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Engaging for Reform



4 May 2012

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SUBMISSION

Local Government in South Australia: Improving Governance Discussion paper, March 2012

Introduction

The Community Alliance SA, a newly formed peak body for residents and community associations of South Australia, is pleased to see that the Government has prepared this discussion paper related to governance, accountability and standards of conduct, to be released for local government and public comment. It is timely considering the imminent creation of the ICAC which is an urgent requirement for this state.

As an overarching principle, this association believes that the integrity and transparency of local government activities and decisions is fundamental to providing confidence to local communities that their Elected Members are making appropriate decisions on their behalf. This state is lucky that it does not have true political party composition of Local Councils, although there are members who do seem to use their political party allegiances to sway their votes in the Chamber. It is critical that these allegiances or memberships are declared so that communities are aware of their Elected Member's political persuasion.

We have addressed each of the questions listed in the discussion paper on the following pages.

- 1. Should a mandated uniform code of conduct focus on high level principles, values, ethical standards and key responsibilities of public officials (elected and employed)? OR**
- 2. Should the mandated code attempt to include all aspects of conduct including behaviour of members and officers and non compliance with other council policies and procedures (that is, matters which may not warrant formal investigation and adjudication by an independent authority)?**

Yes most certainly – it is imperative that Elected Members and staff understand the high level principles – having a clear understanding of the principles makes it easier to understand the actual rules and why they are there.

The uniform mandated code of conduct should accommodate dealing with minor breaches of the code of conduct as well. However, it may be difficult to cover all potential breaches. Perhaps by

using former breaches as precedents, a set of regulations or rules could be established which would guide future legislation. The principle of 'reasonableness' should be adhered to at all times.

It should apply to both elected and employed officers although it could be complicated in that the highest punishment must differ (i.e. employee can be terminated; Elected Member cannot). Should the aspects mentioned in Item 2 be sought to be controlled very closely, many situations and issues are very subjective and personalities and interests come into play.

3. How should matters which may not warrant formal investigation and adjudication by an independent judicial or administrative review authority be dealt with? eg disruptive behaviour at council meetings, discourteous and intimidating behaviour, low-level breaches of council policies etc.

This assumes the behaviour is by an Elected Member and the discourteous and intimidating behaviour is suffered by the Chairperson, who may be the Mayor. How are all Elected Members protected from such behaviour? Continued disruptive behaviour or interruption (without raised hand or other request for formal permission to speak) could be easily controlled by a '3 warnings and you're out' practice for meetings. Do current guidelines enforce appropriate behaviour within the Chamber? It is a matter of having a strong Mayor chairing the meeting to ensure that these latter activities do not occur. In some local councils, disruptive Councillors are expelled from the meeting. This would seem appropriate, rather than going to the full extent of a formal investigation.

But how does can the CEO or Elected Members deal with a disagreeable Mayor? This does not fix the problem of an Elected Member consistently ignored by the Chair in favour of another Elected Member, or one Elected Member being permitted 'supplementary questions' while another is told 'you've had your question!' How is consistency maintained in the Chamber to avoid favouritism of one Elected Member over another?

For continuing bad behaviour, each local council could establish a small committee eg Mayor and several councillors, together with a staff member, to discuss the issue and find the cause for the behaviour, if, after three warnings the member is expelled from the Chamber. If the complaint involves a particular person, that person must step aside in favour of another Elected Member. If the complaint involves the CEO, a senior council staff member must take their place. The rules for managing this behaviour could be similar to those of State Government.

4. Should the mandated code include a high level 'legislative compliance' statement requiring members/officers to comply with the relevant sections of the Act and Regulations (rather than repeating these requirements in the code)?

Yes – members and staff need very clear guidelines – we suggest that reference to 'high level legislative compliance' statement is repeated in relevant training documents. Any code needs to apply equally to all officers in meetings, not merely serve to dumb down and control Elected Members to the point that they are only able to vote as directed by staff members and/or the Chair. This is particularly true where important matters are always presented as 'Reports' but where vital actions flow from their endorsement by Elected Members as recommended by staff. Much depends on how fairly and impartially the meeting is chaired. Breach of conduct is often in the eye of the beholder, i.e. not an unbiased view. Flaws need to be eliminated in the handling of complaints of breaches of code of conduct – Elected Members can be subjected to a one-sided investigation/questioning and judgement without right of appeal. If declared 'confidential' the Elected Member is not able to defend themselves publicly. This is wrong and unfair.

