

LOCAL GOVERNMENT AMENDMENT BILL 2009

Second Reading

Resumed from an earlier stage of the sitting.

MR F.A. ALBAN (Swan Hills) [3.22 pm]: I support the Local Government Amendment Bill 2009. The amendments are designed to provide clarity and to improve and streamline the Local Government Act 1995 as a good foundation for the future of local government.

Matters of local government are very much of interest to me. Early in my career as a councillor—I was a fairly old councillor—one of the things that worried me the most about graffiti was the cost to the community of its removal. Being very adventurous, I moved a motion that the city would offer a \$1 000 reward for information leading to a conviction. That was pooh-poohed a bit, so it did not go ahead. I am interested to see that local government, which is spending \$10 million a year dealing with graffiti, is now starting to talk about my idea. We are now looking at graffiti in a totally different light.

Local governments are essential ingredients for the development and prosperity of our state. They perform key duties for the people of Western Australia, and they are often underrated and unappreciated. They do the core work that is the nuts and bolts of our community. They make decisions that immediately impact on us. Local government is not as glamorous as state Parliament; it does other work—roads, parks, footpaths and local planning and development controls; plus the provision of community recreation facilities, including libraries, swimming facilities, sporting ovals and community building pursuits. The duties also include the removal of graffiti, as I have just mentioned; the removal of garbage—which is going to be contentious; landscaping; and compliance and amenity issues, just to name a few.

Mr M. McGowan: Anything else?

Mr F.A. ALBAN: Does the member for Rockingham want me to spend more time on this? I thank him very much!

Mr B.S. Wyatt: What about the Dog Act?

Mr F.A. ALBAN: I do not know about the Dog Act, but I know there is a cat act. I have not been there for a while, member!

Mr B.S. Wyatt: Do you support the member for Jandakot and his cat act?

Mr F.A. ALBAN: I have not got to it, member for Victoria Park.

The key to this amendment is transparency and accountability. Although the role of a councillor is largely voluntary, the decisions that councillors make may have serious consequences. There should be no misconceptions or misunderstandings to undermine the public's confidence in their elected members.

I will refer to some of the key amendments. I have not taken these in any order; they are the issues that are most important to me. I mentioned clauses 46 and 47 earlier, relating to new powers for local governments in their fight against graffiti.

The ACTING SPEAKER: Members, there is quite a lot of noise in the chamber. If people want to hold meetings, can they move outside, please.

Mr F.A. ALBAN: As I mentioned earlier, local governments continue to burn up unacceptable amounts of ratepayers' money removing graffiti. In the past we have seen graffiti as a bit of a joke. I do not think it is a joke any more. I was interested this morning to see on television six famous Australian graffiti artists. As an Australian I was totally embarrassed to see that they were jailed in London after being caught producing graffiti all over Europe! I am sure that we are going to give them a great reception when they turn up.

Mr W.R. Marmion: Artists?

Mr F.A. ALBAN: No, they are not artists; they are graffiti vandals. I am sorry if I called them artists; I should not have done that!

The bill will also improve accountability provisions and those relating to the declaration of financial interests and election donations, and will restrict the types of gifts that a councillor can receive. That is in clause 26, which would limit the influence that can be exerted by proponents of developments. I register my support for the newly established graffiti taskforce. There are accountability provisions in clause 19 to cover issues arising from the Corruption and Crime Commission report on the City of Cockburn.

I also support the improvement of the provisions in clause 6 related to disqualification of council members for lack of attendance, though this is not common. It is important that their communities are represented adequately. Clause 31 limits the use of local government information, including local government rates records and electoral rolls. This information has been sold for private marketing purposes in the past. It is important that local government be transparent and accountable so that situations do not arise that would undermine this essential level of government.

As a former councillor I wholeheartedly support these amendments, particularly since there has been extensive consultation with the Western Australia Local Government Association, as well as other relevant parties. These amendments will provide a good foundation for the future of local government in Western Australia and they have my full support.

