

6. Better local governance

6G: Remove the concept of a 'body politic' from the *Local Government Act (NSW) 1993*.

CURRENT SITUATION:

On 22 November 2008, section 220 of the *Local Government Act (NSW) 1993* was amended changing the legal status of NSW councils from "bodies corporate" to a "...body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the state".

The objective of the amendment was to remove councils from the federal industrial relations jurisdiction so that they remain part of the NSW State industrial relations system.

The LGSA are concerned that removing councils' legal status as bodies corporate is resulting in unintended and potentially detrimental consequences for councils. For example, councils have experienced difficulty in obtaining Australian Government funding for trainees and apprentices because the funding was only available to corporations and not individuals.

Councils have also reported being excluded from tendering for construction work on Australian Government funded projects because they did not have a federal industrial instrument and were therefore unable to comply with the *National Code of Practice for the Building and Construction Industry* and the associated *Implementation Guidelines*.

The LGSA have also received legal advice identifying potential problems for councils in relation to taxation arising from the different treatment of corporations and individuals under federal taxation law.

In late 2009, the Australian Government and the NSW State Government implemented a suite of legislative changes that facilitated the transfer of NSW private sector industrial relations to the Federal industrial relations system. As part of these changes, then Minister for Industrial Relations, the Hon. John Robertson MLC, declared all NSW councils not to be national system employers, so that they remain part of the NSW industrial relations system.

As a consequence, the legal status of councils can now be restored to bodies corporate without impacting upon whether councils belong to the State or Federal industrial relations system.

SOLUTION:

Remove the concept of a 'body politic' from the *Local Government Act (NSW) 1993*.