5. What should be covered in a mandated uniform code of conduct for council members?

A mandated uniform code of conduct is only appropriate if it applies to **all** Elected Members and **all staff** at every level of government. Otherwise what is the point? Why would anyone want to stand for local government representation when the remuneration is poor, the restrictions far more stringent and the expectations far greater than at any other level of government? It makes absolutely no sense. Why look into local government and Elected Members talking to land developers when the State Government is making deals with Consortiums of developers to the total exclusion of local government and affected communities. There is no point finely delineating rules at the local government level, when it is clear to see the problems all start at a much higher level of government. It all needs to be fixed. The higher the level, the bigger the problem and the worse the example set.

Obviously the end points of very major breaches of code of conduct would necessarily differ – at present under Section 73 (EMs) and resulting in dismissal for staff under Section 120 of the Local Government Act. Elected Members first loyalty must be to the community he/she represents; staff members would be expected to have loyalty to employer (CEO) unless something is amiss. Some suggested inclusions are listed below:

- Principles and values.
- Responsibilities of public officials.
- Disclosure of interest and avoidance of conflict of interest (see Conflicts of Interest section).
- Use of office to secure personal advantage or disadvantage others.
- Recognition of the respective roles of council members, as policy and decision makers, and the council administration, as responsible for the management of staff and council operations.
- Use of council resources.
- Use of council information.
- Reasonable use by members of council meeting time for questions and notices of motion, and requests to staff for information (see Meetings section).
- The giving and receiving of gifts and benefits **and detriments** (see Conflicts of Interests section).
- Professional conduct standards.
- Relationships with council employees.
- Relationships with community members.
- Relationships with other councillors.
- Representation of the council and its decisions.
- Relationships with lobbyists.
- Handling of complaints of breaches of the code of conduct.
- Mandatory training (see Training and Education section).

6. What should be covered in a mandated uniform code of conduct for council employees?

As above. The same rules should apply for all Elected Member and all staff and at all levels of government, not merely local government. Again suggested inclusions are listed below:

- Principles and values.
- Responsibilities of public officials.
- Disclosure of interest and avoidance of conflict of interest (see Conflicts of Interest section)
- Use of council resources.
- Use of council information.

- The giving and receiving of gifts and benefits and detriments (see Conflicts of Interests section).
- Professional conduct standards.
- Relationships with Elected Members.
- Relationships with community members.
- Representation of the council and its decisions.
- Relationships with lobbyists.
- Mandatory training (see Training and Education section).

7. Should the Local Government Act be amended to include a perceived or apparent conflict of interest for council members and employees? If so, 8. Should there be a definition of “perceived conflict of interest”?

Yes, there should be an amendment to include a perceived or apparent conflict of interest for council members and employees and particularly where there is a personal gain or detriment to someone. It needs to be clearly defined because from our experience the Elected Members are not clear about this matter and could easily find themselves in a potential conflict situation without having understood the necessity to declare this.

9. Should section 73(3) of the Local Government Act be changed as suggested above? If so, 10. Should ‘organisation’ be defined for the purposes of this section?

Yes, the Section 73 (3) should be changed as suggested. ‘Organisation’ should be defined for this purpose to ensure that non-profit, lobbyists and other single business entities are clearly defined and included in the specifications of the Act.

11. Are there organisations that should be exempted from this provision?

No because as soon as you allow exemptions, it provides openings for getting around the system.

12. Should there be guidance provided on what it means to be “directly involved” in a matter?

Yes, guidance is essential because what is the legal definition of ‘directly involved?’. Guidance would include providing definitions and training to ensure Elected Members were fully aware of their responsibilities. Any such training should not be provided by the CEO or members of staff. It should be provided by external trainers to ensure that an external third party is leading this training and that this would relieve the instances where bullying or harassment or implied bullying is used as a tactic to ‘persuade’ Elected Members.

13. If there is no requirement to abstain from voting, should council members be required to declare an interest in a matter that they share with a “substantial proportion of other ratepayers, electors or residents”?

Yes, a declaration should be made at all times.

14. Are there other types of “non-pecuniary” benefits that could also be covered by this proposal?

Yes – eg airfares, accommodation, holidays, hospitality, education, health benefits, credit card payments and other ‘benefits’.

15. If so, what other non-pecuniary benefits could be appropriately covered by a disclosure requirement that does not require abstention from voting?

Lobbyists may ask an Elected Member to support and vote on a matter favouring a citizen but on a small matter. Disclosure should occur as a small favour might lead to a significant matter.

