Speech by

Tim Mulherin

MEMBER FOR MACKAY

Hansard Tuesday, 13 November 2012

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr MULHERIN (Mackay—ALP) (Deputy Leader of the Opposition) (2.40 pm): I rise to make a contribution on the Local Government and Other Legislation Amendment Bill 2012. This bill makes some extensive changes to both the Local Government Act 2009 and the City of Brisbane Act 2010. I first want to raise the issue of consultation. The consultation prior to the introduction of this bill was farcical. Such sweeping changes require extensive consultation to ensure a workable model is introduced into the parliament. Instead, minimal consultation was conducted. As the explanatory notes explain—

No public consultation was undertaken during the development of the Bill as the Government has an electoral mandate to implement its announced policy ...

Briefings were provided to key stakeholders including the Local Government Association of Queensland and the Brisbane City Council during the development of the exposure draft of the bill and on further drafts of the bill. For the benefit of the minister, had wider consultation been undertaken on the way the policy was to be implemented, we might not have had the situation where the committee made 19 recommendations on the bill, including many recommendations that the proposed amendment be omitted. Similarly, councillors from the Brisbane City Council who asked to be able to appear at the public briefing on the bill were refused. There was no opportunity for them to ask questions of the departmental advisers and when the advisers were asked questions by committee members they frequently took the questions on notice. This meant that when answers were provided at a later date there was no opportunity to ask for a clarification of those responses or to ask follow-up questions. Perhaps this is something the committee could look at—that is, to allow members to again have the opportunity to question departmental representatives when this is the situation.

The bill allows councils to make their own local laws without requiring the approval of the minister, as is currently required. It also removes the requirement for councils to regularly review their local laws and also provides that community engagement is not mandatory before making interim local laws. It also removes the need to publish a new local law in the newspaper. The cost is the only reason given for this. Submissions received by the committee expressed some concern about this. Many people in regional and rural areas are used to looking to their local papers for information about their council, and this is an ideal way to keep the community informed. I cannot imagine that the cost would be so excessive as to outweigh the benefit of keeping the community informed. Perhaps I could ask the minister to please give an indication of how much on average is spent by local councils in advertising their local laws during his reply. Certainly, if cost is the only reason given for this change then there must be some information available about what the cost is.

There are some increased requirements in relation to maintaining a register of local laws and publishing it on the council website. I understand the Brisbane City Council already does this. However, many people do not have access to the internet and they will therefore have no notice of changes to local laws. This is a reduction of transparency of local government that causes me and many members of the community some concern. The bill also allows local laws to be made about party houses and development processes in some cases. This would include advertising devices, gates and grids, levies and roadside dining. There is also power to impose a fine on an owner or a tenant of a residential property because of

excessive noise regularly emanating from the property—so-called party houses. Some concerns have been expressed about the fact that short-term tenants may not come within this definition so the person actually responsible for the noise will not be able to be punished. The committee recommended amendment to allow councils to fine whoever is responsible for making the noise. The minister has chosen not to follow this recommendation. Let us hope that it is considered in any future review of the act.

The bill also allows the minister to revoke local laws if they are not in the state's interests. This decision is not reviewable, even under judicial review. I note the comments of the committee that this is justifiable because the minister has to act reasonably and, therefore, there are sufficient safeguards. However, if someone feels that the minister has not acted reasonably, there is no review of the decision. What compulsion is there, therefore, for the minister to act reasonably? Even if they do not, the decision cannot be reviewed. That does not appear to be a safeguard to me. There should be a right of review if people are not satisfied that the minister has acted reasonably. Some submitters have commented on the lack of any provision in the bill relating to unmaintained roads, including the member for Gympie. Council may maintain a register of unmaintained roads that they cannot, for various reasons, maintain. The people who use those roads often wish to make some repairs themselves to make them more useable. However, the act prohibits them from doing any work on the road. So the council will not maintain them and users cannot repair them. This was noted in several submissions. The committee recommends resolving this conflict. Perhaps the minister could update the House on what he has done to address this issue.

