**LOCAL GOVERNMENT ACT AMENDMENT BILL 1990**

**Legislative Assembly, 5 December 1990, pages 2359-62**

Second reading

Received from the Legislative Council and read a first time.

**The Hon. M.D. RANN (Minister of Employment and Further Education**): I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

This is a Bill to amend various provisions of the Local Government Act, 1934, relating to elections and to parking and other expiable offences. Most of the changes proposed are technical refinements of the existing provisions which have been suggested by local government and State Electoral Department officers, candidates or legal practitioners.

Amendments have been made to the electoral provisions of the Act between each of the periodical elections held since 1984 when these provisions were entirely reformed. Included in this Bill are several amendments arising out of the experience of candidates in 1989.

The question of whether the omission by an electoral officer to place his or her initials on the ballot paper at the time it is issued renders the ballot paper informal was considered in Raggatt v Fletcher and others (C.L.G.D.R. No. 2 of 1989). The Bill reflects the decision of the court which was that such an administrative omission does not itself render the ballot paper informal. In that case the court upheld a petition in which official error was held to have affected the result of the election and costs were awarded both against the council, which had been joined in the proceedings, and against the respondent successful candidate who was blameless but who appeared and presented the argument against the petition. In that particular case the council did make an ex gratia payment to recompense the respondent for his costs, I am glad to say but was under no obligation to do so. It is proposed to amend the Act to provide that where an election is invalidated on account of an act or omission of an electoral officer, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the council.

The Bill also aims to clarify confusion which exists as to whether local government electoral candidates and their agents are permitted to provide transport to the polling booth for electors. The existing relevant provision is section 125 which deals with intimidation and bribery. At present a person who drives a voter to a polling booth commits an offence only if the voter has, firstly, been given a material advantage and, secondly, been given that advantage with a view to influencing his or her vote. This does not reduce to a straightforward rule for candidates and returning officers and is the source of disagreement at every periodical election. The Bill includes a new provision making it an offence for candidates and their agents to generally offer electors transport to the polling place, which has the endorsement of the Local Government Association as the best solution to this problem.

A widely representative revision committee has presented a report recommending a number of amendments to the parking regulations made pursuant to the Local Government Act. As the regulations were last promulgated in 1981, the Parliamentary Counsel considered it desirable to completely upgrade them. Some of the proposed regulations require complementary amendments to the Act. At the same time, the opportunity has been taken to merge sections 748d, expiation of littering offences, and 794a, expiation of prescribed offences such as parking and by-law offences, within the latter section.

Section 794a permits an offender to make late payment of an expiation fee prior to the commencement of proceedings together with a prescribed fee, currently $10.

In the case of the City of Adelaide, I understand this provision had the effect of increasing the number of offenders expiating prior to the commencement of proceedings from approximately 35 per cent to 80 per cent. After the commencement of proceedings, an offender can still expiate by payment of the expiation fee together with costs and expenses incurred by the council in relation to those proceedings. In the case of parking offences, after the expiation period has expired, it is customary for a council to make a vehicle registration search to ascertain the owner of the vehicle and, acting on that information, send a final notice to the owner informing the owner that he or she may expiate by payment of the expiation fee together with the prescribed late payment fee. Until 1989, it was possible for councils to absorb the cost of a vehicle registration search in the late payment fee, which was originally meant to act as a relatively modest deterrent penalty rather than an added administration charge.

In 1989, motor registration search fees rose from 15 cents to $2 for an on line computer search, from 22 cents to $3 for manually keyed inputs, and from $1.70 to $15 for a manual search. For this reason, I consider it reasonable to amend the Act to authorise the recovery of both the existing prescribed late payment fee and a prescribed expense, namely, the cost of a motor registration search.

Consideration was given to making the expiation period of 21 days uniform with certain other legislation providing a 60 day expiation period. However, I am satisfied that the Summary Offences Act, 1953 and the Expiation of Offences Act, 1987 which provide for the longer expiation period have significantly different characteristics. Unlike the Local Government Act, they permit the withdrawal of an expiation notice once issued. That is, there is a discretion to issue proceedings notwithstanding that an expiation notice was originally used, they have no machinery where an offence may be expiated up to the court hearing date by means of a late payment fee, etc., and finally, they impose a relatively higher level of expiation fees. In consequence, the 21 day expiation period is not being changed in this Bill.

Part XXIIA of the Act—-‘Regulation of Parking and Standing of Vehicles in Public Places’—is characterised by the concept of ‘owner-onus’, meaning that both the owner and the driver of a vehicle parking or standing contrary to the Regulations shall each be guilty of an offence. Thus, in the past, the owner has always been vicariously liable for any parking offence despite the fact that he or she may not have been the driver. This was done for administrative reasons and followed international practice. At present, the owner-onus concept is implemented by regulations but it is now considered timely to locate the concept in the Act and to extend it to other expiable offences involving the use of a vehicle.