An appropriate test might be the ask “Who will benefit most from my vote?” At all times the vote must reflect the interests of the majority of people – the community. Whether someone stands to gain or suffer detriment can be difficult to determine as there may be a problem when what one person perceives as gain, another may perceive as detrimental.

If an ‘objective test’ was to be developed to determine whether a conflict of interest exists:

16. What factors could be taken into account to help determine the existence of a conflict?

An Elected Member may be uncertain if a conflict of interest exists – this could be referred to the other Elected Members at a council meeting allowing the matter to be decided or failing that the matter could be decided by a more qualified person from the LGA or the Ombudsman’s office. Furthermore, expressed personal views and clearly exhibited past behaviour would need to be considered.

17. Could such a test be a useful guide, whether or not it is legislated?

Yes, this would be a very useful provision and we suggest the clause be legislated.

18. Could there be a role for a third party, whether it is the council or an independent person (such as the Ombudsman or proposed Office of Public Integrity), to determine whether a council member has a conflict of the interest in the particular circumstances?

Yes if the fellow Elected Members or council were not able to resolve the matter, a qualified and independent third party could be requested to make a determination. The view of any independent person/office must be impartial and not prepared to base finding on a single aspect (e.g. residential rezoning may increase land value (gain) but if the owner does not want to subdivide – the addition of water/sewer rates or other charges will be a detriment). This has already been (unfairly) decided by one CEO in a Hills Council based on his opinion that all landowners will gain, despite opposing views.

19. Should past benefits and detriments be included in the scope of the conflict of interest provisions? If so,

Yes, but only if applicable. Past favours received by an Elected Member may induce a lobbyist to influence that member again.

20. Should there be limit on the period and if so, how far back should the “past” extend in this context?

We suggest a term of five (5) years would be appropriate. Or perhaps the current term, plus the previous term if pertinent.

21. How should a past gift, benefit or detriments be conceived? Should it include: campaign donations; past work contracts; hospitality; any other matters?

All of the above should be included but in addition benefits such as payment of health benefits, education expenses, payment of legal fees, payment of credit cards, loans, hospitality. We believe there is a clause in the legislation which allows a political party to be ‘loaned’ large sums of money by developers or others, which can be ‘repaid’ in numerous ways. Evidently, this does not have to be declared in similar manner to donations. Flaws such as this must be repaired to ensure full

disclosure of ALL transfer of funds, whether they be donations, loans, gifts or whatever. In one local council Elected Members are advised to declare bottles of wine over \$20!

22. Should there be a minimum deemed value of any gift, benefit or detriment that could provide a trigger for such a provision? If so, what should that value be?

We suggest a minimum value should be \$100.00 but the limit should also include minimum multiples. For example if the minimum is \$100 but a gift of \$100 is provided 52 times in the year (ie total gift of \$5,200) the legislation needs to cover these instances also.

If all candidates for election are required to disclose particular information as part of the election campaign process:

23. Should all candidates be required to complete a Register of Interests in advance of the election?

Yes, as it exists now. This is essential to protect themselves and electors and to openly declare any interests which would influence a person's vote. A CEO should also declare any interest. Of course 'rusted on' political party members could choose NOT to register for two years prior to election which would skew public perception. Re p15 of the Discussion Paper – we agree with the Ombudsman re the inappropriateness of electorate officers, advisers etc. engaged by Members of Parliament becoming members of councils because of the potential for conflict of interest.

24. Should all candidates be required to complete a less onerous declaration form containing specified information only? If so,

25. Should the more limited declaration only be required to be disclosed by all candidates during an election campaign, with existing Registers of Interest made unavailable for that period?

No – this could lead to manipulation and what is the point of a limited register? The Register of Interest should be completed by all Elected Members as well as the CEO. The current system as it exists now is adequate.

26. Should the more limited declarations be published more widely, such as on the elections website, as part of the election process?

We favour full disclosure and suggest that a full declaration be published on an authorised website. It is quick and easy to publish updated information as circumstances change. For example where there is no membership of a political party during the election campaign, but an Elected Member joins after they are elected, will they be subject to the same disclosure rules?

27. What other matters should be taken into account when considering how and what disclosures should be made?

Consideration should be given to new Elected Member candidates to disclose the same information as current Elected Members are required to do. Unsuccessful candidate's matters that are disclosed would need to be securely destroyed. Other matters include involvement, ownership or shareholdings in local businesses.

28. Should the Local Government Act be amended to relieve the CEO of the obligation to provide reports, documents and minutes to a council member where that member has declared a conflict of interest in relation to that matter?

Yes, although there may be times if a conflict of interest is declared that the Elected Member should receive information about the particular matter if they would otherwise be disadvantaged by not receiving that information.

