

SECOND READING SPEECH – HON. PETER GUTWEIN MP

Local Government Amendment (Code of Conduct) Bill 2015

Madam Speaker, I move that this Bill now be read for a second time.

Madam Speaker, the Bill before the House responds to the strong calls from local government, and local communities, for an effective and enforceable framework to address councillor misconduct.

The Bill also encompasses a number of other reforms that progress the Government's commitment to streamline and enhance the existing legislative framework provided for local government.

The proposed amendments have been developed in close association with, and are supported by, the local government sector and the Local Government Association of Tasmania (LGAT).

Councillor code of conduct

The vast majority of Tasmanian councillors uphold the highest levels of probity that the community expects of them. Nonetheless, it is vital that there is an effective and enforceable system in place to address the instances in which a councillor disregards the standard of behaviour that the community expects of them, and that they have agreed to uphold in performing their role.

There have been no substantial changes made to the code of conduct process since the framework was introduced in 2006.

The local government sector has sought reform of the current code of conduct framework for several years because of the strong belief that the framework is flawed. Local government's key issues include that the current Code of Conduct Panel is not sufficiently independent, and that the system is ineffective and unnecessarily cumbersome.

In response, the Government has undertaken a comprehensive review of the current code of conduct framework, including extensive consultation with LGAT and the Integrity Commission.

The proposed code of conduct framework is streamlined, practical and, most importantly, it is enforceable.

Currently, the process for the code of conduct framework is contained within the *Local Government (General) Regulations 2005*. This Bill provides for a more robust code of conduct framework that is contained in the *Local Government Act 1993*.

The Bill provides a strengthened system under which councils are required to adopt a model code of conduct which prescribes the standard of behaviour that councillors are required to meet when performing their role.

The model code of conduct is currently being developed in consultation with LGAT and the members of the current Standards Panel. It is foreshadowed that the model code of conduct will not be significantly different from LGAT's current model code of conduct, which is available for councils to use. Local government will be consulted on the draft model code of conduct, which will be made by Ministerial Order.

A council will be able to supplement or amend the model code of conduct to ensure that it is locally relevant, as long as this is within the confines of the model code and the Local Government Act. A council will be required to review its code of conduct within three months after each ordinary election.

The new code of conduct framework reduces red tape and simplifies the current system by replacing 29 separate council Code of Conduct Panels, and LGAT's Standards Panel, with a single and independent statewide Code of Conduct Panel.

The independent nature of the new Code of Conduct Panel is strongly supported by local government. It will see an end to councillors hearing and determining code of conduct complaints concerning fellow councillors, which many councils consider inappropriate. It will also address LGAT's concern that its role as registrar of the Standards Panel conflicts with its key role to represent local government.

The Minister responsible for local government will be responsible for appointing a pool of members to the statewide Code of Conduct Panel who are Australian lawyers, or persons

who have experience in local government but who have not been councillors or council employees within the preceding two years.

The Code of Conduct Panel will still be constituted by three members, who are derived from the pool of members appointed by the Minister. One member is to be an Australian lawyer and the remaining two members are to be persons with experience in local government.

An Executive Officer is to be appointed by the Department of Premier and Cabinet to undertake the administrative functions of the Panel.

Any person will still be able to make a code of conduct complaint against a councillor within 90 days after the councillor has allegedly committed the contravention. However, under the new system, a complaint is lodged with the general manager of the council, not the mayor or deputy mayor as is currently the case.

If the code of conduct complaint meets the requirements of the Local Government Act, it is forwarded to the Code of Conduct Panel for initial assessment by the chairperson and, if accepted, for investigation and determination by the Panel.

The new code of conduct system will be efficient and cost effective. The Code of Conduct Panel investigates and determines a complaint with as little formality and as expeditiously as possible, and is to make every endeavour to meet the prescribed timeframes. The Panel is also provided with flexibility in hearing and determining complaints and may regulate its procedure regarding the conduct of investigations generally.

While the Code of Conduct Panel is provided with procedural flexibility, it must comply with the rules of natural justice and the new framework provides an appeal right to the Magistrates Court (Administrative Appeals Division) on the basis that the Panel failed to comply with the rules of natural justice.

The Code of Conduct Panel and the Executive Officer are immune from liability for an honest act or omission done or made in the exercise or performance of a function under the Local Government Act or any other Act, as is currently the case for the present code of conduct panel and Standards Panel.

The efficiency of the new system is enhanced by providing the Code of Conduct Panel with the ability to dismiss frivolous or vexatious complaints. If a code of conduct complaint is dismissed because it is frivolous or vexatious, the Panel may direct the complainant not to make a further complaint in relation to the same matter, unless the complainant provides substantive new information.

The Government will also work closely with councils to encourage the development of councillor dispute resolution policies and procedures, which will encourage early mediation in any dispute.

If a code of conduct complaint is upheld, the Code of Conduct Panel may impose one or more of the prescribed sanctions on the councillor. This includes a tough new sanction for a more serious breach of a code of conduct, which allows the Panel to suspend a councillor for a maximum of one month without allowances. This new sanction is in addition to the existing sanctions of cautioning or reprimanding a councillor, or requiring them to apologise to a person or attend counselling or a training course.

If a code of conduct complaint is dismissed, the Panel may determine that the complainant may not make another complaint in relation to the same matter within the next 12 months, unless substantive new information is provided.

Multiple, serious breaches of a code of conduct are not tolerated under the new system. The Bill provides that the office of councillor becomes vacant if a councillor breaches a code of conduct three times for which the suspension sanction is invoked, during the councillor's current term of office. This provides a powerful deterrent and ensures that councils can run effectively without the distraction of repeated bad behaviour.