MR W.J. JOHNSTON (Cannington) [3.28 pm]: I want to make a couple of points regarding this bill. The first thing I will do is remind the Leader of the House that this is not a Labor Party bill; this is the government's bill. Members opposite are in government; they have introduced this bill. It is their bill that they have brought to the house. The continual comment that "it is your bill" as a reason that new members of Parliament like me should not be given an opportunity to scrutinise legislation is becoming very tiresome. I would appreciate it if the Leader of the House would accept his responsibility as leader of government business in the house to allow debate on these issues.

I want to raise some specific issues in the bill, and the minister might want to take note of this so that he can respond either during his reply to the second reading debate, or in consideration in detail. The first is clause 46, which seeks to amend schedule 3.1 of the Local Government Act by inserting a new section 5B. Under this proposed new section, if graffiti has been applied with the consent of the owner and is visible from a public place, and if that graffiti is considered by the local government to be unsightly and offensive, the local government will be given the power to ensure that that graffiti "is obliterated in a manner acceptable to the local government". I am concerned about what will happen if a local government considers a particular piece of graffiti to be unsightly or offensive, but the owner of the premises considers that graffiti to be artwork, and the local government is given the power to enter those premises and obliterate that graffiti. This is a serious issue that needs to be addressed.

Clause 46 also seeks to amend schedule 3.1 of the Local Government Act by deleting item 6 and inserting a new item 6 that will give a local government the power to take specified measures for preventing or minimising the movement of sand, silt, clay et cetera if, in the opinion of the local government, that movement would be likely to affect other land. This is a particularly important issue to certain constituents who live in Surrey Road, Wilson, in my electorate. I think the minister may have had some contact on this issue. The problem is that two landowners in Surrey Road adjoin a property on which their neighbour has made a large cut in the sand and has had to build two large retaining walls—one is about 3.5 metres high—to retain that sand so that it does not undermine their homes. It is interesting that both these neighbouring landowners are civil engineers, so that has given me a good opportunity to learn all about retaining walls. These landowners have made the point that although a retaining wall may be adequate to retain sand and prevent its movement, that does not address the problem of any loads that might be applied on either side of that retaining wall. If a retaining wall has not been engineered to take a load, that may restrict the right of the owner of the adjoining property to build on his land, because that load may cause the wall, and therefore the building, to collapse. This is a serious issue. I am interested to know whether this amendment will be sufficient to enable local governments to require that a retaining wall retains not only sand, but also any loads that might be placed on either side of that wall. This is not a political speech. I just want to address some of the technical issues that may arise here.

I also have a question about clause 4 of the bill. That clause seeks to delete, in section 2.7(1)(a) of the Local Government Act, the words "directs and controls" in respect of the powers of local councils and insert the word "governs". I am concerned about the effect of that proposed amendment on the power of the councillors on a council to run that council regardless of the views of the council. I will give members an example to explain my concern. A council may be involved in deliberations on a proposal for a high-rise development that is very controversial. Very late in the process, a local government election may take place, and a new team of councillors may come in who have been elected on the single issue of opposition to that development. Those new councillors may say, even though the council has gone through a transparent process through its executive, that they do not care about that; they have been elected to stop this development from happening. Will this amendment give a council that may find itself in that circumstance the right to direct the executive to embark on a new course of action, or will it limit the power of that council? I know from a similar circumstance that has occurred in the Town of Victoria Park, where I am a resident, that the minister can overrule the new council anyway. I want to raise with the minister that genuine and serious issue, because I am concerned about what will happen if there is a change in the make-up of a council and the new council has a different view from that of the previous council.

I also have a question about clause 8 of the bill. This clause seeks to amend section 3.27 of the Local Government Act to insert a new subsection (2A). I understand from the briefing that the purpose of this amendment is to clarify the issue of crown land that is the subject of a pastoral lease. I am concerned about the proprietary rights of the leaseholders of this land, because these crown leases are soon to expire. If the government is saying that because these leaseholders do not have propriety rights, it is going provide these leaseholders with these additional powers, then I will be holding the government to account on that when the leases are renewed, because that is actually a major public policy issue.

While I am on clause 8, I also want to clarify a matter that was raised by the member for Gosnells. Clause 8(2) seeks to insert after section 3.27(3) of the Local Government Act a new subsection (4A). Does this refer only to freehold land, or is there some suggestion that it is also related to leasehold land? As I have said, I am raising these issues now so that the minister can deal with them either in his reply to the second reading debate, or in consideration in detail.

