

LOCAL GOVERNMENT IN SOUTH AUSTRALIA

IMPROVING GOVERNANCE

Discussion Paper



**Government
of South Australia**

**OFFICE FOR
STATE/LOCAL GOVERNMENT
RELATIONS**



**Local
Government
Association
of South
Australia**

**LOCAL GOVERNMENT ASSOCIATION
OF SOUTH AUSTRALIA**

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FOREWORD

The State Government and the Local Government Association are committed to working together on governance issues and further reforms to the local government legislative framework.

As previously indicated, in late 2011 we agreed to develop a discussion paper on issues of governance, accountability and standards of conduct, to be released for local government and public comment.

This paper builds on the legislative reforms of recent years and takes into account issues arising from recent investigations and reports, including recent recommendations by the Ombudsman for legislative amendment.

Importantly, it is framed within the context of the Government's proposed public integrity and anti-corruption framework. These reforms will have significant implications for the local government sector and for the local government legislative framework. Legislation to implement these reforms is expected to be presented to Parliament in the near future.

The paper canvasses issues and proposals in relation to:

- The possible content of a mandated, uniform code of conduct for council members and council employees;
- The Conflict of Interest provisions applying to council members;
- Training and education for council members;
- Consideration by councils of items "in confidence"; and
- Council meeting procedures.

We look forward to receiving your comments on the issues and questions in this paper or other relevant suggestions to strengthen the governance and legislative framework for local government in South Australia.



Hon Russell Wortley MLC
**Minister for State/Local
Government Relations**



Mayor Kym McHugh
**President, Local Government
Association**

INTRODUCTION

Councils are established as democratically elected governments to make representative, informed and responsible decisions in the interests of local communities, for which they are ultimately accountable at elections.

As local governments, councils must meet the standards of accountability appropriate for public sector administration and management of public funds. Council members and officers of councils must meet the standards that apply to holders of public office.

Councils generally work very effectively in serving their communities, providing important facilities and services and making significant decisions for the protection, progress and pursuits of their constituencies.

However, some recent events have raised concerns with the current governance framework and, accordingly, it is imperative that effective mechanisms are established to address issues effectively as they arise.

Notably:

- In July 2009, an investigation into the City of Burnside was initiated by the then Minister for State/Local Government Relations, as a result of a significant period of internal turmoil within the then Burnside Council. This investigation highlighted deficiencies in the framework available to manage the conduct of Council members. In late 2010, the investigation was the subject of legal action and a judgement was handed down by the Supreme Court of South Australia in 2011.
- In November 2010, the Attorney-General released a discussion paper entitled '*An Integrated Model – A review of the Public Integrity institutions in South Australia and an integrated model for the future*', on which public comments were sought.
- Following the decision in mid 2011 to terminate the investigation into the City of Burnside, the Minister for State/Local Government Relations and the President of the Local Government Association agreed that a discussion paper should be developed on a range of issues of governance, accountability and standards of conduct in local government. It was intended the paper would canvass a broad range of issues and options and look to further reform of the *Local Government Act 1999*, as well as non-legislative measures for assisting councils and their council members in undertaking their responsibilities.
- In October 2011, the Government announced a package of reforms, including the establishment of an Independent Commission Against Corruption and proposed new measures for the local government sector. These reforms will address significant issues for local government governance, including the structure and powers for investigation of possible corruption or maladministration, for dealing with complaints against council members or staff, and a framework for standards of conduct and sanctions for breaches of standards. The reform package is expected to resolve questions surrounding

the investigation provisions in the Local Government Act arising from the Ministerial investigation into the City of Burnside.

- In November 2011, the Ombudsman released the Final Report of his investigation, which was referred to him by the Parliament, into matters pertaining to the previous Charles Sturt Council. In this report, the Ombudsman made a number of recommendations for legislative amendment, in the areas of register of interests, conflicts of interest, and council members' code of conduct.

In this context, it is timely to consider:

- How can we ensure the highest standards of public administration in local government?
- How can councils be best equipped to deal with issues of poor behaviour, conflict and potential dysfunction?
- What measures would enable councils to work most effectively as representative and decision-making bodies, and to enable council members and staff to carry out their roles as public officials of a sphere of government?

Accordingly, this paper invites comment in relation to proposed amendments to the current legal framework, arising from the Burnside Council investigation, the Public Integrity Review and the Ombudsman's Report of his investigation of matters pertaining to the City of Charles Sturt.

