

NSW Government's management of the COVID-19 pandemic
18 September 2020

Post-hearing responses: answer to question on notice
By Cr Linda Scott, Local Government NSW

Question:

The Hon. TREVOR KHAN: Ms Scott, I get what you are saying. What I am interested in is, particularly in the light of some events that have occurred in the United States where there was some sort of motorcycle rally or something that has now been linked to hundreds of thousands of cases that have sprung from that one event, **if the power and decision-making is devolved to councils, is there any potential legal implication for councils if an event proceeds and then becomes the source of a major outbreak?**

Ms SCOTT: Thank you for the question, Mr Khan. I am unfortunately not familiar with that example of the motorbike rally in the US but more generally this power does already rest with council. Councils are already approving outdoor dining and a range of provisions for outdoor events and we have been again working very closely since 2016 in a very collaborative way across local government areas to try and activate our spaces and open up night-time economies, for example. This really is a continuation of the current powers that exist. Of course, we are absolutely aware of the risks: legal but also just to people's health. We want to not see an outbreak anywhere. That is why we are working so hard to ensure that there is the balance of appropriate regulation to ensure that people are safe combined with regulation to enable as much of the use of our outdoor space is as possible and safe and in the public interest.

Again, allowing councils to keep those powers, allowing them to use their skills and expertise to balance and weigh up all those different objectives for the use of public space is the best way forward. There is no doubt though that COVID has brought forward funding pressures for achieving those plans. Councils are now working very hard, for example, to make sure there beaches have COVID safe plans et cetera. There is no doubt that work that has always been done by councils have a whole lot of new funding pressures and constraints and is much more difficult. Nevertheless, we are very motivated do it and make sure that our public open spaces can thrive.

The CHAIR: We have run out of time but you could take the opportunity on notice to look at whether or not the existing good-faith defence in the Local Government Act would be sufficient to protect councils.

Ms SCOTT: I am happy to take that on notice.

Answer:

The evidence put forward at the hearing was that councils should retain their existing authority to approve outdoor dining and activation of public spaces to ensure local knowledge and input results in the best outcome for each community, rather than a one-size-fits-all approach across NSW.

Councils operate in the interests of their communities and in line with all relevant obligations and legislation, including Public Health Orders. In these circumstances, the view of Local Government NSW is that the good faith provisions of the Local Government Act are sufficient.

The Office of Local Government is best placed to provide specific advice to the Committee on the NSW Government's understanding of the operation of good faith provisions of the *Local Government Act 1993*.