

LOCAL GOVERNMENT AMENDMENT BILL 2023

Committee

Resumed from 10 May. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Jackie Jarvis (Minister for Agriculture and Food) in charge of the bill.

Clause 71: Section 5.68 amended —

Progress was reported after the clause had been partly considered.

Clause put and passed.

Clauses 72 and 73 put and passed.

Clause 74: Sections 5.92A to 5.92C inserted —

Hon Dr BRIAN WALKER: This clause relates to proposed sections 5.92A, “Local government to have communications agreement”. It is of concern to me the question of how much communication has not so far been occurring as required. What required this particular part of legislation to be introduced?

Hon JACKIE JARVIS: The provision for communication agreement mirrors what we use in state government ministerial offices, whereby there is an agreement on how councillors engage with staff. It is a template that will allow for very clear lines of communication and will ensure that counsellors can get information in a timely fashion as required. It also outlines which members of staff councillors could engage with on council business.

Hon Dr BRIAN WALKER: I assume this has also been recommended by the local government review panel’s final report. Can the minister confirm that, please?

Hon JACKIE JARVIS: I cannot point exactly to that report. As we have said previously, all these reforms came from a range of different reviews and reports so I cannot give the member the exact genesis of this one.

Hon Dr BRIAN WALKER: It has been my experience in talking to members of councils and shires that there is a perception that the CEO is given a position of some authority, which has surprised me because I understood that a CEO is appointed to be employed by the council, not to be the ruler of the council. Can the minister confirm that my opinion is correct?

Hon JACKIE JARVIS: The member is right. The CEO is an employee of the council. This provision does not give CEOs any additional powers. The CEO’s role is to manage the administration and implement the policy decisions made by council. This fundamental structure will not be altered by this reform.

Hon Dr BRIAN WALKER: Reading through proposed section 5.92A, it strikes me that there are areas in which it is the purview of the CEO to decide which council members may have access to what information.

Hon JACKIE JARVIS: The reform will not alter the scope of what information council members are entitled to. The scope of information that council and committee members are entitled to is already established at section 5.92, which states —

A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act ...

This subsection will be unchanged by the bill. The amendment will simply require council or committee members to lodge a request through avenues set out in a communications agreement and it will ensure that those council or committee members get the information back in a timely manner.

Hon Dr BRIAN WALKER: What would the minister consider to be irrelevant information, to which a council member has no right of access?

Hon JACKIE JARVIS: An example that has been provided to me is perhaps asking for contracts of individual staff members. That may not be relevant to council business.

Hon Dr BRIAN WALKER: Can the minister give any reason that individual council members should not have access to those because they are, of course, also employed by the council?

Hon JACKIE JARVIS: Under the act, the CEO is responsible for the general administration functions of council, so that is within the remit of the CEO.

Hon Dr BRIAN WALKER: That is understandable. Thank you, minister. However, it also implies that if there were issues with the employees of the council, the elected members would not have access to information to inform themselves regarding performance or be able to take this up with the CEO if he were failing in his performance. Is that not correct?

Hon JACKIE JARVIS: I can provide some examples. It will provide protection so that individual councillors cannot access personal information or personal data, particularly of junior staff, for example. Communications agreements, as I said, already exist in ministerial offices. For example, I cannot go to Department of Primary Industries and Regional Development staff without going through the director general. Councillors cannot direct junior staff to do some duties. It is fairly standard practice across all levels of government. It is simply not appropriate that individual councillors could direct individual staff on matters, or look at staff contracts or personal information of individual staff members. It implements a chain of command in that the CEO reports to the council and the CEO therefore has responsibility for managing staff beneath him or her.

Hon Dr BRIAN WALKER: That leads me to observations I have personally made on certain councils where there have been questions of underperformance or mismanagement that have been denied access to the elected members. The CEO has exerted an undue amount of influence purely because of the right to exclude members of the council from such information. Is that the intent of the act? I am sure it is not but can the minister comment on it?

Hon JACKIE JARVIS: No, it is not the intent of the act. We do not believe these reforms imply in any way that that is the intent of the act.

Hon Dr BRIAN WALKER: How would we have redress? Given that there might be the perception that a CEO has undue influence by virtue of the regulations that exist, how would council members have access to redress were they to suspect there to be a problem with staff that the CEO was not managing?

Hon JACKIE JARVIS: I am not sure what the member means by a CEO having undue influence. The CEO is responsible for the staff and the management of staff. That is the level of influence the CEO has. I cannot really answer the question unless I understand what the member means by undue influence.