The proposals in this paper are not intended to be an exhaustive list of all possible options for change.

1. BACKGROUND

1.1 Local Government Legislative Framework

The *Local Government Act 1999*, the *Local Government (Elections) Act 1999* and the *City of Adelaide Act 1998* are the primary legislative basis for the establishment, governance and operation of local councils. These Acts are committed to the Minister for State/Local Government Relations. In addition to the specific requirements of the Local Government Acts, councils are subject to several other Acts of public sector application.

In 2009 the *Local Government (Accountability Framework) Amendment Act 2009* (the Amendment Act) introduced a number of additional administrative and prudential standards to the Local Government Act to ensure that high public sector standards of transparency and accountability remained at the forefront of local government administrative practice. These amendments have been progressively introduced, with the final amendments coming into operation on 10 December 2011.

Some Amendment Act provisions will need further review, however, in light of the proposed anti-corruption and public integrity structure.

The key amendments to improve the legislative framework for external review of council administration and financial management, contained in the Amendment Act included:

- expanding the scope of the financial audit of councils to provide assurance about the council's internal controls;
- clarifying matters that council auditors must report to the Minister;
- requiring a council to provide the Minister with information relating to their operations or the conduct of their affairs, on request;
- providing that the Minister may ask a council to obtain an independent assessment of its probity or statutory compliance in a matter, or to take specified action to meet standards in its conduct or administration consistent with the objects, principles or requirements of the Act. Further, a refusal or failure to do so by a council may be a basis for formal Ministerial investigation; and
- ensuring the Minister can direct a council if a council fails to respond appropriately to any recommendation of the Ombudsman following an investigation under the *Ombudsman Act 1972*.

Other key reforms focussed on reinforcing the administrative principles appropriate to prudential management, dealing with tenders and contracts, and the handling and review by councils of public complaints. The new provisions also enable regulations to be made in these areas if necessary.

1.2 Public Integrity Reforms

The Attorney-General's discussion paper released in 2010: *An Integrated Model – A review of the Public Integrity institutions in South Australia and an integrated model for the future* (the Public Integrity Review) set out a number of significant recommendations in relation to local government.

The Public Integrity Review recommended changes to the mechanisms for external review of local government, Ministerial investigations and standards of conduct. It also recommended a change to the system in which complaints against councils, council members or staff are received and handled. Public comments were sought on the Public Integrity Review.

In October 2011, the Government announced a package of reforms to establish a new anti-corruption and public integrity structure. The policy elements of particular relevance to local government are expected to include:

- An Independent Commission Against Corruption.
- An Office of Public Integrity that could act as a single entry point for members of the public for complaints about public bodies and officers, including in local government.
- Community members would have the option to report their complaints about councils or council members or staff to the council in question, or to these external bodies.
- The Ombudsman, rather than the Minister for State/Local Government Relations, may have the power to investigate matters of a non-criminal nature, such as maladministration and/or misconduct, and this may be extended to include matters relating to council members, staff and third parties who interact with local government.
- The powers of the Ombudsman could also apply to situations where the council has, for example, demonstrated intractable internal conflict.
- A uniform code of conduct for council members and for council employees to be prescribed in regulations.
- A specific range of sanctions for code of conduct breaches is proposed with penalties provided for non-compliance.
- The Auditor-General may be given the power, to be exercised at his discretion, to examine all or any part of the accounts of any council, where it is in the public interest to do so.

Legislative proposals to establish the anti-corruption and public integrity framework are expected to be presented to Parliament in the near future.

Within the context of these proposed reforms, further consideration is now being given to several important related issues.

1.3 Contents of this Paper

This paper addresses:

- The possible content of a mandated, uniform code of conduct for council members and for council employees, which could be prescribed in legislation.
- The Conflict of Interest provisions applying to local government members and possible reforms.
- Consideration by councils of items “In Confidence”.
- Training and education to support council members in fulfilling their responsibilities.
- Council meeting procedures.

It should be noted that there are other matters that may warrant legislative change arising from the recent Ministerial investigation and Ombudsman’s Inquiries that are not included in this paper eg protection of council members from civil liability and associated insurance issues. This is because these issues do not relate directly to governance and will be the subject of separate consultations.

