Speech by

Hon. David Crisafulli

MEMBER FOR MUNDINGBURRA

Hansard Tuesday, 13 November 2012

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. DF CRISAFULLI (Mundingburra—LNP) (Minister for Local Government) (12.50 pm): I move—

That the bill be now read a second time.

As Minister for Local Government, I am proud to stand in the House today to read for the second time the Local Government and Other Legislation Amendment Bill 2012. When I introduced the bill into the House in September I said that it represents the first stage of the government's ongoing work to put the 'local' back in Queensland's 73 local governments. We were elected on a promise to let councils once again have control of their own destinies, and that is what this legislation is destined to achieve.

The government knows that councils are the elected bodies closest to Queenslanders and we have intimate knowledge of how local government works with the Premier, Deputy Premier, Treasurer and 10 other members of this government having served their communities at the purest level of government. We know that councils are best placed to provide the most practical and appropriate local solutions to local issues. Queenslanders deserve to have the high-functioning, high-performing councils that can deliver the opportunities and growth that come when governments stop blocking progress. This bill returns to Queenslanders the voice to determine how their communities are managed and gives back to councils the responsibility, the accountability and the power to act.

My recent tour of all 73 local governments largely informed the improvements that the bill makes for local governments. The bill was informed by listening to the people of Queensland at the local level—something the Bligh government failed to do. As I outlined at the time of its introduction, this bill fulfils the Queensland government's pre-election pledge to empower local government and give them a high level of autonomy, authority and responsibility to plan and solve local problems. The bill will allow councils to get on with delivering the things that matter to ratepayers.

The bill delivers on a number of other specific election commitments such as putting mayors and councillors clearly in charge of councils; repealing the blatantly unfair requirement of the previous Labor government that forced councillors standing as candidates for state parliament to automatically resign; streamlining the material personal interests and the conflict of interest provisions; and repealing the requirement for a councillor to report another councillor's material personal interest, conflict of interest or misconduct but at the same time increasing penalties for those who wrongly use inside information.

Mayors and councillors will clearly be in control of their councils through the following amendments: giving mayors, along with committee chairs and deputy mayors, a voice on the appointment of senior executive employees; enabling mayors to direct both CEOs and senior executive employees; improving the ability of mayors and councillors to obtain advice or information from council officers; and providing that all delegations to the CEO must be reviewed annually by the mayors and councillors. Many of the amendments will significantly cut red tape which, in turn, will save councils money and manpower. The savings can then be used to make the community a better place to live.

There are, however, a number of specific amendments which individually will result in significant savings. Potential savings to council include the repeal of the long-term community plan requirements. The cost of a community plan can vary significantly from council to council. Recently, the *Gold Coast Bulletin* reported that the Gold Coast City Council's community plans cost the council approximately $1.1 million to develop. Additionally, savings will also be recognised when the councils are due to renew their community plans and also by the removal of the need to review and publish these plans annually.

The removal of the legislative requirement for councillors to automatically vacate office when nominating for state parliament will result in the removal of the need to conduct costly by-elections where that councillor is not successful in being elected to state parliament. The cost of conducting a by-election is a significant burden for councils which can run into the hundreds of thousands of dollars.

Body corporate status was removed from Queensland councils except Brisbane City Council through a legislative amendment in 2008. An unintended consequence of this amendment is that local governments no longer qualify for corporate reconstruction relief from stamp duty under the Duties Act 2001. The restoration of body corporate status to local governments, amongst other things, will ensure that local governments will again qualify for the stamp duty relief. As an example, the stamp duty amounted to $164,175 for one single transaction involving Ipswich City Council.

In addition to the amendments in the bill, the current local government regulations are extremely detailed and prescriptive, and work is underway for complementary changes to be made to the regulations to remove unnecessary red tape and prescription. This will further ease the burden on local government and assist in generating further savings.

