

Submission to the Legislative Council General Purpose Standing Committee No. 6

Inquiry into local government in New South Wales

Uh oh. I know what you're thinking. "Did he amalgamate six councils or only five?" Well to tell you the truth in all this excitement I kinda lost track myself. But being this is a 17 seat majority government, with the most powerful electoral mandate in the world and recommendations from an independent panel that would blow your Council clean off, you've got ask yourself one question: "Do I feel lucky?" Well, do ya, punk?



A rigid template of what constitutes fitness for the future is being hammered onto the 152 local government areas and no-one really knows how things will look when the dust settles. Probably not even the Government.

But everyone does know local government needs to be reformed, and the reform process will involve changes in boundaries, but no one wants anything to happen to their own Council. NIMBYism is both natural and understandable but it won't get in the way of a rampant Government zealous about reform. How rampant, or reforming, or even how effective any changes might be remains to be seen but Premier Baird took the Fit for the Future strategy and process to the election and had a resounding win. An easy opponent yes, but a resounding win nevertheless.

30 June is the deadline for councils to be able to establish that they are financially sustainable for the future and should be left alone.

Councillors are justifiably concerned. They have far more important things to do than worry about selflessness, long-term financial sustainability, quality representation or encouraging improved lifestyles, better environmental and public health protection, or quality planning and development that enhances the community rather than detracts from it.

They are too busy pursuing their own individual self-interest; looking after their mates or the local Racing Club; looking after friends and family ignoring community obligations and interests; ignoring their own council's cleanup orders under the Protection of the Environment Operations Act; having the ICAC looking over their shoulders; parading through ICAC; dabbling in the general manager's responsibilities; boorishly telling the community the Council made a mistake appointing a woman as a GM; getting elected to remove cars from staff and after the election finding they can't, and having nothing else to contribute; persecuting staff because as an applicant or an associate of an applicant, they didn't like what the staff did and thought they paid too much attention to objectors; persecuting staff because as an objector or an associate of an objector they didn't like what the staff did and thought they paid too much attention to the applicant; persecuting staff because they are pro-development and they see staff administering planning and environmental instruments as being anti-development; persecuting staff because they are anti-development and they see staff administering planning and environmental instruments as being pro-development; being in a minority and trying to ignore majority resolutions of councils; being a "popularly-elected" mayor, but without the majority on the Council and fantasising that popular election means greater authority and power; being the subject of performance improvement orders from the Minister for Local Government; or as a minority representative playing out the intimacies of Council decision making in the local rag; and an almost unending list of other distractions.

But during all of this self-indulgence, who is looking after their ratepayers and citizens? The council's employees, that's who.

Local politicians are all well and good. As citizens we want immediate access to our political representatives even though we are invariably left empty-handed and disappointed. More importantly we want good service and services and it's the employees who provide that.

It's the staff who provide the services; the admirable public face of local government; the consultative mechanisms on planning, amenity and quality of life; pick up the recyclables and waste; maintain the libraries and provide services in literacy, literature and research and education; maintain and provide childcare; look after the roads; protect and enforce food, public health and environmental standards; protect land use, waterways and disappearing species; remind us of the joys of the arts; ensure safe construction and building standards (unless the private sector gets in the way) and happily do so while the elected officials are usually doing something else entirely - sometimes just getting in the way of the Council's efficiency by sacking general managers, for unspecified reasons, often good and high performing employees, but not kowtowing sufficiently to new regimes, and with 39 weeks' pay to see them on their way from councils whose finances can be parlous, marginal or propped up by debt. At best, it squandering public moneys.

There are good councillors, smart, interesting and rewarding people with values they live by and a commitment to working in local government but employees understand that the reputation of the industry reflects the councillors who are the lowest common denominator.

The Government has already given undertakings that the employment protections in the Local Government Act on amalgamation will remain - providing three years' protection. The unions have signed Memoranda of Understanding with two councils committed to amalgamating which guarantee continuation of that protection for five years. There are more councils looking to do similarly.

The frenzy of interest in joint organisations needs to be examined. The joint organisations leave the bodies politic untouched. The self-interested can keep doing what they're doing which, as the examples above show, we could all do without. 50 councils would mean 1000 fewer councillors and that has to be a good start.

Local government reform will not be effective if it doesn't address the fundamental problems, the inadequacies of representation that would continue with the historic boundaries, the incapacity to cover costs and operate with proper solvency, and the lack of uniformity in Council sizes and representation. There are far too many councillors in New South Wales and there are far, far, far too many failing to discharge their responsibilities as community representatives.

Joint organisations, if they are to develop as a result of reform which spares the local politicians and their interests, must continue to employ their staff under the Local Government (State) Award. The Government MUST deny the zealots and the sabre rattlers seduced by the opportunity to reduce standards and head towards Federal industrial legislation.

Employees in local government provide the services to the community and the Government needs to ensure that their employment conditions, rights and expectations remain protected to continue to provide those services without the anxiety of reduced entitlements, lost rights and damaged expectations.

The terms of reference of the Committee allow us to make a range of observations about legislative change to the existing Local Government Act that update a piece of legislation more than two decades old. Having dealt with many issues arising in the employment of staff since the 1993 Act, we recommend the following:

- 1 Review the value and effectiveness of "senior staff" positions, the appropriateness and validity of term contract employment (which makes employees more vulnerable to pressure and partial decision-making as they await a renewal) and implications of S340.
- 2 Repeal section 340. This section is now largely ineffective given the finding of the Industrial Relations Commission (Haylen J) that section 340 does not prevent the Industrial Relations Commission making orders under the unfair contracts provision of the Industrial Relations Act.
- 3 Review section 344(a) and update to reflect expanded areas of prohibited discrimination in the Anti-Discrimination Act since 1993 – which will also remove the current awkwardness and apparent inconsistency between 344(a) and 346 and 347.
- 4 Review section 351 to provide a new 351(3) to provide that a person who a Council allows to remain appointed to a position beyond the 12 months prescribed in 351(2) is appointed permanently to that position.

- 5 Review section 352 to provide a new 352 (3) to prohibit direction of any employee, by any employee, “as to the content of any advice or recommendation”.
- 6 Review section 353 to clarify that employees are not obliged to declare any work which does not “relate to or conflict with” the business of the Council or the employees duties.
- 7 Review section 445 to require proper record-keeping by a Council of those interested parties seeking access to the pecuniary interest register.
- 8 Repeal the requirement for the Minister’s approval of payments beyond 12 months in section 354A.
- 9 (Incidentally, review the need for a “standard contract”).)
- 10 Prohibit Councils dealing with staff matters in open council.
- 11 Prohibit comments of an adverse nature against staff by councillors in public and at council meetings.

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We are happy to be examined, amplify or explain any of the comments or recommendations made in this submission. While the behaviour of councillors listed in the 5th paragraph of this submission are notorious, either locally or more broadly, we are not prepared to disclose the offenders.

This submission was unanimously endorsed by depa’s Committee of Management.



Ian Robertson
Secretary

29 June 2015