

LOCAL GOVERNMENT AMENDMENT (CONDUCT) BILL 2012

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.04 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Local Government Amendment (Conduct) Bill 2012. The bill will amend the Local Government Act 1993 in relation to the conduct and discipline of councillors, and for related purposes. This bill seeks to give effect to a more robust framework for the regulation of the conduct of individual council officials. I would like to expand on how this bill seeks to improve the existing regulatory framework. I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

The Model Code of Conduct and misbehaviour provisions

The Local Government Act provides for a Model Code of Conduct for councils. This sets the standard of behaviour that is expected of council officials and prescribes procedures and penalties for breaches of these standards.

As leaders of the community, the conduct of councillors and council staff is under constant public scrutiny. The code aims to ensure that all councillors, council staff and delegates act honestly, ethically and responsibly in carrying out their functions and that decisions are made in a fair, honest, open and impartial manner. The model code is a key part of the governance framework for New South Wales local government.

The model code is supported by provisions in the Act—the misbehaviour provisions—that enable the Division of Local Government to investigate serious or repeated breaches of the code by councillors, and empower the director general and the Pecuniary Interest and Disciplinary Tribunal to take disciplinary action in relation to such serious breaches.

Reasons for the Review of Model Code of Conduct

Most councils do an excellent job of serving their communities. The overwhelming majority of councillors—and for that matter council staff—demonstrate through their efforts and behaviour a commitment to the highest standards of community service and ethical conduct.

Unfortunately, as we are all too aware from occasional media reports into dysfunction in councils, the behaviour of council officials sometimes falls short of what the public rightly expects and deserves.

The model code of conduct aims to set high standards for behaviour and deter behaviour that does not meet this standard.

In recent times it has become apparent that the code was not working as intended. The current model code has at times been misused for political point scoring and other improper purposes. For example the code did not prevent council officials from making complaints for an improper purpose, taking reprisal action and disclosing information about an investigation. This has led to misuse and wasted money in needless investigations. Councils have been caught up in long-running investigations and court battles for often very little outcome in

terms of better behaviour.

The Review of the Model Code of Conduct

With evidence building that the code was not working, the Minister for Local Government requested the Division of Local Government to conduct a comprehensive review to identify all the issues and develop solutions in consultation with the local government sector.

The review revealed a range of problems with the operation of the existing model code and the current misbehaviour provisions. Concerns were raised by councils and others about:

- the efficacy of penalties as a deterrent to poor behaviour, with repeat offenders continually failing to meet the standards expected and disrupting council business,
- misuse of the code by vexatious and politically motivated complainants,
- the cost to councils, and
- poor complaints management and investigative practices.

The new procedures will allow for vexatious complaints to be managed more effectively which will ensure the code is used appropriately and not for political purposes.

Councils have asked for a stronger code of conduct, more efficient and effective procedures for dealing with complaints and stronger sanctions to deter poor behaviour. Councils have also asked for a more robust regulatory framework to ensure that the new code has "teeth".

The review involved exhaustive consultation and collaboration with the local government sector and other key stakeholders such as the Independent Commission Against Corruption and the NSW Ombudsman.

The consultation process comprised a number of steps that were designed to identify the problems with the existing framework. It was designed to ensure that the review outcomes addressed the problems that have been identified, were workable and accepted by the local government sector.

The review process involved the following steps:

- a discussion paper to identifying the issues;
- a position paper outlining a reform proposal;
- workshops around the State to refine the proposal and to ensure that it was workable;
- consultation drafts of a proposed new model code, procedures and the legislative changes contained in this bill were issued for comment; and
- further final refinements to the proposed new regulatory framework.

The exhaustive consultation undertaken with respect to the review of the model code has

ensured that the outcomes contained in this bill are the result of a genuine collaboration between this Government and the local government sector. It reflects this Government's commitment to working in partnership with local government to deliver outcomes that address the challenges faced by local councils.

These changes are broadly supported by the sector. Importantly, the Local Government Association has expressed its support for the amendment of the Act's current misbehaviour provisions to introduce the concepts of misconduct and pattern of misconduct and for stronger disciplinary action.

The changes will better enable councils to deliver local services and infrastructure to communities.

A new framework

In response, the review process has led to the development of a proposal for a new more robust and streamlined framework for the regulation of the conduct of council officials. The framework includes:

- a revised model code of conduct for council officials, which has been amended to tighten requirements and prevent misuse of the code;
- new procedures for the administration of the code to provide for a simple, more flexible but also more rigorous and effective process at reduced cost;
- provisions in the Act that enable the Division of Local Government to investigate serious or repeated breaches of the code along with a range of penalties that will provide an appropriate deterrent to poor behaviour.
- the following key changes are proposed in relation to the new model code of conduct and associated procedures:
 - complaints will be managed from start to finish by an independent conduct reviewer, reducing the role of the general manager and mayor in the management of complaints;
 - there will be greater clarity in relation to the procedural requirements for the management of complaints, including written policies and procedures regarding procedural fairness requirements to ensure rigour and fairness—it is important to note that decisions of the director general to impose penalties can be appealed to the Pecuniary Interest and Disciplinary Tribunal;
 - there will be greater flexibility in the management of complaints to ensure more appropriate and proportionate outcomes are delivered at less cost to councils;
 - there will be prescribed time frames for certain key steps to minimise delay;
 - there will be an onus on the informal resolution of non-serious matters and more options for doing so, thereby reducing costs; and
 - matters will be dealt with outside of the public domain to minimise the potential for undue

reputational damage and reduce the likelihood that matters will be needlessly contested or escalated to the courts.