2. ISSUES FOR DISCUSSION

2.1 Mandated Uniform Code of Conduct

Background

Under the Local Government Act, councils have been required to adopt a code of conduct to be observed by the council members. Councils must review their code of conduct after each local government election and may review or amend it at any time. Councils are also required, under the Act, to adopt a code of conduct for employees.

The local government legislation provides the power for mandatory provisions for council member and employee codes of conduct to be set down by regulation. However, to date, no regulations have been developed. This may change with the development of the Public Integrity legislation.

Across the local government sector, there is a range of codes of conduct; some are quite broad, some more detailed. There is a lack of consistency in the codes used by councils and the way they are applied can vary considerably.

Some council members appear to have a poor understanding of the importance of observing the council's code of conduct, including with regard to behaviour and respectful working relationships with other council members and council staff.

Codes of conduct are an essential element in setting the standards for the conduct of public officials. For codes of conduct to be effective, they need to contain implementation and enforcement mechanisms.

The local government sector has been voicing increasing concern about the need for stronger codes of conduct for council members, that include enforceable sanctions.

As foreshadowed in the announcements by the Government regarding the anti-corruption reforms, the Public Integrity legislation is expected to provide for a mandated uniform code of conduct for council members and for council employees to be prescribed in regulations, as well as enforceable sanctions for breaches of the code.

The Local Government Association (LGA) has provided a model Code of Conduct for the guidance of councils for a number of years, updated in June 2010. More recently, the LGA has developed a model Conduct of Conduct for employees. Copies of the LGA Model Codes can be viewed on the LGA's website¹. As there has been no legislative direction on the content of a council's code of conduct, the LGA Model Code is advisory only. The Model Code also includes guidance on a complaint handling policy to assist councils in the investigation of an alleged breach of the code of conduct. Many councils adopt this model, while some have expanded or amended it.

¹The link to these codes can be found at page 9

The LGA, in 2009, also established the Local Government Governance Panel (LGGP), which receives and investigates complaints of alleged breaches of a council's code of conduct against council members. The LGGP has no legislative or coercive powers, but it will investigate complaints referred to it by a council and make recommendations to councils about possible resolutions, sanctions, or changes to policies or procedures. The experience and work of the LGGP has provided valuable lessons for the implementation of the future framework.

Content of Mandated Uniform Code of Conduct

One of the principal purposes of this discussion paper is to consult broadly with the local government sector, unions, local government commentators, regulatory bodies and the general public on the proposed contents of robust codes of conduct for council members and employees, to be prescribed in regulations.

Therefore, it is important to seek comments on the fundamental purpose of the mandated code of conduct before generating a list of contents. For example, if the mandated code is to cover the field of all possible aspects of alleged misbehaviour, it could run the risk of generating a large number of relatively minor matters for formal adjudication, risking 'clogging up the system'. However, if the mandated uniform code did not include these 'minor matters', there may need to be a mechanism to deal with them. A related question is whether the mandated uniform code of conduct should include reference to matters that are regulated specifically in the Act or Regulations eg conflict of interest, disclosure of confidential information, disclosure of interests, gifts and benefits.

Comment is invited on the following fundamental questions:

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

References to existing codes of conduct, including codes for the State public sector, can be used to inform comments in response to the discussion paper. Outlined below is a list of common subject headings often found in codes and links to a sample of codes from South Australia and other jurisdictions.

However, it is important to not simply “copy” the contents of existing codes of conduct and transplant them into the new mandated codes for local government in South Australia.

List of Common Topic Headings in Codes of Conduct

- *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 (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).*

Links to a Sample of Codes of Conduct for Public Officials

- The SA Local Government Association Model Code of Conduct (Members), 2010.
http://www.lga.sa.gov.au/webdata/resources/files/LGA-516213_Code_of_conduct_2010.doc
- The SA Local Government Association Model Code of Conduct (Employees), 2012.
http://www.lga.sa.gov.au/webdata/resources/files/Code_of_Conduct_-_Model_Code_for_Council_Employees.doc
- The Code of Ethics for the South Australian Public Sector, 2010.
<http://www.espi.sa.gov.au/files/CodeOfEthics.pdf>
- The Model Code of Conduct for Local Councils in NSW, 2008.
http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model_Code_of_Conduct_June_2008.pdf
- The Councillor Conduct Guide, Queensland Crime and Misconduct Commission, 2011.
<http://www.cmc.qld.gov.au/research-and-publications/publications/misconduct-prevention/the-councillor-conduct-guide>

Based on responses to questions 1 - 4 above and the resources listed:

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

Enforceable Penalties

It is recognised that there is considerable interest in the nature of possible enforceable penalties for proven breaches of the mandated code of conduct. However, as it understood that this matter is being considered in the Attorney-General's Public Integrity framework proposals, it is not canvassed in this discussion paper.