Without deflecting from the thrust of the concept, the revision committee has recommended that before a complainant, customarily a council, commences proceedings for a parking offence, it should be mandatory for the complainant to send a notice to the registered owner of the vehicle, inviting the owner, if he or she was not the driver at the time of the alleged offence, to supply a statutory declaration setting out the name and address of the driver. Where an owner supplies an appropriate statutory declaration, it would be a complete defence. This defence also exists in the Private Parking Areas Act, 1986 and in the parking legislation of most other parts of Australia. This revision committee recommendation has been acted upon in the Bill and broadened to apply to all expiable offences against the Act, regulations, and by-laws, involving the use of a vehicle.

Upon receipt of a declaration from an owner naming another person as the driver it will be necessary for a council before commencing proceedings to serve a notice upon the person named as the driver. The notice will set out particulars of the alleged offence and give the recipient the opportunity to either expiate the offence or make out a defence.

In order to protect the rights of a person who after disposing of his or her vehicle is liable for parking offences committed by the new owner prior to re-registration of the vehicle, it will also be a defence for such a person to supply a declaration confirming that he or she had complied with the transfer requirements in the Motor Vehicles Act and setting out the name and address of the new owner.

The new procedure for notifying the owners of vehicles and, subsequently drivers nominated by owners is set out in section 789d in clause 21 of the Bill. Councils will be assisted by the provision of guidelines prepared by the Department of Local Government detailing each step which should be taken prior to commencing proceedings for parking offences, and for other expiable offences involving a motor vehicle where it is not possible to leave an expiation notice on the vehicle. These guidelines will assist councils in the exercise of matters which have been left to their discretion, such as the period which it would, under the circumstances, be reasonable to include in a notice to an alleged driver under new section 789d (4) (j).

Other amendments include an increase in the maximum penalty for a breach of the parking regulations from $200 to $500.

At the request of the Corporation of Walkerville the opportunity has also been taken in this Bill to amend section 886d in a way which will allow the corporation to increase the number of members on the Levi Park Trust Committee of Management.

Other minor amendments will be explained as I proceed.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 adds two definitions to section 5, the general interpretation provision. A definition of ‘driver’ is added to ensure that the term includes the rider of a motor cycle. A definition of ‘owner’ of a motor vehicle is included. This definition currently appears in section 475i in relation to parking offences but the term is used elsewhere in the Act. The definition is altered to ensure that owner includes a person registered interstate as the owner of a vehicle and a person to whom ownership has been transferred whether or not the Registrar of Motor Vehicles has been informed of the transfer. As in the current definition, a person who has hired a vehicle or has possession of a vehicle pursuant to a bailment is also to be considered an owner of the vehicle. In the case of a vehicle registered in the name of a business, the person carrying on the business will be taken to be the owner.

Clause 4 provides for the creation of a Register of Allowances for council members.

Clause 5 provides for the creation of a Register of Salaries for officers and employees of councils.

Clause 6 amends section 99 to ensure that the regulations may make any provision that may be appropriate in relation to the form or content of ballot papers.

Clause 7 relates to the issue of advance voting papers under section 106. It is proposed that a returning officer will not be required to mark the voters roll when he or she issues advance voting papers to a person whose name appears on the roll, but instead that the returning officer will simply be required to keep an appropriate record of the issue of the papers. Furthermore, a returning officer will be able to give notice of the availability of advance voting papers by notice in a newspaper circulating in the area rather than by public notice within the meaning of the Act.

Clause 8 amends section 106a in a manner that is consistent with the amendments to section 106 of the Act.

Clause 9 amends section 107 so that an electoral officer who receives an envelope apparently containing an advance voting paper will not be required by the legislation to rule a line through the voter’s name on the roll, or to make a comparable record in the case of a voter whose name does not appear on the roll.

Clause 10 will enable a person who is unable to sign his or her name to make a mark for the purposes of signing any voting material, provided that the mark is identifiable as a signature and is made in the presence of a witness of or above the age of majority.

Clause 11 relates to the operation of section 122. It has been argued that a council cannot change the method of counting votes to apply at elections of the council after a determination has been made under section 122. This is contrary to the true intent of section 122. Accordingly, the opportunity will be taken to counter any possible argument along the lines referred to above.

