New Integrity Requirements for Councillors

Presenter: Jasmina Nuhovic, Director (Finance & Funding), Department of Local Government, Racing and Multicultural Affairs

Date: 7 September 2018
Topics to be covered today...

- New integrity legislative amendments
- Strengthened requirements for dealing with material personal interests and conflicts of interest
- Proposed Councillor Complaints system
- Independent Assessor and Councillor Conduct Tribunal
CCC received a number of allegations about the conduct of candidates after the Local Government elections.

CCC initiated Operation Belcarra.

The Belcarra report (from Operation Belcarra) made 31 recommendations, in which the Government agreed or agreed in principle with all 31 recommendations.

Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018 enacted amending the LGA.

Face to Face training and online code of conduct available for Mayors and Councillors.

New framework for Local Government Councillor conduct complaints implemented.
Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018

The Amendment Act was assented to on 21 May 2018

- To reinforce integrity and minimise corruption risk
- Improve transparency and accountability in State and Local Government
- Strengthen legislative requirements for how a Councillor must deal with a Conflict of Interest or a Material Personal Interest
Provisions proclaimed and in force

- Councillors’ Personal Interests
  - Material Personal Interests (MPI),
  - Conflict of Interests (COI),
- Reporting suspected MPI or COI,
- Retaliatory action offence,
- Influence others offence,
- Records about MPI and COI,
- Automatic suspension of Councillors,
Material Personal Interest

A Councillor has an Material Personal Interest in a matter if the outcome of consideration may cause a benefit or a loss (directly or indirectly) to

- the Councillor
- a spouse, parent, child, of sibling of the Councillor
- a person in partnership with, or an employer (other than a government entity) of the Councillor
- an entity (other than a government entity) of which the Councillor is a member or an entity prescribed by regulation
Conflicts of Interest

Conflict between personal interest in a matter and the public interest?

Councillors need to determine whether their personal interest is in conflict with the public interest.

If in doubt seek advice!
## Material Personal Interest (MPI) and Conflict of Interest (COI)

<table>
<thead>
<tr>
<th>Material Personal Interest (ss175B, 175C)</th>
<th>Conflict of Interest (ss175D, 175E)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where any of the following stand to directly, or indirectly, gain a benefit or suffer a loss depending on the outcome of a matter, there may be a MPI:</td>
<td>Where a councillor’s personal interests and the public interest may conflict, the public interest takes priority.</td>
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<tr>
<td>• The councillor…</td>
<td>A councillor does not have a conflict of interest in a matter merely because of –</td>
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<tr>
<td>- &amp;/or spouse</td>
<td>- An engagement with a community group, sporting club or similar organisation</td>
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<td>- &amp;/or parent, child, sibling</td>
<td>- Membership of a political party</td>
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<tr>
<td>• Person in a partnership with the councillor</td>
<td>- Membership of a community group, sporting club or similar organization if the councillor is not an office holder</td>
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<td>• An entity of which the councillor is a member (except for a government entity)</td>
<td>- The councillor’s religious beliefs</td>
</tr>
<tr>
<td>• Another entity prescribed by regulation</td>
<td>- If the councillor has no greater personal interest in the matter than that of other persons in the local government area</td>
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That benefit or loss must be no greater than that of other persons in the local government area

Or the matter is an ordinary business matter.
Managing a Conflict of Interest in meetings
Scenario

A Council is to consider an extension of a lease over Council land. Telstra leases the land for the siting of a mobile phone tower.

A Councillor holds 250 Telstra shares.

Q: Is there a Conflict of Interest or a Material Personal Interest?
Scenario

At a Council meeting, the next Agenda item is the discussion of sponsorship for the upcoming Arts Festival. Council sponsorship is crucial for the event to go ahead.

The Mayor’s wife has been Chair of the Festival Committee for many years.