2.2 Conflicts of Interest

The Local Government Act sets out the conflict of interest provisions for council members and employees in sections 73 (members) and 120 (employees). A conflict of interest can arise when a council (or council employee) makes a decision that would create a benefit or detriment for a council member (or employee) or a third party who is 'closely associated' with a council member (or employee). A person 'closely associated' with a council member (or employee) is defined in sections 73(2) and 120(6).

The conflict of interest provisions in the Local Government Act rely on a council member or employee recognising that they have a conflict and declaring that fact publicly prior to any decision being made. In most cases, but not all, a council member must leave the chamber and abstain from voting on the issue. In the case of an employee, they must abstain from making the relevant decision. A breach of section 120 carries a maximum penalty of \$5,000 for an employee.

Allegations that a council member has breached the conflict of interest provisions can only be pursued by lodging a complaint in the District Court, under the general complaint provisions. These only allow a complaint to be lodged by a "public official" or by any other person with the permission of the Attorney-General. The penalties which may be imposed by the Court, set out in section 267 of the Local Government Act, cover a range of possible penalties, including financial penalties.

In his report into matters pertaining to the previous Charles Sturt Council, the Ombudsman made a series of recommendations for legislative amendments to the current provisions of the Local Government Act with respect to conflict of interest. These recommendations are discussed below and concern only the provisions relating to council members.

This paper has taken into account the outcome of consultation undertaken with councils by the LGA in late 2011 in relation to the Ombudsman's proposals for legislative amendment regarding conflict of interest provisions.

Perceived Conflicts of Interest

The Ombudsman noted that the Local Government Act does not currently encompass *perceived* (or apparent) conflicts of interest. In many jurisdictions, avoiding and preventing situations which could give rise to the appearance of a conflict of interest is one of the primary means by which a public officer can maintain public confidence in the impartiality and objectivity of decision-making. The Canadian public service code, for example, distinguishes between actual and perceived conflict as follows:

A real conflict of interest denotes a situation in which [a public official] has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities.

An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.

The policy intention behind including the concept of perceived conflict is to avoid the appearance of any bias or partiality on the part of the decision-maker. The perception that a person has a conflict of interest can have the effect of tainting a decision, even though no actual benefit or detriment flowed from the decision to the person involved in making it or to any close associate.

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”?

Employees of the Crown and other organisations

The Ombudsman recommended that consideration be given to amending section 73(3) of the Local Government Act which relates to a potential “conflict of duty” for employees of the Crown. Currently, a member of a council who is a member, officer or employee of an agency or instrumentality of the Crown (as defined) will be regarded as “having an interest in a matter” before the council if the matter *directly* concerns that agency or instrumentality. A person is not regarded as having an interest simply by virtue of being employed by, or associated with, that body.

The Ombudsman proposed extending this provision to include a council member who is an officer, member or employee of any organisation, not just an agency or instrumentality of the Crown. In conjunction with extending this provision to cover more organisations, the Ombudsman also suggested that a council member should be required to declare the relationship with the organisation if the matter before council directly affects the organisation, but only be required to abstain from voting if they as an individual are actually involved in the matter within that organisation.

This two step approach would therefore have the effect of extending the section coverage from “agency or instrumentality of the Crown” to a wider range of organisations, while at the same time limiting the circumstances in which a council member would be required to abstain from voting.

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?
11. Are there organisations that should be exempted from this provision?
12. Should there be guidance provided on what it means to be "directly involved" in a matter?

Relax the Requirement to Abstain from Voting in Certain Circumstances

The recommendation above opens the door to allowing further circumstances in which a council member would be required to declare an interest, but would not be required to abstain from voting.

The Ombudsman noted that this arrangement currently exists for council members who have an interest in a non-profit association, or in a body that has a person or persons appointed or nominated by council. The Ombudsman has recommended extending this arrangement to situations relating to some other types of non-pecuniary benefits, and to situations involving benefits or detriments shared with other ratepayers, electors or residents of the area or ward.

