**LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)**

**Legislative Assembly, 6 December 1984, pages 2294-5**

Second reading

**The Hon. G.F. KENEALLY (Minister of Local Government)** obtained leave and introduced a Bill for an Act to amend the Local Government Act, 1934. Read a first time.

The Hon. G.F. KENEALLY: I move: That this Bill be now read a second time. I seek leave to have the second reading explanation of the Bill inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

This Bill makes a number of amendments to the Local Government Act designed to improve the administration of the Act, to ensure that it is given effect to in the manner intended when the legislation was enacted, to clarify areas where doubt about the intention of a provision has arisen and to remove obsolete provisions.

The principal amendment is that contained in clause 5, which provides that a member who fails to lodge either a primary or ordinary return as required by Part VIII of the Act, setting out certain prescribed information about his interests and activities, which may lead to conflict with his public duties, shall forthwith forfeit his office.

In recent months there has been much media attention paid to the grandstanding of a few local government members who say they have refused to meet their legal obligation, to lodge the required return under the Act and are prepared to be seen as martyrs for the cause by being imprisoned for their contempt of the legislation and the courts by failing to pay any fine imposed.

This irresponsible approach has brought discredit on the local government industry and in particular the great majority of members, who have acted responsibly and met their obligations. Their action avoids the real issue that a person who undertakes public office and is involved in public decision making must be prepared to demonstrate that his involvement is not for personal gain. If a person is not prepared to subject himself to such scrutiny, then he has an obligation to stand aside and make way for a person who is prepared to be openly seen to be acting in the public interest.

The amendment proposed by the Bill achieves this while, at the same time, providing an appeal mechanism for any person who can demonstrate that his failure to lodge a return was unavoidable in the circumstances. The Government’s intention is that, using the provisions of clause 2 of the Bill, the operation of the amending clauses would be suspended until after the periodical election in May 1985 so that no person now in office would be affected by the amendment.

The other amendments contained in the Bill may best be described as ‘house-keeping’ amendments, designed to improve the administration of the Act and remove obsolete provisions. The amendments are explained in the clause explanations and may, if necessary, be further explained during the Committee stages of the Bill.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends the provision setting out the arrangement of the Act and is consequential upon the repeal of Part XXXVII of the Act (destruction of sparrows).

Clause 4 inserts a further provision in the interpretive section of the Act to make it clear that a reference in the Act to a person being absent means absence from duties of office and includes a reference to the situation where the person no longer holds office. This is particularly relevant to the office of Mayor or Chairman and the office of chief executive officer. The amendment will leave no doubt that a deputy, or some other person appointed under the Act, will be able to act in the case where a person is not performing the duties of his office.

Clause 5 will amend section 48 of the principal Act so that the office of a member will become vacant if he fails to submit a return to the chief executive officer within the time provided by Part VIII. However, in order to cater for the situation where a member could not for some good reason submit a return within the prescribed time, a member will be able to apply to a court of summary jurisdiction for relief from the operation of the new provision upon the basis that the failure to comply with Part VIII was unavoidable in the circumstances of his particular case.

Clause 6 provides for the repeal of section 50 of the Act and the substitution of a new section. After the enactment of the Local Government Act Amendment Act (No. 3) earlier this year, submissions were received that the insurance coverage required by section 50 was far wider than that which had been previously applying to councils. Upon the basis of these submissions the Government undertook a review of the scope of section 50 and decided that some revision was appropriate. It is therefore intended to substitute a new provision that will simply oblige councils to provide insurance coverage for each member of the council and any spouse or other person who may be accompanying the member, and will restrict the obligation to risks associated with the performance of official functions by members. Furthermore, in order to avoid the situation where councils could be considered to be obliged to insure against all risks associated with the performance of members duties, including those that are normally uninsurable, it is proposed that the coverage provided by a council simply be of a standard approved by the Minister.

Clause 7 proposes two amendments to section 58 relating to notices of meetings which would require the chief executive officer to post a copy of the notice and agenda for each ordinary meeting of the council in the principal office of the council and allow members of the public to obtain a copy of any such notice or agenda upon the payment of a fee fixed by the council. Clause 8 proposes various amendments to section 61 of the principal Act that are intended to match, in the Act and not necessarily in regulations, the provisions dealing with the convening of council committee meetings with those provisions dealing with meetings of the council as a whole. Accordingly, it will be provided that committee meetings are to be held at times and places appointed by the council or, if appropriate, the particular committee. Notices of meetings will have to be given at least three days in advance and displayed in the principal office of the council. Special meetings will be able to be called at any time. Requirements as to the form and content of notices will have to be followed. In relation to the times of meetings of committees, a committee will still be required to hold ordinary meetings after 5 p.m. unless all members of the particular committee decide otherwise, but a committee will be able to hold a special meeting at any time.

Clause 9 is included to overcome a possible problem relating to the chief executive officer’s obligation to keep minutes if he is excluded from attending at a meeting pursuant to section 64. In such a case, the person presiding at the meeting shall be responsible for ensuring that minutes are kept. Clause 10 provides for clarification of the situation that is to apply if the chief executive officer is absent. It is proposed that section 66 (4) be revised to provide that in the absence of the chief executive officer his deputy will act in the office, if there is no deputy or he is absent, a person appointed by the council will act or, if a person is not appointed by the council (because of the occurrence of a disaster or an emergency, for example), a person appointed by the Mayor or Chairman, or any three other members, may act.

