

20 April 2023

Attention: Addressing councillor misconduct discussion paper

Office of Local Government
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

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

Dear Sir/Madam

Submission – Discussion Paper; Addressing Councillor Misconduct

Background context

The Tasmanian Government (“**Government**”) is currently conducting a review concerning the current processes dealing with Councillor misconduct, and how it should be dealt with in the future.

The Government’s concern is this framework does not suitably address matters of serious misconduct by Councillors, which brings into question their suitability for public office.

In undertaking its review the Government wishes to strike a balance between the independent democratic functions of Councillors with intervention of that process in extraordinary circumstances, to the extent that a Councillor may be removed from public office.

This submission is provided on behalf of the Northern Midlands Council (“**Council**”) for consideration.

Preliminary

The Government has put forward two options for consideration. Both options provide for stronger sanctions against Councillors, including in circumstances that warrant it, a Councillor’s dismissal.

The two options are as follows:

1. Amendment to the Board of Inquiry provisions of the *Local Government Act 1993*, to enable a Board to be established to investigate misconduct of individual Councillor’s (“**Option One**”); and;
2. Empowering the Director of Local Government to seek dismissal or extended suspension of a Councillor under the Model Code of Conduct by application to the Code of Conduct Panel or, possibly in future, the Tasmanian Civil and Administrative Tribunal (“**TASCAT**”) (“**Option Two**”).

Council has considered both options carefully and proceeds here on the basis that Councillor behaviour requires clear sanction pathways, otherwise there remains concern Councillor behaviour will remain unchecked.

Council supports Option Two

In Council’s opinion, Option One concerning an amendment to the Board of Enquiry provides little assistance to the delivery of fair and efficient outcomes concerning the suspension or dismissal of a Councillor. The process can be slow or complicated and therefore inefficient.

P.O. Box 156
Longford Tas 7301

Telephone (03) 6397 7303
Facsimile (03) 6397 7331

www.northernmidlands.tas.gov.au

Given the history of Councillor misconduct requiring sanctions such as suspension or dismissal is low, the use of a Board of Enquiry would seem an overreach where other well established mechanisms are better equipped to deal with such issues. It is for this reason and ones that follow, Council supports Option Two.

The current Code of Conduct is fraught as it currently stands, stated for reasons for which do not need to be expressed here.

The Government's position to remove functions of the Code of Conduct panel into TASCAT is Councils preferred option. This submission operates on the assumption that it is the Governments intention for that to occur.

Council is of the view that any situations seeking dismissal or extended suspension of a Councillor under the Model Code of Conduct, should be referred to the TASCAT by the Director of Local Government, with an investigation warranting such action to be undertaken by a separate statutory authority.

Council favours Option Two because it provides for a substantive process using TASCAT's established practice and procedures and is further supported by proposed additions to the *Local Government Act 1993* that will empower TASCAT to dismiss a Councillor.

Given the substantive nature of what is at stake, it is at the heart of this submission that there is a requirement for any process to codify and make certain the circumstances where a complaint can be made against a Councillor, and the circumstances upon which a Councillor can be dismissed.

Properly codified, it is anticipated Councillor behaviour will modify. This is because Councillor misconduct, including certain failures and behaviours, will give rise to the real prospect of the Councillor being dismissed. By clearly setting out the circumstances, including behaviours, failures and inappropriate conduct, with precision and clarity, Councillor's will be aware of the types of failures and behaviours which may result in a successful dismissal. This will gain a Councillor's attention.

Other jurisdictions

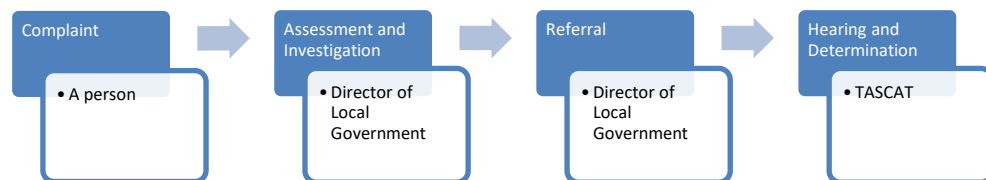
In terms of the comparative analysis provided in the discussion paper concerning processes in other jurisdictions relating to a Councillor's dismissal, Council is of the view that the South Australian model provides a reasonable and appropriate framework in dealing with such matters.

Council has considered carefully the principles outlined by the Government in terms of thresholds for intervention leading to possible dismissal and the need to maintain public confidence and transparency in decision making. The South Australian model demonstrates these principles. The investigation and referral of such matters in the South Australian model rests in other statutory authorities or other specified persons.

Council believes this assists the Government in making the decision to adopt Option Two, with appropriate referral by the Director Local Government, investigation by another statutory authority and then determination by TASCAT.

Principles, processes and reform

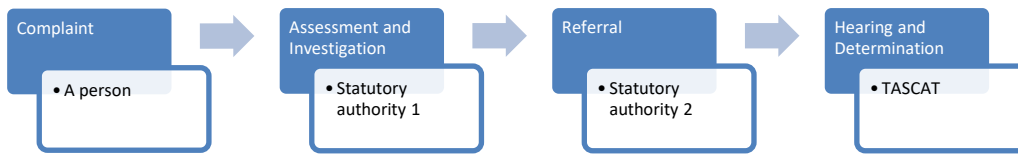
Under Option Two, the Government considers a process by which the Director of Local Government refers matters of alleged serious misconduct to TASCAT for determination. The discussion paper makes no comment as to the assessment and investigation of a complaint. In the absence of anything to the contrary, Council assumes the intention may be for the Director of Local Government to undertake these functions. As such the process would be described as follows:



The question arises as to whether this process is a fit with the Government's guiding principles and principles of good governance?

The above process identifies multiple roles being undertaken by the Director of Local Government. That body is performing an assessment, investigatory and referral role. The concern is that in performing multiple roles, there is a risk of that body taking an interest in the decision by referring matters which may not warrant referral. Council favours a referral by either a separate statutory authority after reviewing the outcome of an investigation or alternatively, the assessment and investigation by a separate statutory authority. Such processes exist in other areas of Government.

For consideration Council outlines below a framework concerning a complaint, its assessment and investigation, its referral and finally its determination. All of which concern the principles outlined by the Government in its discussion paper.



Each step is at arms of length to the other, involving different persons and authorities in the decision making process, with the ultimate decision resting in a well established statutory authority performing a judicial role.

Nature of a complaint

It is Council's view the category of complaint must be clearly and unambiguously defined, meeting a threshold which is sufficiently high enough to require the determination of a Councillors fitness for public office. Given the nature of what is at stake, the threshold must be one that is proportionate to the gravity of the proposed sanction, that of a Councillor's dismissal.

Appeals

Councils view is that TASCAT decisions concerning the dismissal of a Councillor would follow the current TASCAT appeal process.

Advantages/Disadvantages

Council notes the Government's discussion paper lists out several advantages and disadvantages concerning Option Two.

As discussed above Council's view is the Government should enliven the principles outlined, by empowering decision making through a separate authority in each step of the process. This improves transparency enhancing public confidence and removes possible adverse public perception and potential for politicisation.

Access to judicial or administrative review provides better and fairer outcomes.

Thank you for considering this submission.

Yours faithfully

Des Jennings
GENERAL MANAGER