The bill also removes the requirement for councils to develop a long-term community plan and financial plan. These were required to be developed over 10 years. There is now required to be developed a five-year corporate plan. The Department of Local Government advised the committee that a 10-year asset management plan and a financial forecast document are still required. The development of the corporate plan requires that council incorporates community engagement. This is not defined. Perhaps this is another matter that the minister could provide some clarification on. What exactly is envisaged by incorporating community engagement and how would that differ from what is regularly described as community consultation in various other pieces of legislation?

The bill also removes the prohibition on councillors being able to simultaneously hold full-time government jobs. This includes the Brisbane City Council where councillors are paid between $160,000 and $340,000 per annum. It is not difficult to envisage a situation where there could be a conflict between a councillor's government employment and their council duties. Where a councillor is paid the sort of salary that some councils pay their councillors, I question why there would be any benefit from them also holding down a full-time government job. Where councillors are part time there could be some justification for them holding down a full-time government job—that is, provided there were clear guidelines for councillors to follow in the event that there is some perceived conflict between their employment and their council responsibilities. The committee also supports the amendment provided there is no conflict such as the councillor working for their own council. I agree with that, but I also agree that there are many other situations where conflict is likely other than working for their own council.

The amendments in relation to councillor requests for advice and information are probably the most contentious part of the bill. They prevent councillors from asking the CEO to provide information that relates to any ward or division that the councillor does not represent. This applies to both the City of Brisbane Act and the Local Government Act.

There are also acceptable request guidelines to be developed and requests must comply with those. The matters that councillors may request advice on will be widened to include advice to assist them to perform their role as a councillor in addition to helping them make decisions, which is the current situation. But it is the restriction on councillors to requesting advice outside their local ward or division that has generated the most media interest and the submissions to the committee. The Ombudsman has advised the committee that in his view this is contrary to the local government principles in section 4 of the City of Brisbane Act 2012. It also breaches section 14(c) of the City of Brisbane Act and section 12(3)(c) of the Local Government Act 1999, which provides that councillors have a responsibility to participate in debate, policy development and decision making for the benefit of the local government area, not just their ward or division.

I note that the committee recommended that councillors under the LGA should have the ability to request information about their whole local government area and I note the amendments circulated by the minister to this effect. But this should also include Brisbane City councillors. When the current Premier was Lord Mayor of the Brisbane City Council, he requested the former state Labor government to provide civic cabinet protection from right to information, which was granted. So it is important, I think, for transparency and accountability that councillors should be able to be provided with information that is outside the bailiwick of their ward or division.

Last week in the media the minister responded that the committee's recommendation was unnecessary as councillors can always rummage through council records and that this just stops them using council employees to do this. During the committee hearing, the member for Algester was concerned

that councillors could go on a fishing expedition and tie up council assets for purely political reasons. The committee commented that, although it was cognisant of the workload areas, it felt that greater access was necessary for a councillor to fulfil their obligations under the legislation. But I cannot see any logical reason for making a distinction between councils under the Local Government Act and the Brisbane City Council Act. I ask the minister to explain the reasons the Brisbane City Council has been excluded from this amendment.

Another issue raised in the submissions was the fact that the restrictions on access to information outside the ward is not applicable to the mayors and chairs of committees. This creates an inherent inequality. Councillor Milton Dick raised this issue in his submission and the committee commented that there must be equity of access to all relevant information pertaining to the broader local government area. Even if the government was not prepared to make the same amendments to the City of Brisbane Act that it has made to the Local Government Act, at least this comment by the committee should have been endorsed and at least the leader of the opposition in the council and the shadow chairs of committees should have access to this information.

The amendments also contain a provision that prohibits councillors from releasing information that they know or ought to reasonably know is confidential. A breach of the provision constitutes misconduct and may be dealt with by the councillor conduct review panel. This is a serious matter. There is insufficient information contained in the bill and explanatory notes in relation to this provision. 'Confidential information' is not defined, nor are there examples given. Perhaps the minister could clarify what is exactly encompassed by 'confidential information' and explain how councillors are able to ascertain this. Is there some person to whom they can go to seek clarification on what can and cannot be released?

