



OUR REF: 2022/003286

YOUR REF: 22/86507

30 August 2022

Craig Limkin  
Deputy Secretary  
Department of Premier and Cabinet

By email: [lgconsultation@dpac.tas.gov.au](mailto:lgconsultation@dpac.tas.gov.au)

Dear Craig,

**Local Government Amendment (Code of Conduct) Bill 2022 and related matters**

Thank you for the opportunity to provide feedback on the draft Local Government Amendment (Code of Conduct) Bill 2022 (the draft Bill).

The Integrity Commission supports the broad intent of the draft Bill. In particular, we welcome the establishment of a process to manage conflicts of interest, and the introduction of mandatory dispute resolution policies.

We make the following specific observations.

**Definition of ‘conflict of interest’**

While we support the introduction of requirements to declare conflicts of interest, there is a risk of differing interpretation of these new obligations.

Although not defined in the *Integrity Commission Act 2009*, the Commission defines conflicts of interest as actual, perceived and potential for the purposes of education regarding misconduct prevention. It is our experience that these concepts are nuanced and often difficult to grasp.

The terms ‘direct’, ‘indirect’ and ‘perceived’ conflicts of interest are not defined in the draft Bill. The terms ‘direct and indirect’ are also not in common usage. It would be preferable for the principal Act to use terms and definitions that are consistent with the Commission’s usage, and with common usage. We note that the Model Code of Conduct for councillors (as prescribed in the Local Government (Model Code of Conduct) Order 2016) uses the terms ‘actual, perceived or potential conflict of interest’, and that any difference could result in confusion.

The distinctions are important. For example, a ‘perceived’ conflict of interest can be actual or potential, or not amount to any conflict at all ie the perception was ill informed. Additionally, a potential conflict of interest – while it should be declared – may or may not eventuate to be an actual conflict, depending on the individual circumstances of the matter.

It is important to have clarity in these concepts. While not specifically contemplated in the draft Bill, there is nevertheless the potential for the concepts to be applied to the management of

conflicts of interest by councillors under the *Local Government Act*. The risk of misinterpretation would be mitigated by greater clarity.

### **Investigating panel**

In relation to clause 9 of the Bill (proposed section 28OA(4)(b)), the provision for a member of the investigating panel to determine that he or she is not precluded from acting fairly is overly reliant on that person's subjective decision. Such assessments are better made by someone who does not have the conflict, for example, by the investigating panel convened in the matter and to which the declaration is made. As proposed, the panel will be informed but can take no action on the notification of the conflict; the panel may have a different view on the matter.

### **Behaviour standards for Councillors**

We agree that clarity regarding behaviour standards is good practice.

It is unclear why this provision is voluntary. If the policy is to be given effect in legislation, it would be preferable that it be mandatory for all Councils. This would have the positive effect of clarity across the board, and hence lead to easier implementation.

A standard or template policy – perhaps developed by the Office of Local Government (OLG) in conjunction with the Local Government Association of Tasmania – would make it easier and simpler for Councils to adopt and implement. The OLG could be given legislative responsibility to draft the policy.

### **Dispute resolution policy**

It would be preferable that the mandatory 'local dispute resolution policy' also specify that any conflicts of interest – irrespective of whether the matter being considered arose from a potential breach of the code of conduct or the behaviour standard policy – are declared and managed.

Yours sincerely



**Michael Easton**

Chief Executive Officer