I support the comment of the member for Swan Hills that local government plays a very important role. It is disappointing that this role is sometimes corrupted. I refer in particular to the attacks that were made in 2005 by the council of the City of Melville against the then Labor government. I refer also to the Western Australian Local Government Association television advertisements about former minister Jon Ford. I also draw attention to finding 2 of the Public Accounts Committee in its fourth report in 2006, which is that 68 per cent of local government revenue comes from public moneys, and 25 per cent of local government revenue is derived from either state or commonwealth grants. I am concerned that some councils are using these funds not to run political campaigns—such as telling drivers to “buckle up”—but, rather, for party political purposes. I do not think that is appropriate. I am getting on to philosophical issues here, and the minister does not necessarily need to respond, but it is important that we keep the accountability issues in mind. We are dealing with some of those issues with respect to the recent state election. I could, if I had the time, go into some detail about a \$26 900 donation to a particular candidate who is now the member for Wanneroo from a company in the northern suburbs called Sol Health Pty Ltd. That matter has been referred to in the other chamber as well. It appears that there may have been some laundering of donations. I look forward to the next local government bill coming into this house, because I am sure that will give me the opportunity to go into more detail about the disturbing aspects of that matter.

The amendments in the Local Government Amendment Bill 2009 are all very important technical amendments to strengthen local government. However, I will make a couple of points about that. It is important for local government amalgamations to be properly considered. The mayors of Gosnells and Canning, whose councils are in the electorate that I represent, have the same view. They have asked why their councils should have to amalgamate. They are large councils that are financially viable. Neither of the mayors can understand why those councils are being required to amalgamate, and the government is not explaining that to them. This process highlights that when undertaking any government activity, the government should tell the people what it is trying to achieve. If governments do not do that, how can people know if the government has failed? The minister can say that he just wants to change things, that he is not happy with local government and that they cannot continue to keep going the way they are. They are the political points he has made. That may well be the case, and no-one in the Labor Party is arguing that that is not the case. However, we have asked the minister to tell us what he wants to achieve. If he does not tell us what he wants to achieve, we will not know whether he has succeeded. Equally, we will not know whether he has failed. It is a very important part of the government process to set failure standards. The absence of failure standards means that the minister's process is unaccountable. We cannot tell whether the minister has got it wrong because he has not told us what the outcome is supposed to be. If the minister tells us what the outcome is supposed to be, we can hold him to account. Until he does that, he is behaving in an unaccountable way. The minister will probably not address any of these very important aspects because the debate is being truncated. As I have said, further reform is needed.

The technical amendments are welcome changes and the additional clauses that have been inserted concerning disclosure of campaign funding are important changes. However, the minister could get on with some genuine reforms rather than the mickey mouse reforms that he has talked about. One of those genuine reforms, which I suggest should be in the minister's next bill, is the implementation of the recommendations arising from the fourth report of the Public Accounts Committee into local government accountability in Western Australia. That report was produced during the previous Parliament. The committee set out a very detailed and sensible set of recommendations regarding the inclusion of the operation of the Auditor General in the auditing of local government. Local governments are the least accountable level of government operation of this state. It is open to corruption. There has been evidence of that corruption in local government over the past 20 years. We all know of certain cases and we all happily refer to them when it involves a political opponent. The reality is that there has been corruption in local government for years and years, and that is partly because they are not properly accountable.

The member for Warnbro said in his contribution to the second reading debate that many councils do not even have a simple mechanism such as an asset register. Until we take action in those areas, which is the difficult part of addressing the issues relating to local government, rather than only the soft areas such as electoral systems, we will not address some of these major problems. I say again that only 30 per cent of eligible electors vote in local government elections. That means that 70 per cent of people—these are round figures—do not care about the outcome of their local government election. That should not be something we welcome and is a matter that we must address. If we improved accountability mechanisms, we would go some way towards addressing that.

