

DRAFT SECOND READING SPEECH

HON NIC STREET MP

Local Government Amendment (Code of Conduct) Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

Mr Speaker, this Bill forms a critical part of a broader process to reform the Code of Conduct Framework, which was first introduced by the Tasmanian Government in 2016.

The Framework was introduced at that time in response to strong calls from the local government sector and the Tasmanian community for an effective and enforceable framework to address councillor misconduct.

It is important to acknowledge that the vast majority of Tasmanian councillors uphold the highest levels of behaviour and probity, as is to be expected by a person holding public office.

Nonetheless, it is vital that we have a robust system in place to address the instances in which a councillor's conduct falls short of the standard they have agreed to uphold in performing their role on behalf of their local community.

A key feature of the 2016 reform was that it replaced a patchwork of previous code of conduct arrangements that were in place at the individual council level.

Subsequently, under the current Framework councils are required to adopt a single, state-wide Model Code of Conduct developed in consultation with the local government sector and approved by the Minister for Local Government.

Councils may adopt the Model Code of Conduct with or without variation. However, any variation must be consistent with the Model Code of Conduct.

The Model Code of Conduct was amended in late 2018 and early 2019, following a review of its operation by the Government and the local government sector.

Since that time, there has continued to be significant public interest and commentary surrounding the Code of Conduct process, decisions and determinations.

As Minister, it is my view that the intent of the Code of Conduct framework is sound. However, in keeping with the feedback provided by the sector and the Tasmanian community, it is evident that certain elements of the framework can be improved, and that this work can be undertaken in a progressive manner to ensure that we have a framework that meets expectations now and into the future.

The Code of Conduct is enforced by an independent Code of Conduct Panel established to investigate and determine complaints involving alleged breaches of the Code and empowered to issue sanctions against councillors found in breach.

The Panel replaced the previous system of 29 separate council Code of Conduct Panels and the Local Government Association of Tasmania's Standards Panel.

To a considerable extent, the Framework has been an effective tool in holding councillors to account. However, there has also been significant public criticism in the media of the Code of Conduct Panel process.

There are concerns about the types of complaints being investigated and whether some complaints could have been resolved informally. Concerns have also been raised regarding the absence of legal representation, conflict of interest, the adequacy of available sanctions and associated costs to the parties and councils.

The Government has acknowledged that the Framework can be improved. That is why in late 2020, the Department of Premier and Cabinet's Local Government Division (now known as the Office of Local Government) engaged in consultation with the Local Government Association of Tasmania and the local government sector.

As a result of these discussions, *Initial Assessment Guidelines for the Code of Conduct Panel* were developed, and are now in use, to assist the Chairperson carrying out an initial assessment of a complaint.

In 2021, the Government undertook public consultation on potential legislative reforms to the Framework to address issues raised by the sector and ensure that acceptable standards of councillor behaviour are upheld.

Twenty-eight submissions were received through that process, and I would like to thank each of the respondents for their feedback.

Following the public consultation, the Government released its response, which committed to reform across six key areas:

1. Improving consistency and clarity across councils
2. Using dispute resolution processes for less serious matters
3. Focusing initial assessment on more serious allegations
4. Increasing confidence in the assessment and investigation process
5. Stronger monitoring of compliance with sanctions
6. Positioning the framework for the future

As I indicated earlier, this Bill progresses reforms across several of those key areas committed to by the Government.

Earlier this year in August, a draft Bill was released for public consultation and ten submissions were received. The Government has considered this feedback and incorporated suggested changes into the Bill where appropriate.

I would like to take this opportunity to thank everyone who contributed to the consultation process.

Mr Speaker, this Bill has several key amendments.

First, this Bill removes the requirement for councils to individually adopt and regularly review their Code of Conduct. This means that the Code of Conduct issued by the Minister automatically applies to all Tasmanian councillors, without any variations at the local council level.

The Government is introducing this measure to ensure a consistent, effective and efficient process for addressing councillor misconduct. The current Model Code of Conduct will be reviewed following the amendment of the Act.

Dispute Resolution Policy

Mr Speaker, when the Framework was introduced in 2016, it was designed as a measure of last resort and there was an expectation at the time that councils would develop dispute resolution policies to support the informal resolution of disputes between councillors.

This Bill will make it compulsory for all councils to adopt, within 12 months of the enactment of the amendments, a dispute resolution policy that establishes a dispute resolution process within each council. A council's dispute resolution policy must comply with the prescribed minimum requirements, which will be set out in the Local Government (General) Regulations following the amendment of the Act.

Satisfactory participation in a council's dispute resolution process is a pre-requisite for lodging a code of conduct complaint under this Bill. The complainant is required to provide relevant information about any attempts they have made to resolve their complaint through a council's established dispute resolution process.