Hon Dr BRIAN WALKER: The minister is quite correct. The question would be then, if the CEO were to perform in a way that was not in accord with the wishes of the council, what method would the council members have to determine whether their opinion was correct?

Hon JACKIE JARVIS: The council is obviously the employer of the CEO so in this case the member is discussing the performance of the CEO. If the council is unhappy with the performance of the CEO, then the council may wish to raise the issue with the CEO. Obviously, we have publicly available KPIs and there is a process in place in which the performance of a CEO is reviewed on at least an annual basis. Nothing will change there. The council is responsible for managing the CEO.

Hon Dr BRIAN WALKER: There is one aspect here where it was possible that the CEO would have the power of veto over a matter that required the absolute majority of a council. Am I correct in that understanding?

Hon JACKIE JARVIS: We are confused; we cannot see anything in this clause that deals with that. Perhaps the member could highlight what section of the clause he is referring to.

Hon Dr BRIAN WALKER: I am wondering about proposed section 5.92C, “Local government may adopt communications agreement of its own” and states that it may adopt a communications agreement of its own with an absolute majority. Proposed subsection (5) reads —

If a local government has a communications agreement of its own, the CEO must publish an up-to-date version of the communications ...

Prior to that, subsection (4) reads —

A local government cannot adopt or amend a communications agreement of its own without the agreement of the CEO.

Hon JACKIE JARVIS: The communications agreement is an agreement between the council and the CEO. Yes, the CEO must agree as the other party in the communications agreement. It will outline certain council matters that would go through the CEO. It might nominate particular staff whom councillors could speak to with the permission of the CEO. It is an agreement between two parties, the CEO being one of them. That is why it cannot proceed. I suspect the member’s next question might be: what happens if the CEO does not agree? That would then become a performance management issue between the council and the CEO. There is a default communications agreement. If there cannot be agreement—a bespoke one, if you like—with a particular LGA, a default communications agreement will apply.

Hon MARTIN ALDRIDGE: I notice that proposed section 5.92C(5) provides that the communications agreement be published on the local government’s official website. If a local government either adopts or defaults to the default communications agreement, is there a similar provision for that to be published on the local government’s website?

Hon JACKIE JARVIS: The default communications agreement would be publicly available but there would be a requirement for it to be on the local government's website only if it had its own communications agreement outside of the default templated one.

Hon MARTIN ALDRIDGE: Is it open to a local government to adopt the default agreement or would it take the action of literally not adopting one and it would become the agreement?

Hon Jackie Jarvis: Yes.

Hon MARTIN ALDRIDGE: It seems a little odd. It is difficult, deputy chair, to hear.

The DEPUTY CHAIR (Hon Sandra Carr): Members, Hansard is having difficulty hearing our speakers. I ask you to keep your conversations to a dull roar.

Hon MARTIN ALDRIDGE: I apologise. These are not very riveting changes.

It just seems a little peculiar that there is a reliance on somebody assuming that because something is not published on a website, the default communication agreement is in force. Local government websites can be fairly simple but they can also be fairly complex. When we think about some of the larger local governments, a lot of information is on their websites. I would have thought there would be a publishing requirement, whether there was a default agreement in force or whether the local government had adopted one of its own. From the evidence that the minister has given, if a communications agreement is not published, it is therefore assumed that the default communications agreement is in force.

Hon JACKIE JARVIS: As I said, the default communications agreement would be readily available. I am advised that the only reason this provision includes a requirement for anyone going outside the default is so that the electors in that local government will have a clear understanding of the communications agreement. I note the member's comments about why we would not require the default communications agreement to be published. I do not have a clear response, but I am thinking of the smaller LGAs and the need to update websites if a default agreement changed. There is nothing to prevent a local government from saying that it uses the default agreement. The only requirement is that if it did use the default agreement, it would need to be on the website.

Hon MARTIN ALDRIDGE: This provision is modelled on what occurs in the state public service. Are the communication agreements that the minister has executed with her agencies published on their respective department websites?

Hon JACKIE JARVIS: I do not believe state communication agreements are published. I cannot clarify that for the member 100 per cent, but that is my understanding. This reform was included because a significant number of complaints have been received about communications between councillors and staff members, including serious bullying allegations. This reform will be put in place to deal with that issue of the significant number of complaints. Publishing the comms agreement when it is outside the default gives everyone a clear understanding that a local government has chosen its own comms agreement and sets out the terms of that agreement.