The reality is that most of what is in the code of conduct is commonsense and reflects the principles we would expect of anyone in public office. Most people will adhere to these standards and will never need to look at the procedures for what happens when things go wrong.

The code and procedures are however necessarily detailed to remove loopholes and address issues that have been raised in corruption inquiries. To balance this, however, we have developed a two-page summary of the model code, to help all council officers understand their obligations.

The intent of the Bill

This bill is one element, a key element of the changes that need to occur to the management of the behaviour of council officials. The bill updates the regulatory framework that underpins the proposed new code and procedures and provides the necessary deterrents to poor behaviour that councils are asking for.

It seeks to do this by:

1. improving the efficiency and effectiveness of investigations by the Division of Local Government,
2. strengthening penalties for misconduct
3. strengthening the implementation of the code of conduct by councils, and
4. ensuring fairness

I will briefly address these, in turn.

Improving the efficiency and effectiveness of investigations

Firstly, the bill seeks to improve the efficiency and the effectiveness of investigations of councillor misbehaviour by the Division of Local Government.

Currently, the process for initiating disciplinary action against a councillor under the misbehaviour provisions is needlessly procedurally complex and time consuming.

In cases of serious misconduct, the division is not able to refer a matter to the tribunal for the imposition of a stronger penalty if the disciplinary process was commenced at the request of a council (unless the councillor has previously been suspended). This means that in such cases, at most, a councillor can only be suspended for up to one month for even the most serious misconduct.

These procedural deficiencies are compounded by the fact that the division has no evidence gathering powers in relation to misbehaviour matters limiting its capacity to effectively investigate such conduct.

This bill seeks to address these deficiencies.

It is proposed to simplify the process for initiating disciplinary action under the misbehaviour provisions. It is proposed to allow such action to be initiated on a simple referral by a council's general manager or on the division's own motion.

This will in turn allow the division to directly police misuse of the model code through the misbehaviour provisions. This has become an endemic problem for some councils undermining confidence in the integrity of their codes of conduct at great financial and reputational cost to the councils concerned.

It is also proposed to remove the existing procedural restrictions on the referral of serious matters by the division to the tribunal. This will allow the division to refer any serious matter to the tribunal for the imposition of stronger penalties regardless of how the disciplinary process was initiated.

It is also proposed to give the division powers to gather the evidence necessary to investigate a matter effectively. The division will be developing procedures on how it exercises these powers in consultation with the local government sector and these procedures will be transparent and will be publicly available.

Strengthening penalties

Secondly, the bill seeks to strengthen the penalties to deter misconduct.

Currently, the only penalty the director general can impose is to suspend a councillor for up to one month. On its own, this is a blunt instrument and one that is largely ineffective as a deterrent.

It is proposed to create new "lesser penalties" to enhance the division's capacity to more effectively address the causes of misconduct and its consequences. These will allow the director general to counsel or reprimand a councillor, to issue an order directing a councillor to apologise for the misconduct or to participate in training or mediation, and to suspend a councillor's right to be paid for up to three months.

It is also proposed to strengthen the existing penalties by extending the power of the director general to suspend a councillor from one to three months and the existing power of the tribunal to disqualify a councillor for up to five years for breaches of the pecuniary interest provisions of the Act to misbehaviour matters.

Crucially, it also proposed to allow the consideration of previous incidents of misconduct in determining a penalty for misconduct thereby allowing an escalation in the severity of penalties for repeated misconduct. This will enable the division to more effectively manage ongoing disruptive behaviour.

Finally, it is proposed to enhance the deterrent effect of disciplinary action by changing the term "misbehaviour" currently used in the Act to "misconduct" to more accurately reflect the serious nature of the conduct the provisions are intended to address.

Strengthening the implementation of the code of conduct

Thirdly, the bill seeks to strengthen the implementation of the code of conduct by councils.

It is proposed to separately prescribe mandatory minimum procedures for the administration of the code. This will ensure council officials can easily understand their ethical obligations under the code without needing to read the complex procedural requirements necessary to ensure the appropriate management and investigation of complaints.

Under the proposed new procedures, the division will be able to provide binding procedural guidance in relation to particular matters to resolve procedural disputes thereby minimising the additional cost of investigations and delay this causes and to ensure matters are dealt with appropriately and fairly.

The division will also be able to provide binding guidance in relation to broader procedural questions to assist in councils' implementation of the code and procedures.

It also proposed to expand the application of the model code and procedures to administrators appointed to councils to ensure they will be required to meet the same standards of conduct expected of the councillors they replace.

Ensuring fairness

Finally, more robust procedures and tougher penalties must be counterbalanced by the need to ensure fairness. This bill seeks to ensure this by a number of means.

It is proposed to allow councils to close their meetings to the public to consider code of conduct matters. This will minimise the disproportionate reputational damage the public reporting of such matters may cause and the consequent exposure of councils to legal action. It should be noted that where a councillor is found to have breached the code and a penalty is imposed, this will still be recorded in the minutes of the meeting, ensuring public accountability.

It is also proposed to apply the same procedural protections and rights of appeal that currently apply to suspension by the director general to the new "lesser penalties".

These protections will be complemented by the new procedures to be developed by the Division of Local Government for the investigation of councillor misconduct. These will ensure that those being investigated by the Division of Local Government and facing the imposition of a penalty by the chief executive of the division, as a delegate of the director general, will be afforded procedural fairness.

Concluding observations

This Government has built a positive and collaborative relationship with local government to date. We have worked with the sector and consulted extensively to design a system that supports the highest standards of behaviour in local government, in a simple, clear and cost-effective way.

I commend the bill to the House.