The Government acknowledges that an informal dispute resolution process may not be suitable for resolving all code of conduct complaints. Thus, this Bill allows a complainant to lodge a code of conduct complaint without having participated in a council's informal dispute resolution process, provided the complainant can justify the unsuitability of that process in the circumstances.

Initial Complaint Assessment

This Bill also changes the current initial assessment process for a code of conduct complaint. Currently, the Chairperson of the investigating Panel conducts the initial assessment, which increases the risks of a conflict of interest.

The Bill sets out that the initial assessment of a complaint will be undertaken by a legal member of the Code of Conduct Panel. This legal member will not be eligible to form part of any subsequent investigating Panel that investigates that complaint.

This Bill provides for two additional grounds for dismissing a complaint at the initial assessment.

The first, which I mentioned earlier is the use of a council's dispute resolution process. The initial assessor is empowered to dismiss a complaint if in their view, that matter could have reasonably been dealt with through the council dispute resolution process and there has been no attempt, or an insufficient attempt to resolve the matter through that process.

The second ground for dismissing a complaint at the initial assessment is a public interest test. This new public interest test enables the initial assessor to dismiss a complaint if they consider that it is not in the public interest to investigate it. This Bill contains several factors to be considered in applying the public interest test.

Timeframes

This Bill also stipulates strict timeframes for processing code of conduct complaints. A council general manager must process any code of conduct complaint within 14 days of receipt.

Confidentiality

Another key component of this Bill is improving confidentiality of the Code of Conduct process. This Bill makes it an offence for any person to disclose any information, documents or records provided by the Executive Officer or the investigating Panel in relation to a complaint, unless it has already been publicly disclosed in a determination report.

A council general manager and mayor are, however, able to discuss with each other a determination report before it is released for the purpose of arranging for the report to be tabled at a council meeting.

Conflicts of Interest

Mr Speaker, this Bill sets out the procedure for members of the Code of Conduct Panel to disclose and manage any actual, potential or perceived conflict of interest in a matter that is relevant to the investigation and determination of a code of conduct complaint.

As a result, this Bill removes the restriction on persons who have been councillors or employees of any council within the immediately preceding two years of a complaint from being on the Code of Conduct Panel. Only current councillors and current employees of a council are restricted from being members of the Code of Conduct Panel.

Additional Sanctions

In terms of sanctions, this Bill allows the investigating Panel to recommend in the determination report that the Director of Local Government considers making a recommendation to the Minister under the Local Government Act for the issuance of a performance improvement direction in respect of matters raised during the investigation of a complaint.

To assist with the monitoring of compliance with sanctions, councillors are required under this Bill to notify the Code of Conduct Executive Officer, rather than the Council's general manager, when they have complied with a sanction.

In addition to the legislative changes proposed with the introduction of this Bill, the Government is also committing to undertake further work to ensure the Code of Conduct Framework in its entirety remains effective, and is supported, respected, and trusted by the community and the local government sector alike.

In the coming months, the Government will review the Local Government (General) Regulations and the Model Code of Conduct to ensure that the intent of the Bill's legislative changes are appropriately reflected and embedded in those supporting instruments.

The review of the Model Code of Conduct will also allow the Government to take into consideration the findings from a sector-led workplace cultural review of local government, which is currently being undertaken by the Local Government Association of Tasmania.

The Government is providing funding support for this important work as part of its broader commitment to supporting a positive culture for all elected members and for local government workplaces.

This work also encompasses the development of a state-wide Learning and Development Framework for councillors to ensure that appropriate support and information is available for elected representatives to understand their individual and collective responsibilities.

This framework will include training on the Code of Conduct system, which will be mandated once the learning and development framework has been fully implemented early in 2023.

In keeping with the Government's commitments to increasing sectoral and community confidence in Code of Conduct processes and positioning for the future, we are also conducting a feasibility study into transferring administrative responsibility for the Framework (or certain elements of the Framework) to the new Tasmanian Civil and Administrative Tribunal (TASCAT).

The study will consider legal representation, appeal rights, the need for further sanctions and other relevant matters. A discussion paper will be released for public consultation in 2023.

The Government will also be considering and consulting on options, including legislative options, that could better address instances of very serious councillor misconduct that may not fall within the parameters of the current Code of Conduct Framework. This work will include consideration of appropriate eligibility criteria for individuals to serve as councillors.

In what is a new term of office for local government elected representatives across the State, the Government is confident that this suite of reforms will assist returning and new councillors in discharging their duties and will provide a supportive framework for their engagement with local communities going forward.

Mr Speaker, I commend the Bill to the House.