There are also amendments relating to councillors' material personal interests and conflicts of interest. The explanatory notes provide that the bill makes the following amendments to streamline the material personal interest provisions and the conflict of interest provisions—

Exempts councillors from disclosing a COI at a meeting if the matter to be discussed is an 'ordinary business matter';

Exempts councillors from disclosing a COI or MPI at a meeting with respect to an interest common to a significant number of electors or ratepayers;

Repeals the requirement for a councillor to report another councillor's MPI, COI, or misconduct;

Provides that a councillor only has a MPI in relation to their parent, child or sibling if the councillor knows, or should reasonably know, that their parent, child or sibling stands to gain a benefit or suffer a loss;

Provides that a councillor does not have a COI because of any engagement undertaken by the councillor with community groups, sporting clubs and similar organisations undertaken by the councillor in their capacity as a councillor; membership of a political party; membership of a community group, sporting club or similar organisation if the councillor is not an office holder; their religious beliefs; or they were a student of a particular school or their involvement with a school as parent of a student at the school.

However, instead of providing that a councillor does not have to disclose a conflict of interest or a material personal interest at a meeting with respect to an interest common to a significant number of electors or ratepayers, the provision states that a councillor does not have a material personal interest if they have no greater interest than other persons in the local government area. It would be difficult to imagine a situation where a councillor did not have any greater interest in a matter than at least one other person in the local government area. The provision does not clarify anything. The Local Government Association of Queensland was opposed to the amendment. The provision is apparently following a recommendation by the Integrity Commissioner that councillors be exempt from disclosing an interest common to a significant number of electors or ratepayers. That is a very different thing. That would be like making a decision about water rights when the councillor is a user of water like everyone else in the local government area. Perhaps the minister could explain why he used a different form of words with a different meaning from what the Integrity Commissioner recommended.

The other issue that I want to raise is in relation to local councils that engage in commercial activities—establishing trading companies with councillors serving on the board. Is the minister aware of that occurring? Is there anything in the legislation that would prevent that occurring? Did the minister consider the issue when reviewing the legislation? If it is occurring, does the minister have any concerns about it? My concern is where such a company might engage in an activity that is affected by council decisions. How can councillors who serve on the board of a company really make a decision that is not influenced by the needs of the company? Under this definition, they would not need to declare their interests, because a number of councillors have the same interest as each other—therefore, no greater interest than other persons in the local government area, the other councillors on the company board. I would be interested to know the minister's view on this matter and whether he intends to restrict councils to doing what is their responsibility, which is delivering services to the people in their local government areas.

Councillor Tully also raised a question about the meaning of 'religious beliefs' in this clause and wanted to include religious practice or membership to clarify the issue. The committee recommended aligning the terminology with that of the Anti-Discrimination Act. That appears to be a sensible option to provide certainty and clarity.

Clauses 61 and 141 require annual reports to include information on remuneration packages of the chief executive officer. I note some amendments to these clauses in the amendments circulated by the minister. I have some concerns about the remuneration of council employees as to whether they include payments that they receive from the boards that they serve on as council employees. I know that council employees may serve on boards and if those meetings are held during working hours or if councillors serve in their capacity as employees, I am interested to know what restrictions there are on them pocketing meeting fees that they might receive for doing that work in relation to their usual job.

Also in relation to councillors I hold some of the same concerns. It is not uncommon for councillors to serve on bodies such as the Local Government Grants Commission. There should be full disclosure of remuneration they receive, including meeting fees, travel allowance and any allowance to attend conferences, so voters can properly assess whether they are getting value for money in the councillors they elect and what other remuneration they receive as a result of their council position.

Council CEOs and departmental CEOs are also given power under the bill to assess complaints made about councillors to ascertain whether they are about a frivolous matter or made vexatiously or whether they lack substance. They then make a preliminary assessment. The councillor is not given an opportunity to know the nature of the complaint at this stage. Once the preliminary assessment is made they are then afforded natural justice. The committee has recommended that the guidelines for preliminary assessment of complaints be more fully described in the bill.

There are a number of real issues about natural justice here. It may not be necessary for the CEO of the council or department to notify the councillor about whom a complaint is made at the preliminary assessment stage if the CEO intends to dismiss it. However, before referring it to the next stage of the process, the councillor should have the chance to respond. This is what happens in this House when a matter is referred to the Speaker to consider whether it should be referred to the Ethics Committee. The Speaker allows the member to make a submission before making the decision about whether a referral should be made to the committee.