Importantly, the framework mandates that a code of conduct complaint pertaining to half or more of the councillors of a council is referred to the Director of Local Government. The rationale behind this is that such a complaint may be indicative of council dysfunction and undermined community confidence, which warrants investigation by the Director and possible intervention.

Enforceability is a hallmark of the new framework with a new offence provision for failure to comply with a sanction imposed by the Code of Conduct Panel. If a councillor fails to

apologise or attend counselling or a training course, the matter is referred to the Director and that councillor may face a penalty of a fine not exceeding 50 penalty units, which currently equates to \$7 000.

The new framework enhances the transparency and accountability of local government. Councils will be required to table a copy of a final report relating to the determination of a code of conduct complaint at the next open council meeting. Additionally, councils will be required to publicly disclose in their annual reports any breaches of the code of conduct, including all costs associated with code of conduct complaints.

If confidential council matters are raised during a code of conduct investigation and determination, the Code of Conduct Panel has the option to create an addendum to the final report, which is tabled at a council meeting that is closed to the public.

The relevant council to a code of conduct complaint is responsible for payment of the remuneration and allowances of the Code of Conduct Panel and the Executive Officer, as determined by the Minister. This reflects the Government's view that councils are autonomous bodies that are accountable to their electorates for the manner in which they conduct themselves, including dealing with councillor misconduct.

The cost arrangement under the new system will not impact significantly on councils. This is because, under the current system, LGAT recovers the administration costs of the Standards Panel from councils through subscription fees, and recovers the sitting fees and disbursements of the Standards Panel directly from councils. Furthermore, the streamlined and flexible nature of the new framework will reduce costs for councils in relation to the whole code of conduct process.

Complainants will be required to pay a fee when lodging a code of conduct complaint, as is currently the case, but the fee will be returned if the complaint is upheld by the Panel, referred to another person or authority or withdrawn by the complainant. The complainant and the respondent councillor bear their own costs in relation to the investigation and determination of a code of conduct complaint.

Complaints against non-compliance or offence

Without limiting the ability of the Director of Local Government to determine the procedure for handling and investigating complaints of non-compliance or offences made under the Local Government Act, the Bill provides the Director with the overt power to dismiss a complaint received under the Act on the basis that the complaint is frivolous or vexatious. Criteria will be developed to ensure consistency in the application of this provision.

Disclosure of information

The Bill amends the Local Government Act to provide a specific dispute resolution process regarding the relevance of documents relating to an agenda item of a council meeting.

The new process provides that a general manager may withhold from a relevant document private and confidential information relating to a person, if that information is not relevant to the agenda item. If a general manager refuses to provide a document to a councillor, either in whole or part, on the basis that he or she considers that it is not relevant to an agenda item, the councillor may seek a decision of the council regarding the document and the general manager is to comply with the council decision.

The Bill also amends the Act to provide clarification regarding the disclosure of information offence provisions, to exclude the application of the associated offence provisions from any other disclosure of information requirement under the Act or any other law.

Annual General Meeting

At the request of the local government sector, the Bill makes it optional for a council to convene an Annual General Meeting (AGM).

If a council determines to hold an AGM, a council is to hold it on a date no later than 15 December each year, as is currently the case.

Local government has a strong preference for moving to optional AGMs, because they are poorly attended. Poor attendance is indicative of a lack of community support and interest in AGMs, which renders the forum an inappropriate use of council resources.

In making AGMs optional, it is important to emphasise that a local council is the most accessible sphere of government. There are a number of formal mechanisms under the Local Government Act, in addition to the broader community consultation processes undertaken by councils, that enable members of the public to participate in council meetings and raise matters for consideration by a council.

Members of the public are able to attend all ordinary meetings of a council, which are held on a monthly basis, and 15 minutes of each ordinary council meeting must provide for public question time. A council is also able to hold a public meeting or an elector poll to consult with its community regarding an issue.

Additionally, the formal petition provisions under the Local Government Act can be used by the community to bring a matter to the attention of the council, or seek a public meeting or elector poll regarding a matter.

Currently, a council is required to invite community submissions on its annual report for discussion at its AGM. Given the proposal to make AGMs optional, the Bill amends the Local Government Act to provide that a council is still required to prepare and advertise its annual report, and to seek and consider comment on the annual report.

The Bill also amends the Local Government Act to provide that a council is only required to publish one newspaper notice regarding an AGM, instead of two notices as is currently required.

Impounding of animals

The Bill proposes a minor red tape reduction associated with the impounding of animals provisions under the Local Government Act. It is proposed to only require a council to publish a single all-encompassing newspaper notice regarding an impounded animal, rather than the current requirement to publish two separate notices.

Eligibility for nomination as councillor

The Bill proposes to restrict the eligibility criteria for nominating as a councillor to those persons who have their principal place of residence in Tasmania.

This amendment is based on the premise that a person needs to be living in Tasmania in order to adequately represent his or her community.

This new provision is enforced by explicitly providing that it is an offence to make a false or misleading statement in relation to making a notice of nomination as a candidate for the office of councillor.

I note that a number of other local government electoral issues have been raised that are not addressed in this Bill, including electoral advertising via the internet, reform of the general managers' roll and disclosure of political donations.

Given the complex and contentious nature of these electoral issues, and the current Legislative Council committee inquiry into the Tasmanian Electoral Commission and the *Electoral Act 2004*, the Government will consider and consult on these matters prior to the next local government elections.

Conclusion

In conclusion, the Local Government Amendment (Code of Conduct) Bill will encourage councillors and councils to act in the best interests of their local communities. The Bill will be welcomed by those concerned about the proper functioning of local government in Tasmania, and I commend the Bill to the House.