Clause 12 relates to two matters. The first matter relates to the use of electronic equipment for the purpose of recording and counting votes. Section 123a presently refers to equipment for counting votes. A new provision will enable detailed regulations to be made prescribing the kind of equipment that must be used and the procedures that must be observed if electronic equipment is introduced either for recording or counting votes. These regulations will be able to modify the operation of the relevant provisions of Part VII of the Act. The second matter has been included in response to the decision in Raggatt v Fletcher. It is proposed to enact new section 123b to provide that a ballot paper is not informal by virtue of being uninitialled by an electoral officer if the ballot paper is otherwise accepted as being authentic. A similar provision exists in the Electoral Act.

Clause 13 will make it an offence for a candidate, or someone acting on behalf of a candidate, to offer to an elector transportation to or from a polling booth, other than in certain specified cases.

Clause 14 will make it an offence for an electoral officer to fail to carry out (without proper excuse) any duty connected with the conduct of an election or poll. A similar provision exists in the Electoral Act.

Clauses 15 and 16 relate to proceedings before a Court of Disputed Returns in a case where it is alleged that an election is invalid on account of an act or omission of an electoral officer. In such a case, a copy of the petition must be served on the relevant council and the council will be able to act as replicant. Costs will be awarded against the council to the extent to which an election is avoided on account of an act or omission of an electoral officer.

Clause 17 amends section 475a to increase the penalty that may be imposed for breach of a parking regulation from $200 to $500.

Clause 18 provides for the repeal of s. 475d. The section is now redundant in view of the new definition of ‘owner’ that is to apply throughout the Act.

Clause 19 also removes redundant material from section 475e.

Clause 20 strikes out the definitions of ‘owner’ and ‘registered owner’ from section 475i. See clause 3 above.

Clause 21 amends section 693 dealing with service of notices. A potential technical problem is avoided by providing that service of a notice may be accomplished by leaving it at the person’s residence with someone apparently over the age of 16 years (rather than as is currently provided with an adult living with the person).

Clause 22 amends section 743a which provides for an evidentiary aid in the prosecution of offences against bylaws. The amendment limits the application of the section to offences involving animals. Vehicles are adequately dealt with in new provisions inserted by clause 25.

Clause 23 repeals section 748d which deals with the expiation of littering offences. The section is amalgamated with section 794a by clause 26.

Clause 24 makes an amendment to section 789a consequential to the inclusion of the definition of ‘owner’ of a vehicle in section 5. A reference to ‘inspector’ is replaced with ‘authorized person’.

Clause 25 inserts three new provisions relating to offences involving vehicles.

New section 789b provides that where the driver of a vehicle is guilty of an offence against the Act, regulations or by-laws the owner of the vehicle is also guilty of an offence.

New section 789c provides that only the owner or the driver, not both, may be convicted of an offence arising out of the same circumstances.

New section 789d sets out certain steps that must be taken before the owner or, in certain cases, the driver, may be prosecuted. Before prosecuting an owner of a vehicle, the prosecutor is required to inform the owner of the particulars of the offence and invite the owner, if he or she was not the driver, to provide a statutory declaration nominating either the driver or a person to whom the vehicle had been transferred prior to the time of the alleged offence. The latter is only effective if the owner complied with his or her obligations under the Motor Vehicles Act 1959 in respect of the transfer. The owner has 21 days within which to make such a declaration. It also provides that it is a defence for the owner to have provided such a statutory declaration or if it is proved that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence.

The section also provides that if, in accordance with an invitation, an owner of a vehicle nominates a person as the driver of the vehicle and the offence concerned is one that may be expiated pursuant to the Act, the prosecutor must, before commencing proceedings against the nominated driver, inform the driver of the particulars of the offence and of the statutory declaration nominating him or her that the offence may be expiated and that he or she may be prosecuted if it is not expiated within the period specified in the notice.

The section also provides an evidentiary aid—in proceedings against a person named in a statutory declaration it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle.

Clause 26 amends section 794a which deals with the expiation of offences. Section 748d dealing with the expiation of littering offences is subsumed within this provision. Alterations are made to ensure that the same approach is taken towards all expiable offences. The section is also amended to make it clear that the fee prescribed for late payment of an expiation fee may include a component for costs incurred by the council in recovering the expiation fee.

Clause 27 amends section 794c to ensure that prosecution for all expiable offences must be commenced within one year. Currently this requirement only relates to offences against the parking regulations.

Clause 28 makes a minor amendment to section 886d so as to allow the membership of the Levi Park Controlling Authority to be varied.

Clause 29 inserts a new section 890. This section enables regulations to incorporate codes and standards as in force from time to time or as in force at a specified time.

Mr MATTHEW secured the adjournment of the debate.