29. How well are the current conflict of interest provisions working? Is there scope to review the provisions and start afresh?

We are unable to say having no data to consider but it might be necessary to define what the term 'relative' means in today's modern family structure. The Census or ATO definitions may provide guidance. We suggest that conflict of interest provisions are very complex and at times difficult to determine if one exists, therefore a full and proper review would probably be important.

With regard to the Charles Sturt land swap we need to look at what went wrong. If Elected Members were involved why was this not disclosed and the appropriate action taken? Why did such Elected Members vote at all?

30. Are the current procedures for prosecuting a council member for breaches of conflict of interest working?

We are unable to provide information on this matter because these matters are usually handled as confidential. It appears to work well but we need to know why it did not work at Charles Sturt and who was responsible? Was the Mayor or staff involved? This needs other measures.

31. Would a provision for lower penalties for some forms of conflict of interest, which would not require a prosecution in court, provide more flexibility to deal with this issue?

Not necessarily – this could have the effect of dealing with 'minor' breaches and dealing with them by an independent panel of say three persons selected by the local council. However, by having different levels of 'conflict of interest' this may only produce a bigger 'can of worms' with many levels and litigation requirements.

32. Should the provisions of the Local Government Act that set out the grounds for councils to determine that matters will be considered in confidence be amended and/or narrowed?

We suggest that the grounds on which a council decides to use the 'in confidence' provision (section 90(3)) be clarified eg just what does 'in the public interest' mean or what does commercial information of a 'confidential nature' mean? Often the 'in confidence' issue is to discuss council expenditure on property.

There are examples where this is dealing with millions of dollars of real estate which has the potential to push a council into a significant debt situation. This provision is also used to use ratepayer's funds for large property purchases where the ratepayer has absolutely no power or voice in the matter. They are forced to leave the gallery and will often not know the outcome of such discussions until the deal has been done. This is unfair and undemocratic and needs to be changed.

Furthermore any change in the status of public/community land or land held in trust by Council should be the subject of open and intensive community consultation. This appears not to have occurred regarding St. Clair Reserve. Why?

33. Should there be more specific requirements for councils to provide some form of information to the community about confidential items and/or to record in meeting minutes some summary information about the matter.

Yes. We feel that it is essential to maximise transparency as much as possible. The public is exasperated with councils using 'commercial in confidence' as an apparent excuse for withholding information. This provision will also go a long way to protecting a council from a perception of being evasive. This should also apply to non-confidential items where changes of land use or management occurs by Council action which will or may impact community amenity of an area. Greater clarity of description is required where public purpose lands are being purchased and then should become community land. Ratepayers should have a voice in these important community matters.

34. Should training in relation to conflicts of interest for council members be made mandatory?

Yes. All councillors should undergo this training and should be required to achieve an acceptable level of understanding (ie sit a test). The training must be delivered by an accredited trainer from the Crown Law Department or an accredited RTO. Training delivered by outside training providers needs to be carefully monitored to ensure there is no potential conflict of interest.

35. If so, should this be achieved by amendment to the Local Government Act or by inclusion in a mandated uniform code of conduct?

We suggest that the Local Government Act be amended to achieve this. This would have the effect of making this provision stronger and encourage Councils to adhere to it more consistently. It should be a normal part of training.

36. Should training for council members to better appreciate their public officer roles and responsibilities and the significance of the declaration on taking office be made mandatory?

Yes, initial training and then ongoing annual training is essential to remind Elected Members of their roles and responsibilities in these matters. The role of major legal firms such as Wallmans Lawyers and Norman Waterhouse appear to have made quite a good income from local government matters by providing such training. However are they RTOs? And are they influenced by CEO's requirements? Or developer's requirements?

We suggest the training to Elected Members be a formal training package which is offered by tender to registered training organisations that are NOT affiliated with legal firms and their developer 'friends'. This training package would include both initial 'new member' training and then ongoing workshops and training throughout their period of office.

37. If so, should this be achieved by amendment to the Act or by inclusion in the mandated code of conduct?

We suggest the Act be amended to achieve strong legislation and better clarity but the mandated code of conduct include the requirements of 'how' this training would work. You would not include matters in the Act which could change, because then a change of the Act would be required. The Act should include the overarching principles and the code of conduct the operational implementation guidelines.

38. If training is to be made mandatory, what other areas, if any, should be included?

Some suggestions are principles of public administration, ethical behaviour, objective decision making, legislative framework and responsibilities, strategic thinking, collegiate approach of council and context for decision making.