At present, section 73(1) exempts a council member from declaring an interest in a matter where the benefit or detriment would be shared with at least a "substantial proportion" of other ratepayers, electors or residents of the area or ward or some other substantial class of persons. This recommendation would therefore have the effect of extending the requirement to disclose the interest that arises in this situation, but a declaration of interest would not prevent a council member from exercising a vote on the matter.

In considering this proposal, it will be necessary to define what types of other "non-pecuniary benefits" might fall into this category, and what types of benefits or detriments might attract a declaration of interest where they are shared with other ratepayers.

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"?
14. Are there other types of "non-pecuniary" benefits that could also be covered by this proposal?
15. If so, what other non-pecuniary benefits could be appropriately covered by a disclosure requirement that does not require abstention from voting?

Could there be an objective test for conflict of interest and who should determine whether a conflict of interest exists?

The Ombudsman recommended that consideration be given to legislating for an "objective test" to determine a council member's conflict of interest. In conjunction with this approach, the Ombudsman recommended allowing the council members in

attendance at a council meeting to decide whether a particular council member has a conflict of interest or could reasonably be taken to have a conflict of interest.

This arrangement is enshrined in the Queensland Local Government Act 2009. This would be a significant change from the current South Australian legislative scheme where it is the responsibility of the affected council member, not the council or any other member, to decide on, and declare, a conflict of interest.

However, the nature of an “objective test” would need to be carefully considered and defined, as well as the factors other members of the council should take into account when deciding whether a conflict exists.

Nevertheless, in light of some of the questions that have arisen in relation to identifying a conflict of interest, and the difficulties some council members have experienced in determining whether or not they have a conflict, it is timely to explore the potential for a different approach. It is recognised that some councils already provide access to legal advice for members to assist them to determine whether a conflict of interest exists in light of particular circumstances.

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

Past Benefits and Inducements

The Ombudsman recommended that *past* benefits or inducements should be included within the scope of the conflict of interest provisions. The Local Government Act currently focuses on benefits or detriments expected to be received by a council member in the future.

In some other jurisdictions, past gifts are dealt with specifically. The Victorian legislation, for example, provides that a person has an interest in a matter if a gift has previously been received by them from an interested party in the matter.

The inclusion of past benefits or detriments raises a number of questions. The first is the question of how far back the “past” should extend for the purposes of such a provision. A period of two years has been suggested but this may not be a sufficient passage of time. A second question relates to what types of benefits or detriments should fall under such a provision. Should it, for example, include campaign donations to individual candidates for election, or contracts for work undertaken in the past? Thirdly, should there be a minimum level of value that would trigger any provision of this kind and, if so, what should that level be?

19. Should past benefits and detriments be included in the scope of the conflict of interest provisions? If so,
20. Should there be limit on the period and if so, how far back should the “past” extend in this context?
21. How should a past gift, benefit or detriments be conceived? Should it include: campaign donations; past work contracts; hospitality; any other matters?
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?

Disclosure by Candidates for Election

The Ombudsman recommended that all candidates who stand for local government office should be required to disclose any political affiliation.

The LGA has previously endorsed the proposal that all candidates for council election should be required to disclose information about membership of political parties and professional bodies in the previous two years consistent with the requirements for sitting council members through their Register of Interests. This expands on the Ombudsman’s recommendation, by seeking to create the same requirements for all candidates, whether sitting members of council or not.

The disclosure of interests by all candidates for election raises issues of practical implementation in relation to how the disclosure should be made. Sitting council members standing for re-election have existing Registers of Interest which can be made available by the council on request. However, there is no current arrangement for dealing with disclosures by new candidates. Completing a Register of Interest is a substantial task and requires a broad disclosure of interests, which may not be relevant if the candidate is not successful.

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?
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?
26. Should the more limited declarations be published more widely, such as on the elections website, as part of the election process?
27. What other matters should be taken into account when considering how and what disclosures should be made?

Exclusion of Certain Employees from Candidature

The Ombudsman recommended that further consideration be given to whether it may be inappropriate for electorate officers and other people such as advisers engaged by Members of Parliament, to become members of councils because of the potential for a conflict of interest in relation to their duties. The local government sector undertook considerable research into this matter during 2011 and concluded that the Local Government Act and the Local Government (Elections) Act provided sufficient checks and balances to ensure that any potential conflicts of this nature can be appropriately dealt with.