I would like to take this opportunity to acknowledge and thank Ms Peta Irvine, Chief Executive Officer of the Local Government Managers Australia, as well as the Local Government Association of Queensland, in particular, Greg Hallam, Chief Executive, and Greg Hoffman, PSM, General Manager, Advocacy, for their strong and continuing advocacy for local government and their open and constructive partnering with the government to ensure the interests of local communities are represented.

I would also like to thank all those who made submissions—32 in all—to the Transport, Housing and Local Government Committee. I greatly appreciate the time and effort taken to communicate your concerns and suggestions on the bill. I am gladdened by the advocacy for local government and overall support for the bill demonstrated in those submissions. I thank the Transport, Housing and Local Government Committee for its timely and thorough consideration of the bill. In particular, I would like to thank the chair of the committee, the member for Warrego, for his committee's deliberation and report on the bill. The government has carefully considered the submissions and the committee's report on the bill, which was tabled in the House on 6 November 2012. In reply, I am pleased to now table the government's response to the report.

Tabled paper: Transport, Housing and Local Government Committee: Report No. 11—Local Government and Other Legislation Amendment Bill 2012, government response [1568].

The committee's report makes 19 recommendations to the bill and I will respond briefly to each of the recommendations. The government's detailed responses to the committee recommendations are provided in the government's tabled response. Of the 19 recommendations, the government supports seven. I will speak firstly to the recommendations supported by the government.

The government supports recommendation 1 that the bill will be passed. The government supports recommendation 4 and notes the committee's support of the right of councillors to undertake government employment while representing the communities as elected councillors provided there is no conflict of interest, for example, a councillor employed in their own council. As with all decisions taken whilst a councillor, due consideration must be given to the identification and resolution of conflicts of interest with the intention of always serving in the public interest.

The government supports recommendation 5 to omit the clauses in the bill which amend the Local Government Act 2009 to limit a councillor's ability to request information for divisions other than their own. It remains the case that the bill permits a councillor to ask a local government employee for assistance or information provided it is to permit the councillor to carry out his or her responsibility under the act. A request of a councillor must comply with acceptable request guidelines developed by the council. Local governments have a broad discretion and a high level of autonomy in determining the contents of their guidelines.

The government supports recommendation 6 to amend the bill to link the clauses that relate to the acceptable request guidelines, that is clause 125, and a council CEO's additional responsibility to fill councillor requests for information, clause 79, both in relation to the LGA 2009 to further clarify that

councillor requests are considered to have been complied with when the acceptable request guidelines are followed.

The government supports recommendation 11 to amend the bill to ensure that the commencement of the clauses relating to the recorporatisation of local government be delayed until the Department of Justice and Attorney-General and the Local Government Association of Queensland have the opportunity to resolve the outstanding matters of the industrial relations jurisdiction.

The government supports recommendation 14 to omit section 156A from the Local Government Act 2009 to correct an inconsistency with the amendments in the bill to section 152 of the LGA which will remove the residency and heritage qualifications for a person to be eligible to be mayor or councillor of the Torres Strait Island Regional Council. The government acknowledges that, with the proposed omissions of 152(2) and (3) of the Local Government Act 2009, section 156A is not required.

Finally, the government supports recommendation 19 that the term 'ordinary business matter' defined in the City of Brisbane Act 2010 and the Local Government Act 2009 should not be able to be amended in any way by regulation. The government is satisfied that instances in which an amendment to the definition of the term 'ordinary business matter' would be limited and, in those circumstances, an amendment by way of an amendment to the Local Government Act or City of Brisbane Act would be appropriate. The government proposes to amend clause 72(9) and 176(8) of the bill to remove the ability for another matter to be prescribed under a regulation with respect to the definition of 'ordinary business matter'.