Hon MARTIN ALDRIDGE: I understand the intent. The intent is probably not dissimilar to state-based communications agreements, although there is a bit of confusion from time to time. This week a minister suggested to me that I was in breach of a communications agreement, which is not possible because I am not a party to a communications agreement. I can obviously freely contact whoever I like. Whether they want to engage with me is another thing. The communications agreement does not bind me; it is more an instrument between the executive and their agencies. I do not have any issue with us requiring local governments to publish the agreement. I thought it would be logical for them to publish it, whether they were using the default agreement or whether they adopted their own. That would have been neater. Nevertheless, this is where we are at with the bill.

The minister mentioned that the driving force behind this provision was complaints. What would the penalty be if an elected council member breached the communications agreement?

Hon JACKIE JARVIS: I am advised that many existing local government policies have been written to reflect rules and procedures already set out in the Local Government Act and regulations. This is not intended to be punitive. Accordingly, any breach of a communications agreement will be subject to regulations. It is designed to provide clarity. It also provides some clarity for councillors in that it might set out time frames for when a response is required on any particular matter. I have been told that a breach of a communications agreement may constitute a breach under the act or regulations, and I read that to mean that it will be subject to future drafting of regulations.

Hon Dr BRIAN WALKER: Does the government have any plans to define in statute the phrase "relevant to performance"?

Hon JACKIE JARVIS: Can I just clarify which section the member is looking at?

Hon Dr Brian Walker: I am looking at section 5.92 and "relevant to performance".

Hon JACKIE JARVIS: I am advised that nothing has changed, so the answer is no.

Hon Dr BRIAN WALKER: This will tend to limit the current right of an elected member to access local government records, will it not? Has the department issued any operational guidelines in dealing with releasing information to councillors?

Hon JACKIE JARVIS: Nothing in this reform changes the right for council members to access information. The scope of what information a council member can access is already established in section 5.92(1). There is no amendment to that in this bill. This provision was an important part of the 1995 act because it establishes separation between a councillor as a decision-maker and the CEO and the administration, which implements decisions and conducts the day-to-day operation of local government. This amendment simply provides for local government to establish a clear framework for how information is to be requested and how those requests are to be handled. As I mentioned, it might set out time lines so that staff must respond to a councillor's request for information in a timely manner—that sort of thing.

Hon Dr BRIAN WALKER: Is there any provision for a difference in access between an ordinary council member and the mayor?

Hon JACKIE JARVIS: No, this section simply refers to councillors as a group.

Clause put and passed.

Clauses 75 to 77 put and passed.

Clause 78: Section 5.96B inserted —

Hon NEIL THOMSON: Clause 78 has to do with the publication of information. It seems to require considerable expansion of registers. What is the purpose of being prescriptive here, given a number of registers are already published? Proposed section 5.96B(1) states —

Regulations may require the CEO to keep a register containing prescribed information ...

That covers leases of land, grants of money and a whole range of contracts for goods and services. It seems quite a vast increase in the requirement. I wonder what the reason for that is.

Hon JACKIE JARVIS: This clause inserts a regulation-making power that will require local government to keep, maintain and publish certain registers. Registers of matters it is proposed local governments are required to maintain and publish are leases of land, grants made by local government and contracts for goods and services. The intent is that regular online publication of information will enable streamlining of reporting elsewhere, and these registers will supplement the simplification of financial statements, which is also being implemented. This also provides consistency across local government areas.

Hon NEIL THOMSON: In relation to leases on land, Landgate will provide a register of all interests and property. Have any concerns been raised by the local government sector about the potential for those registered to be inconsistent with those at Landgate and how that might impact on issues of currency and other concerns that might be raised by people interacting with those registers?

Hon JACKIE JARVIS: I am advised that this relates to leases that local governments might have with, say, the local footy club or other community groups, so leases that the local government holds with other organisations. I am not sure that they are registered with Landgate.

Hon NEIL THOMSON: Are registers for things like leases standard practice for many local governments at the moment?

Hon JACKIE JARVIS: I cannot give that advice. I am advised that some local governments already do this, but I cannot give a quantum on how many. It is about providing public transparency so members of the tennis club know what members of the footy club are paying for their facilities.

Progress reported and leave granted to sit again, on motion by Hon Jackie Jarvis (Minister for Agriculture and Food).

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Sitting suspended from 1.00 to 2.00 pm