in public-private partnerships is effective so that councils act in the best interests of their ratepayers. As I mentioned before, the Minister has consulted closely with the Local Government and Shires Associations in the development of the policy position that this bill represents. This has been a very productive process and the Government looks forward to continuing to work with key local government stakeholders in the implementation of these proposals. I commend the bill to the House.