Clause 11 will amend section 69 of the principal Act so as to allow regulations to be made prescribing fees that may be charged for the performance by the Local Government Qualifications Committee of any of its functions. Section 69 presently only provides for the payment of a fee upon the granting of a certificate. However, it may be appropriate to impose fees for issuing appeals, conducting examinations, and so on. The amendment will allow regulations which will impose such fees to be made. Clause 12 will effect a minor amendment to section 93 of the Act to ensure that a company or group of persons shall not be entitled to vote at an election or poll unless a person has been nominated in accordance with other provisions of the Act to act as agent on its behalf.

Clause 13 rectifies an incorrect cross-reference in section 106. Clauses 14 and 15 provide amendments to Part VIII of the principal Act (register of interests) and are consequential upon the Government’s decision to revise the sanction that will apply if a member fails to lodge a return within the time prescribed by the Act. It has been decided that the Register will not be laid before the council, although it will still be available to any member who may wish to inspect it. If a member fails to submit the return, the chief executive officer will be acquired to report that fact to the council and the Minister. It will still be an offence to submit a return under Part VIII that is false or misleading in a material particular.

Clause 16 proposes amendments to section 213a of the principal Act relating to the rate of interest that is to be paid on moneys credited to a ratepayer under subsection (3) . Advice has been received from the Reserve Bank to the effect that the definition of ‘prescribed rate’ in subsection (4) is no longer appropriate. The situation is that the Reserve Bank simply specifies a maximum rate of interest that may be charged by trading banks on overdraft facilities with limits of less than $100 000 . Alternatively, the Reserve Bank does provide certain special overdraft facilities to some Government accounts, but the rates of interest in these cases are kept confidential. Accordingly, it is intended to revise the definition and relate the rate of interest to that rate that is being charged by the council’s bank on the council’s overdraft facilities for its current account. At the same time, it is intended to insert a new subsection to clarify that the interest is to be paid on so much of the relevant amount as may from time to time stand to the ratepayer’s credit.

Clause 17 provides for a new subsection to be inserted in section 214 of the principal Act to ensure that before a council declares a general or differential rate it consider and adopt an annual budget for the ensuing financial year and approve or adopt the relevant assessments. The Government is concerned that a council be fully aware of its estimated receipts and expenditures, and decide upon the relevant assessments, before it sets its rates. Clauses 18 and 19 propose the striking out of certain paragraphs in sections 288 and 289 concerned with the power of councils to expend moneys on providing personal injury insurance cover. These paragraphs may be deleted as the obligation to provide insurance cover under section 50, coupled with the general empowering provision in section 287(l)(l), are sufficient authority for councils to expend money on insurance premiums.

Clauses 20 to 24 (inclusive) alter references to a council survey in sections 322, 324, 331, 336 and 337 of the principal Act to the engineer. It is considered that the appropriate officer of council to perform the duties in these sections is the engineer. Clause 25 amends section 358 of the principal Act to provide that it is not an offence under that section to ride or wheel a pedal cycle or ride or lead a horse or other animal over a safety zone or median strip that forms part of a crossing-place across a public street or road. This amendment will ensure that there is no conflict between this Act and other statutory controls that relate to the use of refuges formed in streets or roads.

Clause 26 revises an out of date cross-reference to the Control of Advertisements Act, 1916, in section 363. The correct reference should be the Planning Act, 1982. Clause 27 changes the word ‘surveyor’ to ‘engineer’ in section 367 of the principal Act. Clauses 28 and 29 will amend sections 392 and 392a of the principal Act to provide that a scheme, or an amendment to a scheme, for work or an undertaking to be carried out by two or more councils jointly shall come into force upon a date to be fixed by the Minister when he gives his approval or, if no date is so fixed, upon the date that the relevant notice is published in the Gazette. It is often the case that schemes, or amendments to schemes, are submitted to the Minister well in advance of the date when they are intended to come into operation. The amendments will facilitate arrangements to bring schemes, or amendments to schemes, into operation on the appropriate days.

Clause 30 clarifies that section 530c is to operate in relation to effluent from septic sewerage tanks only and that a scheme under the section must be put forward to the Minister with the consent of the Central Board of Health (and not simply after consultation with that Board). Clauses 31 to 41 (inclusive) alter various references to ‘surveyor’ to either ‘building surveyor’ or ‘engineer’, depending on the purpose of the particular provisions. Clause 42 provides for the repeal of Part XXXVII dealing with the destruction of sparrows. The provisions contained in this Part are considered to be obsolete.

Clause 43 proposes various amendments to the by-law provisions of the Act (section 667) to strike out obsolete powers, make consequential amendments or rectify incorrect references. Clause 44 provides for the recasting of section 668(2) in order to provide that no by-law made with respect to the suspension or prohibition of traffic on streets or roads, or the temporary closure of streets or roads, shall have force or effect until it is approved by the Road Traffic Board of South Australia. This will help ensure that action that may potentially restrict the proper flow of traffic will be subject to the scrutiny of the proper authority.

Clause 45 inserts a new subsection in section 679 to the effect that a resolution passed under this section that will result in the closure of a street or road must first be approved by the Road Traffic Board. Clause 46 alters a reference to ‘surveyor’ in section 778 to ‘engineer’. Clause 47 corrects an obsolete cross-reference in section 781. Clause 48 alters a reference to ‘surveyor’ in section 789 to ‘engineer’.

The Hon. B.C. EASTICK secured the adjournment of the debate.