MS A.S. CARLES (Fremantle) [3.45 pm]: The Greens (WA) are broadly supportive of the Local Government Amendment Bill 2009. However, I will comment on two areas of concern—the disclosure of donations and the investigative powers. Clause 19 concerns the disclosure of donations. Our interest is in improving the transparency of electoral funding to avoid the type of corruption that was exposed by the Corruption and Crime Commission in relation to the Port Coogee development. We support the power to require donors to disclose donations made in the lead-up to local government elections as an extension of the current power to require such disclosure to be made by candidates for local government office. However, the current disclosure regime requires only that the disclosure be made to the relevant chief executive officer and that the CEO must put the information on an electoral gift register, which is publicly accessible at the local government office. We say that the regulations regarding the disclosure by candidates and donors should go further than that. We would require the local government to place an advertisement in the relevant local paper in the lead-up to the election campaign. The advertisement would disclose the location of the gift register and preferably advertise a website address so that voters could access the register online.

We are seeing developers get involved in elections at the local and state government levels, particularly when the developers have an opportunity to make extraordinary profits, say for instance where they are seeking to build private housing over the ocean. There is a higher risk that they will try to influence the decision makers. We saw it happen at the City of Cockburn where there was a proposal to develop Port Coogee, and when the North Port Quay consortium attempted to influence the outcome of the recent Fremantle by-election. Voters have a right to know whether private developers are seeking to get candidates elected so that they can effectively influence the decision-making process. We believe that this electoral disclosure should be made in a timely manner, prior to the local government elections, so that the voters will have the information to hand prior to casting their vote.

My second point is about the investigative powers under clause 41. The Greens support the Western Australian Local Government Association in opposition to the mechanism by which information can be sought directly from individuals within local government or from individual councillors. Information should be sought using the existing and long-established protocols; that is, through the CEO, unless there are special circumstances precluding this, such as if the CEO is under investigation. The CEO is responsible for keeping proper records and managing the affairs of local government and therefore should be responsible for releasing information. We need to be mindful that elected councillors are unpaid. They receive a small allowance for costs but they contribute their time to the community without pay. It is inappropriate to burden unpaid elected members with the additional burden of releasing official information, particularly as this provision exposes them to penalties for noncompliance.

MR G.M. CASTRILLI (Bunbury — Minister for Local Government) [3.47 pm] — in reply: I thank members for participating in this debate. I will try to quickly cover most of the points that have been raised and I will cover the rest at the third reading stage. The member for Warnbro's main point was about the extensive consultation. The previous government introduced the Local Government Amendment Bill 2008 into Parliament after it had conducted extensive consultation. The Department of Local Government and Regional Development consulted extensively with the Western Australian Local Government Association and other stakeholders. We have inserted three clauses concerning accountability as a result of recommendations by the Corruption and Crime Commission. That was done in consultation with WALGA, which was happy with them.

Mr P. Papalia: There is an opportunity to rectify the incorrect allegations made by the Treasurer.

Mr G.M. CASTRILLI: I will leave that up to the Treasurer. I point out that extensive consultation was carried out. The department did that, just as it would have done for any bill that came before this house, irrespective of which party was the government of the day.

The member for Gosnells talked about river walls. I am not sure how that fits into the bill. Some of the member's other main points were about local government getting access to private property to collect gravel. This is a clause that I think both sides agree with, because it is one of the clauses introduced by the previous Labor government, and the current government agrees with it. We agreed with all of the previous government's clauses; we have just introduced three more because of the Corruption and Crime Commission. That clause is really to clarify that a local government can enter private property to take gravel and building materials. The

owner has the right to demand full compensation and rehabilitation, because that is part of the negotiations they have.

Mr C.J. Tallentire: At the moment the right of entry would only be for gravel that has been taken from pasture land. Is cropping land included?

Mr G.M. CASTRILLI: No, it never has been, and it will not now, as I understand it. If I am wrong, I will clarify it.

Mr C.J. Tallentire: It's a mistake?

Mr G.M. CASTRILLI: If there is a crop of wheat and the local government wanted to rip it out to get to some gravel, it would be an awfully expensive exercise.

Mr C.J. Tallentire: No, it's not, minister.

Mr G.M. CASTRILLI: Local governments have never had the power to do it before, and the state government is not proposing to change that.