I will now briefly speak to the recommendations that the government does not support. The government does not support recommendation 2 for the sections of the bill relating to party houses to be amended to ensure that the local government have power to penalise whoever is responsible for the noise and antisocial behaviour, whether owners or tenants in both short- and long-term residential accommodation where noise and/or antisocial behaviour is a regular occurrence. The government's view is that clauses 17 and 89 of the bill as drafted already empower local government to pass local laws which regulate excessive noise regularly emitted from a property, which covers both tenants and owners in short- and long-term rental properties. It is not the government's intention for the bill to specifically empower local governments to pass local laws governing other antisocial behaviour. There are already existing state laws, for example the offence of public nuisance, that could potentially apply to neighbourhood disruptions resulting from party house activities while damage to property could constitute wilful damage under the Criminal Code.

The government does not support recommendation 3 as the government submits there is no inherent inconsistencies between section 60 and 75 in relation to road maintenance. The bill maintains the current position in the legislation, which states that the local government is responsible for all roads in its local government area.

Hon. DF CRISAFULLI (Mundingburra—LNP) (Minister for Local Government) (2.31 pm), continuing: The Department of Local Government will, however, undertake to further consider the issue of liability for unmaintained roads at a later point in time.

The government does not support recommendation 7, to omit the proposed clauses in the bill which state that 'a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in the local government area'. The committee recommends that 'ordinary business matter' form the basis for a councillor's clear understanding of what constitutes an MPI.

The bill provides that a councillor does not have a material personal interest if the councillor's interest is no greater than that of other persons in the local government area. This proposed amendment follows a recommendation of the Queensland Integrity Commissioner. A similar exemption applies to members of parliament in relation to proceedings in the parliament. The Queensland Ministerial Code of Ethics contains a similar exemption from discussions in cabinet concerning 'a matter of general public policy or where the minister has no greater interest than that of other classes of people in the community or within the cabinet generally'.

As is currently the case, the requirements applying when a councillor has a material personal interest will also not apply where the matter is an 'ordinary business matter'. The bill permits councillors to engage with a particular matter before council where they would ordinarily have a material personal interest, provided their interest is no greater than other persons in their local government area. This is particularly important where council is dealing with a matter which affects a large portion of the local government area, permitting councillors to continue to represent their communities. Each councillor will need to assess whether a material personal interest exists and how that interest compares to other persons in the local government area. As always, councillors must remain mindful of the importance of adhering to the local government principles.

Recommendation 8 is that the Department of Local Government liaise with the Office of the Queensland Parliamentary Counsel to ensure consistency between the terms in the Anti-Discrimination Act 1991 and the terms proposed to be used in the conflict of interest and material personal interest clauses in the bill. Following discussions with the Office of the Queensland Parliamentary Counsel, the government is of the view that there is no legal requirement for the wording of the bill to match the exact wording of the Anti-Discrimination Act 1991 in this particular instance. It is the government's view that the term 'the councillor's religious beliefs' used in the bill is sufficiently broad to capture any religious practice or membership of a councillor pertaining to a religious belief.

The government does not support recommendation 9, for the guidelines given around the preliminary assessment of complaints by the CEO and the departmental director-general, in some cases, to be more fully described in the relevant clauses of the bill, in relation to both the City of Brisbane Act and the Local Government Act, to clarify the role of the CEO and the departmental director-general in carrying out their duty. The bill provides for a preliminary assessment of complaints about the conduct or performance of a councillor by either the director-general of the Department of Local Government or the local government's chief executive officer, depending upon the nature of the complaint.

The bill intends for the preliminary assessment to be undertaken in a manner determined appropriate by the assessor. With the government's commitment to reducing red tape and unnecessary state interference in local government processes, it is not intended that the bill will contain a prescriptive process for the preliminary assessment to follow. Should CEOs in due course seek clarification around the process for the carrying out of the preliminary assessment, the Department of Local Government is able to provide administrative guidelines to assist. Similarly, if a local government wants to utilise a complaints management checklist or process, there is nothing in the bill which would prevent them from doing so.

The government does not support recommendation 10, to amend the bill to define the terms 'frivolous' and 'vexatious' in both CoBA and LGA. The government's preferred approach is for the terms to be interpreted according to their ordinary, natural meaning. The terms 'frivolous' and 'vexatious' are difficult terms to define with any amount of precision. Defining these terms risks defining them too narrowly, giving rise to unintended consequences.