We suggest all of the above be included, as is currently the situation, as well as relationships with lobbyists. Consideration should be given to providing such training for new councillors or those who

have not received such training as part of an induction program. This could be a 3-4 day program with the trainees meeting a satisfactory level of competence. The training should be delivered by an accredited trainer from a recognised training institution and not delivered by Council staff, especially not the CEO, nor from legal firms as discussed at Item 36. Training could include items related to planning and development which Elected Members receive many enquiries and complaints about. Importantly training should not be so time consuming or onerous so that it detracts from the core focus of an Elected Member's work – supporting and informing their community in decision-making.

39. Should there be specific training for Mayors and Chairpersons of councils and presiding members of council committees?

Yes - a suitable program should be made available for all new Mayors/Chairpersons and those Mayors/Chairpersons who have not received such training. This should include presiding members. The training should be mandatory. Appropriate training would provide trainees with greater insights into chairing meetings, managing disruptive members and raise the standard of Council meetings.

This is often where much of the problem begins – a lack of equity and actual meeting procedure. Where a Question on Notice and/or a Question Without Notice receives a questionable response from a staff member, the Elected Member should be permitted the right of reply (yet often is not). A seconder to a motion should not be denied right to speak by the Chair. How is it possible to resolve a wrong decision by a Chairperson? Some Elected Members are granted more questions and longer discussion times than others, or are allowed additional questions following the staff response. Some members are allowed to engage with the gallery; others are disciplined. The floor of Council Chamber is far from a level playing field.

40. The LGA, Councils and the Electoral Commission of South Australia currently provide briefing sessions for prospective candidates, including the program "So you want to be on Council". However, not all candidates participate in the available activities. Should there be a requirement for prospective candidates, perhaps when they have submitted a nomination, to attend an appropriate information session?

Yes. We think attendance at an Information Session should be compulsory for all nominating candidates, topics that might be covered include:

- Code of Conduct
- Conflict of Interest
- Information to be disclosed
- An overview of Council staff responsibilities
- An overview of Elected Members duties, and particularly that of the Mayor
- Mandatory and elective training requirements
- Communications between Elected Members and Council staff

41. How can council meeting procedures be improved (noting that councils will be participating in the complete review of the Procedures at Meetings Regulations over the next twelve months)?

Council meetings must include mandatory community question time for a given time period. Some councils (CEOs) have tried to have this removed and not succeeded. The right for the community to attend Council meetings and ask questions is a democratic right. Furthermore these questions and answers should be minuted accurately. Currently one council that we are aware of has removed almost all relevant minutes regarding questions from the community. It is a nonsensical response to

receiving many question, because the responses, if minuted correctly and with sufficient detail could be used to inform other persons, thereby saving the Council staff and Council meeting time.

Elected Members reports should be kept to a time limit – many of them ‘ramble on’ and if there is a full gallery they often will present a re-election speech on a particular issue!

There should be opportunities for frank and open discussion within the Chamber without going through the Chair, particularly for important community issues. The gallery should be able to raise their hands to ask a question when such debate occurs. To ensure the community could hear the frank and open discussions about issues relating to their community, the ‘behind closed doors’ workshops and pre-council ‘buttering up’ workshops should cease.

Everyone should get a fair hearing and there should be equity and complete impartiality in the chairing of meetings. More emphasis should be made on training for Chairpersons, Mayors etc. With regard to repeated interruptions, the offending person be placed on notice and required to leave the room on the third breach of conduct. A hand raised needs to be acknowledged by the Chair, rather than a very vocal person being permitted to speak to the detriment of the rule-abiding person. What is the model for State Government and Federal Elected Members? Why is there not a uniform code of conduct and a more uniform meeting procedure (tailored to fit time available level of discussion).

42. Are provisions necessary to deal with the reasonable use of council meeting time for members’ questions and notices of motion and requests to council staff for information?

Yes, the questions from members are an essential part of the meeting. The agenda is largely dictated by Council staff, but the questions and motions with notice are Elected Member’s way to have some input into the agenda. It appears to works well as it stands with the order of agenda items in some Councils. Requests to council staff for information can be readily accommodated outside a formal meeting unless unusual circumstance or urgency prompts the Elected Member to bring it to a meeting. This appears to work well and does not require change in some districts. Again the measure of consistency is essential.

Conclusion

Thank you for the opportunity to present this submission. If there are any working groups or forums established to deliberate these matters further, our group would like to be represented. If there is the opportunity to speak to these matters, we would like to be heard.

Yours sincerely

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