Dr J.M. Woollard: Will that access still be subject to Environmental Protection Authority approval?

Mr G.M. CASTRILLI: Proper permission and clearance have to be obtained to do that, obviously, as is the case now, I would have thought.

Clause 39 relates to differential rating being allowed. That means that each local government has its own town planning scheme, with a section called the predominant use. Under the town planning scheme there might be, for instance, a section of land that might have a redevelopment authority looking over it, or there might be a home-based business within that which is not being used. That gives the local government the right to differentially rate those portions of that land, and that is what that is all about. I think I have covered most of the questions related to the bill.

I was glad to see that the member for Swan Hills agreed with and supported the graffiti clauses, 46 and 47. The member for Cannington had a query—I cannot read my own writing.

Mr W.J. Johnston: In respect of clause 46, I was asking about schedule 3.1 amended, item 5B, paragraph (c), which states “considered by the local government to be unsightly or offensive, ...”. If the local government thinks it is unsightly or offensive, but the person thinks it is art —

Mr G.M. CASTRILLI: That was the part about graffiti?

Mr W.J. Johnston: Yes. If the local government considers it to have political content, what happens?

Mr G.M. CASTRILLI: What happens is that if the owner consents, it is fine; if the owner does not consent because of the reasons the member cited, obviously the local government has to give the owner notice in writing to remove it. If the owner objects to the removal, he can lodge a formal objection with the local government and/or with the State Administrative Tribunal. If the appeal is not upheld, the local government can remove it, and the owner will be charged with the costs of the removal. That is how it stands. I think that was one of the clauses that the previous Labor government put into the bill.

The member for Cannington raised a question about direction and control in relation to the policy and direction of council. It is about the chief executive officer taking control of the local government and the day-to-day operations of council. It is a bit like the separation powers, if the member likes. I think the member asked what would happen if one mob came in and changed and was of a mind not to do what the previous council wanted. In local government there are a lot of standards and formations written in, and some specific powers have been allocated to CEOs through approvals.

Mr W.J. Johnston: I gave an example whereby there is a process running, and two-thirds of the way through the process the council gets turned over. What happens then?

Mr G.M. CASTRILLI: That is what we call democracy, I am afraid. Sometimes it works one way and sometimes it works the other way. Basically that is what it is about, I am afraid. Those options can be explored a bit further if the member likes.

The member for Cannington asked about entering pastoral lease land. This bill gives local government the power to enter pastoral lease land in the same way as it would enter private land.

The member for Fremantle supported the inclusion of the disclosure of donations from donors. This bill legislates for donors to disclose who they gave the donations to, and the person running for election cannot accept a donation from somebody if he does not know who it is from—he must know. Donors now have to say what sort of gift it is and the value, so it has been broadened right out. Not only that, the gift has to be registered,

and every council will have a gift register situated in a public place so that every person in that locality can go to the council and view the gift register.

Dr J.M. Woollard: Is that going to set the standard for state elections too?

Mr G.M. CASTRILLI: Sorry, this is local government, and that is another argument.

Ms A.S. Carles: I am just concerned that the information is provided to voters before an election, rather than after the result is out.

Mr G.M. CASTRILLI: I think the clause states—I hope I have got this right—that six months before the date that a person nominates, the person has to declare any donations. If the person is successful in being elected, three days after he has been sworn in he has to declare them. Therefore, there is the nomination date, and then six months before, as I understand it, all donations and gifts have to be declared. It is pretty comprehensive.

The last point that the member for Fremantle made was that she was opposed to clause 41, which is about broadening the access of information by the Department of Local Government or the minister of the day by way of going to a local government, which means, in effect, the CEO, but also other councillors and employees and other persons. That is the only clause in this bill that the Western Australian Local Government Association has objected to. I have no problems with this. We were talking before about openness and accountability, which I totally agree with, because sometimes if the CEO is being investigated—some of this came out of the Joondalup issue, which happened a fair while ago—access to information is very restricted. We want to be open and accountable and to provide as much information as possible, and I am totally happy about broadening the scope of the access. I think I have covered most of the matters raised.

Question put and passed.

Bill read a second time.

Leave not granted to proceed forthwith to third reading.