

Proposed Amendments to the Rules of Conduct for Councillors

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In November 2015, the Department of Local Government and Communities put out for comment the *Summary of Proposals and Issues for Comment: Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework*. The consultation period closed in August 2016.

This review has important implications for local governments and their councillors, who may soon face additional and clearer regulation of their conduct in the discharge of their roles if the proposals are implemented.

This article explores some of the changes being contemplated and the issues they seek to address.

Background

Reviews conducted by the Department in 2010 and 2011 identified that some types of dysfunctional conduct were not effectively covered by the *Local Government (Rules of Conduct) Regulations 2007*.

Because of a perception that the Regulations were not meeting the expectations of stakeholders, the Department launched a further review in 2015. This review has resulted in a number of proposed amendments to the Regulations which are open for comment and, if adopted, will affect the standard of conduct required of Councillors.

How will the public expression of Councillors be limited?

Proposed amendments to Regulation 6 (Use of Information) will introduce 'personal information acquired in a Council member's capacity' as a kind of information that must not be disclosed.

Further, 'professional legal advice, information subject to confidentiality or non-disclosure agreements, and commercially sensitive information provided in confidence to the Local Government' must not be disclosed.

Summary of Impacts

- Councillors will no longer be able to disclose personal and privileged information, and will face additional restrictions on engaging with the media;
- Councillors will face new limits on the gifts they can accept; and
- Stricter standards of conduct will apply to Councillors in their engagement with Local Government employees and other Councillors.

A newly proposed Regulation on Public Statements will limit the ability of councillors to engage with the media. It requires councillors to notify their CEO in writing of any comment they intend to provide to the media concerning their local government's performance or administration.

A new regulation on interactions with councillors would prohibit councillors from stating or implying that a council decision or process was incompetent, dishonest, corrupt, negligent or unlawful to anyone other than a regulatory agency.

The proposed regulation seeks to address what sometimes passes for local politics, where councillors make destructive statements in public, in the misguided belief that they when they do so, they are somehow entitled to disparage their fellow councillors and the staff of their own local government.

Such a belief is misguided in that it ignores other general laws, for example the laws on defamation and the laws of confidentiality, not to mention that it also ignores the leadership nature of the role. It is difficult to see how one can properly be a leader of an organisation when one is roundly criticising it at the same time.

It also approaches the role of councillor as if it were somehow external to the local government when in fact it is internal and integral to it.

How will the regulations on receiving gifts and contributions to travel change?

A proposed amendment to Regulation 12 (Gifts) would see *'financial or other contribution to travel'* included as something a councillor must not accept from a person undertaking, seeking to undertake, or likely to be intending to undertake an activity involving an exercise of local government discretion.

Further, councillors who mistakenly accepted a gift from such a person would be required to rescind their acceptance, return the gift, or notify the CEO of a non-returnable gift.

A councillor would have to notify their CEO as soon as practicable after the councillor realised the giver of the gift was connected to the exercise of a local government discretion in some way.

This amendment appears to coincide with the revelations from the investigations into the conduct of the Lord Mayor of the City of Perth by the Corruption and Crime Commission in which she was found to have accepted contributions to travel which were substantial and which were not a breach of any rule of misconduct.

One could reasonably argue that it is artificial to suggest that where a gift takes the form of a contribution to travel, it would not have the potential to affect the integrity of the recipient. Common sense would suggest that there is no difference between a gift of \$500 cash and a gift of travel vouchers to the amount of \$500 and therefore there should be no distinction between them in the regulations.

Discussion in the sector in 2015 and 2016 suggests there is a substantial level of confusion about the gifts disclosure regime. This is not completely surprising, given that the regime is governed in slightly different ways by the Local Government Act as well as the Rules of Conduct Regulations.

One can therefore expect some significant changes to the gifts disclosure regime in the near future.



How will councillors' conduct toward local government employees and one another be limited?

Proposed amendments to Regulation 10 (Relations with Local Government Employees), and a new Regulation (Interactions with Council members) would specify inappropriate conduct on the part of Council members.

Councillors would be prohibited from acting in an abusive or threatening manner towards employees, including the CEO, and from using abusive or offensive language. They would not be able to make repeated demands for assistance from an employee to the extent that the employee's capacity to work is impaired. Further, they would not be able to disparage or impugn the character of an employee or former employee.

Similarly, council members could not disparage or impugn the character of their colleagues by stating or implying a deficiency in their honesty, integrity, competence, diligence, impartiality or loyalty. Further, they could not use abusive or offensive language to or in reference to a fellow council member.

“Councillors would be prohibited from acting in an abusive or threatening manner”

Such amendments appear to provide more detail in relation to the actual conduct of councillors, rather than changing the nature of the prohibitions on councillor conduct.

Whatever the underlying motivations for the amendments, they seem to be in keeping with the idea that all members of Australian society should treat each other with respect and that elected councillors are not exempt from that general principle and indeed, can be brought to account if they should breach it.

Conclusion

The proposed amendments to the Regulations seek to set out in clearer detail just what is required of council members. The amendments also seek to raise the standard of conduct expected of council members in certain situations, and impose additional duties with respect to media engagement and the receipt of gifts.

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