



Draft Local Government Amendment (Code of Conduct) Bill 2014

Submission

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Introduction

The Local Government Association of Tasmania (LGAT/The Association) is incorporated under the *Local Government Act 1993* and is the representative body for Local Government in Tasmania.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

General Comments

The Association appreciates the work of the Local Government Division in developing the draft Bill and the opportunity to consult with our Members. This submission has been developed in collaboration with member Councils and also with current and past Members of the LGAT Standards Panel. Where a Council has made a direct submission to this process, any omission of these specific Council comments in the LGAT submission should not be viewed as lack of support by the Association for that specific issue.

In general there is a high level of support for the Bill based on the previous work and consultation undertaken, in particular the Discussion Paper prepared by LGAT with input from the Division, the Integrity Commission and others. In particular LGAT and the Local Government Sector welcome:

- Removal of the role of Registrar from LGAT in recognition of the potential conflict with its goals and functions as a Member organisation.
- Removal of the requirement of Local Panels, recognising these have often been fraught because of potential conflict of interest for Panel Members who are also councillors and the sometimes complex nature of complaints.
- Increased sanctions and compliance powers.

In relation to the other matters captured in the draft Bill, namely Annual Reports, AGMs, electoral eligibility, internet advertising and investigation powers of the Director – the proposed amendments are all supported.

Issues raised are detailed below by exception. Where no comment has been made this indicates sectoral agreement with the proposal.

Panel Composition

- Feedback from current and past Standards Panel members strongly indicated there were risks around having a Panel of only 2 members. If there is disagreement there is no resolution and the point of the Panel is to bring about resolution as quickly as possible. They also indicated that having the additional local government experience was beneficial in balancing the tight legal views that may be divorced from LG practice.
- It is agreed there should be a pool of possible panel members to allow for geographic coverage, flexibility of timing and resolution of conflict of interest issues.

Sanctions

- In relation to the one month suspension sanction – it may be necessary to clarify (340a) that the Councillor is not eligible for their allowance during the suspended period based on a pro-rata of days of suspension equivalent to the allowance for a year.
- One large council felt that there should be some flexibility around sanctions particularly in situations where suspension from office is not required – eg allow them attend meetings but get no allowance.
- Needs to be guidance/clarification on what is a breach of the Code of Conduct.
- One council felt that there should be inclusion of an option for informal resolution of councillor disputes in the complaint assessment stage. LGAT notes that based on previous conversations, that mediation or other early resolution will be strongly encouraged.

Fees

- Proposed amendments 8ZP(1)(b), (d),(f) relate to the refund of a lodgement fee where the complaint is dismissed without hearing, upheld or the Councillor has resigned. It was noted that the council is still being burdened with the cost of the complaint and undertaking administrative functions and the fee should not be refunded in those circumstances.
- Standards Panel members noted that much work may have been done by the Registrar and Panel prior to withdrawal of a complaint and that fees should not necessary be refunded on that basis.
- LGAT has some concern at the cost associated with requiring a Panel to determine whether a matter should be heard, referred or dismissed and suggests consideration of a different process at this stage. Any two members of the Panel Pool could be asked to review the complaint electronically for a small fixed fee (eg \$20 or some figure small enough to be captured by the lodgement fee). These members may or may not then be asked to form a 'hearing' Panel should the matter progress to that stage. Under this model, there would be no refunding of fees unless a complaint was upheld (with those costs then borne by the Council).

Representation (28V)

- In relation to a complainant authorising a person to act on their behalf – it is not clear if this might be a legal practitioner. Currently legal practitioners may only act if all parties agree and this is preferred.

Referral of complaint (28ZC)

- It is noted that on the one recent occasion this has occurred, the statutory authority to whom the complaint was referred deemed that was a breach of law but that it was a low priority for them to act on it. This left a situation where they wouldn't sanction and the Standards Panel couldn't sanction and this needs to be avoided in future. Perhaps if there is indication there will be no action by the body to whom the complaint is referred then it reverts back to the Panel for action.

Conduct of Investigations (28ZE)

- Information from closed council meetings should be available to the Panel if requested. Currently they can't be provided if the Council don't authorise it. The provision of such information could be linked to a requirement that any section of the Panel's report dealing with information revealed in a close council meeting is only disclosed in the report to the closed meeting of council from the Panel.

Model Code of Conduct

- The idea of a template/mandated Code of Conduct is supported but with a review for currency every four years at a minimum.
- LGAT's Model Code is some years old now and so a working group should be convened as a separate exercise to review this document. Representation from current Standards Panel Members on that working group is strongly encouraged, so that it is grounded in what is need in order to determine sanctions.

Costs

- LGAT is concerned that the issue of costs to councils has not been well addressed at this stage, particularly given the uncertainty around who will be undertaking the initial triage stage and the need to involve a panel at that point. There is a risk that councils that have a disproportionate number of frivolous and vexatious complaints will bear significant costs through no fault of their own.
- Further while all councils are generally supportive of bearing costs related to complaints against their councillors, there is significant concern that the Regulations appear to say that Councils will also pay for the employment of Departmental Officer. Councils need to be aware of what this impost may be in developing their budgets in the future. While LGAT has undertaken this role, the cost has been absorbed and the task managed by officers with other primary functions. This cost risk also applies if a private contractor is used.
- In relation to 28P(2): currently there are no requirements around administrative work beyond individual complaints other than would apply to policy formation, review and guidance on implementation and that work is already part of the Local Government Division's functions. If the Government, in the guise of the Minister, Secretary of DPAC, the Director of Local Government or the Board request information to support their work functions, again that should be at their cost, not councils. Charging councils for such work is not supported and is considered highly unusual.

- Fundamentally, this role relates to the administration of the *Local Government Act 1993*. It is certainly not appropriate for councils to be charged or levied in the manner proposed. The State Government has had the benefit and notional 'saving' of not having to undertake this function and to now seek to recover the cost of what should be a core function is both opportunistic and outrageous.

Determination

- While not required, it has been the practice of the Standards Panel to provide both a report for Closed Council and for Open Council and we encourage this two levels of reporting to continue. In addition to ensuring consistency in the way in which such matters are reported to the public there may be matters, as outlined earlier in relation to closed council meetings, which are too sensitive to be tabled at an Ordinary Meeting of Council.

Other Matters

- A recent issue arising has been the matter of the inability to compel people to attend hearings on a certain date or at all. This then works at odds with procedural fairness and prescribed time limits to deal with a complaint. This needs some consideration to see what strengthened powers may be able to be provided to the Panel through further amendments to the Act and associated regulations.