The committee also recommends that 'frivolous' and 'vexatious' be defined. These are terms which have been legally defined on many occasions and it may have the effect of limiting their meaning to attempt to define them. There were also concerns raised about whether the preliminary assessment was as to whether the complaint is about misconduct, inappropriate conduct or official misconduct or is likely to amount to misconduct, inappropriate conduct or official misconduct. The section seems to be quite clear and it prescribes certain action if the preliminary assessment is that the matter is about misconduct or inappropriate conduct or official misconduct—subsections (3) and (4).

The bill also allows members of the public to view outcomes of written complaints on the website and for inspection at the council offices. It exempts complaints found to be vexatious, frivolous or lacking in substance and also public interest disclosure. The bill also contains amendments that widen the behaviour that can amount to disorderly conduct by a councillor. Any decision in this respect by a chairperson of the council or a committee chairperson on the conduct of a councillor is not subject to appeal. The amendment removes the right of appeal that previously existed. Without an appropriate method of review, this power could be open to abuse. The Ombudsman proposes that there should be a mechanism to protect councillors from arbitrary or capricious conduct. The Department of Local Government says the powers are relatively low grade and the amendments allow strong scrutiny of councillors. However, protection against unreasonable behaviour is something that should be the right of our elected representatives and this should have been included.

Brisbane City Council councillors have long had access to discretionary funds for the benefit of their community. The amendment further defines the meaning of 'councillors' discretionary funds' as funds that are budgeted for community purposes. Previously the term used was 'community organisations' and this is defined in the regulation. 'Community purposes' is not. The Local Government Association of Queensland recommends using the defined term so councillors have clarity. The committee believes the wider definition gives greater flexibility, provided the council adopts clear guidelines for expenditure. That may be so, but there is, however, no requirement for them to do so. Without those guidelines councillors are left in the dark as to exactly how they can expend those funds.

The amendments further allow a council CEO to delegate their power to take disciplinary action to an appropriately qualified employee of the local council or a contractor of the council. Commencement of this section is to be delayed until a complementary regulation is made which sets out what disciplinary action can be taken against a council employee and when action can be so taken. However, we have not yet seen any details of the regulation. The Services Union has expressed concern about this. Perhaps the minister could explain how the development of the regulation is progressing and whether he intends to undertake consultation with interested stakeholders, including the relevant unions, in the development of the regulation.

Councillor Milton Dick has expressed concern about additional powers that will be delegated to the Establishment and Coordination Committee. The Department of Local Government advised that the

Establishment and Coordination Committee was a standing committee that could receive delegations prior to the commencement of the City of Brisbane Act. After the act it was unclear whether the committee retained its status as a standing committee so this bill clarifies this position. I do have some concerns about decisions being made by a committee behind closed doors and not by council in the full glare of public scrutiny. People elect councillors, not members of the ECC. I would like to know what restrictions there will be on the delegation of powers to the committee. What types of matters will the committee be able to decide? Perhaps the minister could clarify this also.

The act contains a requirement that the minister conduct a review of the act within four years of its commencement. This bill removes that requirement. The Department of Local Government states that review of legislation is conducted in accordance with Australian government regulatory best practice principles. However, there is only one review required under the act. When the act was passed it was on the basis that a review would be undertaken and members voted on that basis. To remove the requirement now would undermine the authority of the parliament and reduce the transparency and accountability of the council.

The committee report states on page 28 that the act must be reviewed each council term. This is not what the act requires. It is a one-off review. Section 249 provides—

The Minister must, within 4 years after the commencement of this Act, carry out a review of the operation and effectiveness of this Act.

I am a little concerned that the committee considered the bill in light of a misapprehension on what is required by the act.

The bill also makes amendments to restore body corporate status to councils. It is said that the reason for this is to give certainty to councils entering into contracts and to protect individual councillors from lawsuits. Questions were raised by the Local Government Association of Queensland and the Services Union about how that left councils in relation to industrial relations law. The LGAQ has approached the Department of Justice and Attorney-General about seeking an exemption from the provisions of the Fair Work Act so that council employees are still covered by state industrial relations legislation. The committee recommended an amendment to the bill to ensure that commencement be delayed until the Local Government Association of Queensland and the Department of Justice and Attorney-General have resolved the industrial relations matter. I would ask the minister to please update the House as to where this negotiation is up to and how it is likely to be resolved.

