

2 September 2022

Office of Local Government
Department of Premier and Cabinet

Via email: lgconsultation@dpac.tas.gov.au

Code of Conduct Bill

Thank you for the opportunity to provide a submission on the draft *Local Government Amendment (Code of Conduct) Bill 2022* (the Bill) and related matters. This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of the local government sector in collaboration with our Members, all 29 local councils in Tasmania. Where a council has made a direct submission to this process any omission of specific comments made by that council in this submission should not be viewed as lack of support by the LGAT for that specific issue.

The local government sector has welcomed the long overdue release of the Bill and on the whole support the proposed changes. However, a number of councils commented on the need to include more significant sanctions for matters of a more serious nature pertaining to breaches of governance standards, serious cultural issues, or loss of public confidence in local government. Frequent comment was also made on the ability of the proposed changes to deal with frivolous, vexatious and trivial complaints. At a minimum it was felt that further clarity is required on how each of these terms would be interpreted as part of the public interest test.

If you have any questions or would like further information, please do not hesitate to contact me at dion.lester@lgat.tas.gov.au or via phone on (03) 6146 3740.

Yours sincerely



Dion Lester
CHIEF EXECUTIVE OFFICER

Specific Comments

A summary of the specific feedback relating to the Bill are provided below:

| Proposed Legislative Change | Comments / Concerns |
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| A standard code of conduct for councils | Supported. This will ensure consistency, is more efficient and will assist in the assessment of complaints. One council indicated that it may wish to continue the practice of adopting the code of conduct at a council meeting as a means of demonstrating its support of the code in a public forum. |
| Behaviour standards policy for councillors | Supported. Although concerns were raised on why a council has the 'option' to adopt such a policy. If the mandated Code of Conduct does not include sufficient definition regarding expected behaviours, then the standards policy should be mandated. |
| Local dispute resolution policy | <p>Supported. In some instances it will assist in the resolution of some complaints. However, it may result in further unintended consequences and the content and detail of any such policy would need careful consideration.</p> <p>Potential issues include:</p> <ul style="list-style-type: none"> • The local dispute policy simply becoming another step for complainants of a frivolous and vexatious nature. The existing draft legislation appears deficient in preventing such from occurring. • The outcome from the local process should be upheld or at the very least hold significant weight if the matter was then referred as a code complaint. • Identifying who the suitable person/s are to consider complaints and the methodology to be applied will be difficult. <p>Most councils do not have the human resources available to deal with these issues and staff should not</p> |

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| | <p>be expected to in any event. It is likely that independent mediators will be engaged and this will come at an additional cost to councils.</p> <p>It should be noted that prior to the current Code of Conduct structure a local dispute process, similar to that proposed, was in existence and deemed ineffective. Learning from the failure of the previous 'local' system should be considered and, where possible, addressed in the new legislation.</p> |
| Making a code of conduct complaint | Supported. The additional information required as part of a complaint should include the two items noted plus a further requirement to detail not only the outcome of any local dispute process but also the specific reasons why the outcome is not accepted. |
| Timeframe for completing initial assessment and referral by General Manager | Supported. |
| Initial assessment of a code of conduct complaint | <p>Supported.</p> <p>The introduction of a public interest test should be supported by the definition of terms such as frivolous, vexatious and trivial as it is not felt that the current Bill will adequately deal with circumstances where complainants are 'weaponizing' the Code.</p> <p>Grounds for dismissing a complaint should also include circumstances where <u>the outcome of the local process</u> is considered reasonable.</p> <p>In undertaking the initial assessment, patterns of complaints from regular complainants should form part of the consideration for dismissal.</p> |

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| | One council suggested that consideration should be given to removing the initial assessing lawyer/s from all Panel roles. A pool of 2 to 3 lawyers could be used to undertake all initial assessments and be fully independent from the Panel process. These lawyers should be obligated twice yearly to meet with the LGAT President and CEO to remain abreast of current local government matters, specifically those that may be impacting the complaint process. |
| Investigating Panel for a code of conduct complaint | Supported. |
| Conflict of interest | Supported. |
| Costs and expenses to be borne by council | Supported. |
| Confidentiality of determination report and related document, report or information | Supported. |
| Notification of compliance with sanctions | Supported. |
| Refund of fee accompanying lodgement of code of conduct complaint | Supported. |
| Other matters raised | One council raised the potential for parties to be afforded legal representation in circumstances of alleged more serious breaches and that appeal rights should be available. |