Q: Is there a Conflict of Interest or a Material Personal Interest?
## Penalties

<table>
<thead>
<tr>
<th>Issue</th>
<th>Penalty</th>
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<tbody>
<tr>
<td>Duty to report a MPI at a meeting</td>
<td>If the councillor votes with an intention to gain a benefit or avoid a loss for self or other/s:</td>
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<tr>
<td></td>
<td>- 200 penalty units or 2 years imprisonment, or</td>
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<td></td>
<td>- 85 penalty units (inadvertent omission)</td>
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<tr>
<td>Duty to report a COI at a meeting</td>
<td>100 penalty units or one year’s imprisonment</td>
</tr>
<tr>
<td>Duty to report another councillor’s MPI or COI at a meeting</td>
<td>167 penalty units or two years imprisonment</td>
</tr>
<tr>
<td>Influencing Councillors or Employees</td>
<td>200 penalty units or two years imprisonment</td>
</tr>
<tr>
<td>Councillors engaging in Retaliatory behaviour</td>
<td>167 penalty units or two years imprisonment</td>
</tr>
</tbody>
</table>

1 penalty unit = $130.55
Reference: Tasmanian Integrity Commission 2014
Councillor Conduct Complaints System

April 2016
An independent Councillor Complaints Review panel was appointed to review the arrangements for dealing with complaints about the conduct of Local Government Councillors

January 2017
The Councillor Complaints Review report made 60 recommendations about councillor complaints, of which the Government accepted 50

May 2018
Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018 enacted amending the Local Government Act 2009

September 2018
Face to Face integrity training and online training on Code of Conduct available for Mayors and Councillors

3 December 2018
New framework for Local Government Councillor Conduct Complaints implemented
Establishing the Office of the Independent Assessor
Categorisation of Councillor Conduct
Establishing a mandatory uniform Code of Conduct
Introducing protection from Reprisal
Establishing a dedicated Councillor Conduct Tribunal
Revised offences, penalty increases
Establishing Model Meeting Procedures
Introducing review and appeal rights
Establishing the Local Government Remuneration Commission
Categories of Councillor Conduct

Categories of complaint:

- **Unsuitable Meeting Conduct** (new category) * - handled by the council in the meeting

- **Inappropriate conduct** ** - handled by Council under a new Investigation policy

- **Misconduct** – handled by the Independent Assessor

- **Corrupt Conduct** – handled by the Crime and Corruption Commission

*Orders for a Councillor’s Unsuitable Meeting Conduct three (3) times in a year is dealt with as Inappropriate Conduct

** Conduct leading to the Local Government taking action to discipline a councillor for Inappropriate Conduct on three (3) occasions in a year is Misconduct
Activity

How to identify Councillor category of conduct

- A Councillor engages in Retaliatory or Reprisal activity in relation to a complaint about conduct of the Councillor
- A Councillor fails to report the meeting of a suspected personal interest of another Councillor
- A Councillor attends a workshop while intoxicated
- A Councillor behaves in an offensive or disorderly manner at a Council meeting
- A Councillor fails to declare a Material Personal Interest or Conflict of Interest in a Council meeting
Independent Assessor

- Provide impartial assessment
- Investigate and deal with the conduct of Councillors
- Provide advice, training and information about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct
- Prosecute offences against the conduct provisions
- Investigate other matters decided by the Minister
- Other functions related to, mentioned or directed in writing by the Minister or given to the assessor under the Local Government Act
Councillor Conduct Tribunal

- Conducts hearings of alleged misconduct following investigation by IA
- Councillor Conduct Tribunal must conduct a hearing about the application
- Onus of proof is on the Independent Assessor to prove the Councillor engaged in misconduct
- Independent Assessor and respondent Councillor are both parties to the hearing
- Hearing to be conducted as set out in the legislation
- Tribunal must keep a written record of the hearing
If the Councillor Conduct Tribunal decides that a councillor has engaged in Misconduct, disciplinary action can include

- No action
- Make one or more orders
Reviews and appeals

- Under section 150AS(3) a person entitled to be given a Queensland Civil and Administrative Tribunal notice for a decision of the Councillor Conduct Tribunal, may apply to the Queensland Civic and Administrative Tribunal for a review of the decision.

- Prohibition on appeals will be repealed.

- A Councillor can apply for Judicial Review or to the Ombudsman for review of a decision related to inappropriate conduct of that Councillor.
Summary

- The Belcarra Stage 1 Amendments do not change the definitions of Material Personal Interest and Conflict of Interest, they change how these are handled and increase penalties.

- The Councillor complaints system establishes a mandatory Code of Conduct and an Independent Assessor to investigate complaints.

- Councils will manage unsuitable meeting conduct and make decisions about inappropriate conduct, and investigate complaints of inappropriate conduct referred by the Independent Assessor.

- A new Councillor Conduct Tribunal will hear complaints about Misconduct while the Crime and Corruption Commission will continue to investigate complaints about corrupt conduct.
Thank you!

Questions?