The bill also provides that the mayor is responsible for preparing the budget for presentation to the local council and that councillors be given a copy of the budget at least two weeks before council is to consider adopting the budget. Many submissions were received expressing concern that this responsibility was delegated to the mayor solely without any input from other councillors. The committee recommended that these provisions be deleted from the bill and the bill include instead a provision requiring a consultative and collaborative approach to the budget development in local government. Many submissions also considered that two weeks is not long enough for councillors to consider a budget where the council is large and the budget complex.

The committee recommended that, if the earlier recommendation is not followed, then two weeks be replaced by four weeks to allow councillors sufficient time to review the budget. As the minister has decided not to take the recommendations of the committee in relation to allowing greater consultation with other councillors in the preparation of the budget, could he please explain why he has not at least allowed councillors four weeks to pursue the budget as the committee recommended?

Mr Crisafulli: I have already.

Mr MULHERIN: I know, but the minister needs to give a bit more detail, rather than just running his line in here. The Local Government Act currently requires the Torres Strait Islander mayor and councillors to be Torres Strait Islanders and to have been residents in their divisions for two years prior to election. The bill removes those two requirements. The minister informed us at estimates that at the last election three people were challenged under this provision. One was successful and two were unsuccessful. The minister felt that if the residency and heritage requirements were important to residents, they would not have voted for the councillors. There are no similar requirements in any other local council. The Torres Strait Island Regional Council contends that the non-Aboriginal and Torres Strait Islander people cannot sign the advices under the Torres Strait Treaty, allowing free movement between PNG and the Torres Strait islands. However, the committee accepted there would be no adverse effect from the change to the act.

The committee has recommended that section 156A also be removed, which contains the requirement that a person cannot be a councillor if they do not live in the council's local government area. This means that once elected as a resident the person could then move outside the council area. They could, however, live outside their division. I see the minister has adopted this recommendation and the amendment to be moved during the consideration in detail stage circulated by the minister contains a provision to this effect. The committee recommended removing this section as it is inconsistent with the heritage and residency requirement. This amendment will mean that, if a person moves outside the TSIRC

area, perhaps to New Guinea, the mainland or anywhere else in the world, they could remain on the council. This is not the same as the residency requirement at the time of election. If a person lives outside the local government area at the time of the election, people can take that into account when they vote. If, once elected, they move outside the council area, people do not get a second chance at voting. That is just a difference I wanted to raise.

The bill contains an amendment to allow the mayor to direct senior executive employees. These senior employees are already subject to the direction of the CEO and this provision creates potential for conflict and two lines of authority. This would be unworkable. Many of the submissions reflected this view. The committee recommended removing this provision, leaving the existing arrangements where the CEO directs the senior executive staff and the mayor is able to direct the CEO. That is a far preferable situation. I think having both the CEO and the mayor able to direct senior staff is a recipe for disaster. I ask the minister: how will staff be expected to prioritise conflicting directions? Is there some mechanism proposed where they can at least get some advice on what to do in that situation?

Currently, the act also requires the CEO to keep record of all mayoral directions. The bill removes this requirement. This is a massive reduction in accountability and transparency. The Department of Local Government says there is nothing to prevent the CEO from keeping such records or for a council requiring records to be kept; that this is only a minimum standard. However, where a council is under the control of a mayor and they decide not to make a requirement for records to be kept, a mayor could direct a CEO not to keep records of directions. I ask the minister if he believes that a mayor should be able to direct a CEO not to keep records of mayoral directions?

The committee recommended this provision be removed from the bill. However, it recommended that the requirement to keep and publish be retained. There is no current requirement to publish. In relation to a CEO's responsibilities, section 13(3)(e) states—

Keeping a record, and giving the local government access to a record, of all directions that the mayor gives to the chief executive officer.

It might be a good suggestion to include a requirement to publish all mayoral directions. Perhaps this could be considered when the regular review is undertaken? It is the same situation when a minister gives a direction to a government owned corporation—that is, that the direction has to be published and is recorded in the annual report.