The government does not support recommendation 12, to omit from the bill the new provisions relating to budget development and approval and to amend the bill to include a provision requiring a consultative and collaborative approach to budget development in local government. Clause 109 of the bill expressly requires the mayor to present the budget. The budget must be provided to each councillor at least two weeks before the local government is to consider adopting the budget. The only difference resulting from the bill is that it is now the mayor, not the chief executive officer, who is responsible for the preparation of the budget. The role of the other councillors remains unchanged. The amendment is in line with the government's commitment to ensure that mayors and councillors are in charge of councils. The level of consultation and the means by which the consultation occurs are not restricted by the bill.

Recommendation 13 is that, if recommendation 12 is not agreed to, it is recommended that clause 109 of the bill, which provides that councillors be given a copy of the budget at least two weeks before local government is to consider adopting the budget, be amended to ensure that councillors are given a copy of the proposed budget at least four weeks prior to consideration to adopt the budget. The government does not support recommendation 13. The introduction of the two-week time frame aims to provide councillors with a 'safety net' which they do not currently have. The bill provides councillors with a legislative right to view the proposed budget well in advance of its consideration by the local government. The two-week time frame is supported by stakeholders, and the government is pleased to introduce a bill which for the first time provides councillors with a minimum time frame to carefully consider the budget. I am confident that the input of councillors will be valued by any mayor seeking support on the floor of council.

The government does not support recommendation 15, to omit clause 124 from the bill and for the existing provisions to be retained—that is, that the mayor is able to direct the CEO only. Clause 124 of the bill amends section 170 of the Local Government Act to give mayors the capacity to direct both the CEO and senior executive employees to clearly reflect the government's policy of ensuring that mayors and councillors are firmly in charge of local governments and to reflect the nature of the significant appointment of senior executive employees and the benefits which flow from mayors having direct access to these employees. The bill does not prevent local governments—indeed, this is highly encouraged as a matter of best practice—from having administrative arrangements in place between senior executive employees and their CEO to ensure that all instances of contact from a mayor are conveyed promptly to the CEO.

The government does not support recommendation 16, to omit clause 79(1) from the bill. Clause 79(1) removes from the Local Government Act the requirement for CEOs to keep and publish records of mayoral directions. This amendment is strongly supported by stakeholders and reflects that, in practice, this record is not maintained by local governments.

Recommendation 17 is that all terms used in the 'Prohibited conduct by councillor in possession of inside information' clauses in both CoBA and LGA should be unambiguously defined so that councillors have legal certainty about these provisions. The committee also recommends that the Department of Local Government develops a mechanism to ensure that all councillors, current and future, have a clear understanding of the parameters of these clauses. The government does not support this recommendation. The government acknowledges the difficulties which arise when attempting to prosecute offences such as that contained in proposed clauses 45 and 126 of the bill. However, the government is satisfied with the level of certainty contained in proposed clauses 45 and 126, acknowledging that, ultimately, whether evidence meets the prescribed threshold in a prosecution will depend upon the specifics of each particular instance.

The Department of Local Government will ensure that councillors have the necessary tools to comprehensively understand the impact of the bill. The Department of Local Government commits to identifying key areas in which early capacity building is required to achieve this understanding.

Lastly, recommendation 18 is that the juxtaposition error in clause 182 in reference to subsections 36(2)(a) and 36(2)(b) be corrected. The government does not support this recommendation. The section references are correct and no amendment is necessary. In closing, I propose to move amendments during consideration in detail which will give effect to the government's response to recommendations 5, 6, 11, 14 and 19. In September I gave an undertaking to this House and to the people of Queensland that this bill is not the end of the process of revitalising local government. I intend to maintain a watching brief over the legislation and expect to make further changes in the future. With the passing of this bill and the making of the proposed new regulations, local government will be empowered to give local people a real say on the future direction of their communities. I am proud to commend the bill to the House.