However, the Ombudsman has suggested that the State Government public sector code of ethics may already prevent public sector employees, such as electorate officers and Ministerial staff, from becoming members of council because of the potential for a conflict of interest. The Ombudsman has referred the matter to the State Government for further consideration.

Agenda Reports and Minutes regarding Conflict of Interest Matters

One of the issues arising from the current conflict of interest provisions is the interplay between these provisions and section 83 of the Local Government Act. Section 83(4) requires a council CEO to provide each member of council with any documents to be considered by council. This can create a problem where the matter remains under consideration by a council over two or more meetings and a council member has declared a conflict of interest in relation to the matter.

In effect, the interplay between the provisions gives rise to a situation where a council member with a declared conflict of interest continues to receive the reports, documents and minuted outcomes of the matter before council. This anomaly has caused a problem for at least one council.

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?

Option for Full Review of Provisions

The conflict of interest provisions in the Local Government Act are very prescriptive and detailed in their nature. As with most provisions which seek to take account of all possible situations, it has given rise to 'gaps' in the coverage. For example, the definition of a 'close associate' includes a 'relative' but in the context of modern family arrangements, what constitutes a relative may not be clear. It also fails to take account of other close personal relationships that do not fall into the concept of a relative.

In addition, and contrary to the prescriptive nature of some of the provisions, there is little guidance on how to identify a potential benefit or detriment, leaving open the possibility of an inadvertent breach. This is particularly so where the benefit or detriment is of a non-pecuniary nature.

29. How well are the current conflict of interest provisions working? Is there scope to review the provisions and start afresh?
30. Are the current procedures for prosecuting a council member for breaches of conflict of interest working?
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?

2.3 Consideration of Items by Councils “In Confidence”

Council meetings are required to be open to the public, except in special circumstances.

Section 90 of the Local Government Act sets out the basis on which councils may decide to exclude the public from a council meeting or part of a meeting, and deal with an item or items “in confidence”.

A council or council committee may order that the public be excluded “to the extent (and only to the extent) that the council or council committee considers it necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection)”.

The grounds on which a council may decide to close a meeting to the public, as specified in section 90(3) of the Act, include:

- disclosure of information concerning the personal affairs of any person, living or dead;
- commercial information of a confidential nature;
- information that could prejudice a criminal investigation or fair trial;
- legal advice and information relating to actual or possible litigation;
- tenders for goods or services;
- information relating to proposed development amendments;
- freedom of information matters; and
- matters that would, on balance, be contrary to the public interest.

Where councils make an order to deal with matters in confidence, a note must be made in the minutes of the making of the order and the grounds on which it was made.

Under the Local Government Act, copies of the minutes of council meetings and reports and other documents presented to council meetings are required to be made available to the public. However, this requirement does not apply to a document or part of a document if the document or part relates to a matter dealt with the council or council committee on a confidential basis, or if the council or committee orders that the document or part be kept confidential.

An order made by a council to keep documents confidential must specify the period for which it will apply and such an order must be reviewed immediately after that date, or

at least every 12 months. The minutes of the meeting must record the grounds for the order and the time period specified.

Considerable concern is voiced from time to time by the community and the media about councils considering matters in confidence, particularly in relation to issues of high public interest, and about perceived inappropriate and frequent use of these provisions by some councils.

In his report in relation to the previous Charles Sturt Council, the Ombudsman found that the Council had wrongly moved into confidence on a number of occasions and had failed to provide details of its reasons for excluding the public.

The Ombudsman has initiated an audit and review of the use of the “in confidence” provisions by councils. This will provide valuable information, analysis and findings for further consideration.

It is timely to consider how an appropriate balance can be struck between transparency and the legitimate need in some circumstances for certain matters to be discussed on a confidential basis to protect personal privacy and other interests. Comments are being sought on the following:

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?

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?

2.4 Training and Education

Relevant to the other matters being canvassed in this paper, it is timely to consider what training and support should be provided to inform and assist council members in fulfilling their roles and responsibilities.

There are over 700 council members in diverse councils ranging from very large metropolitan councils to small rural councils. Council member backgrounds are equally diverse, and bring into councils a wide range of skills and experience. Knowledge of how councils work differs among council members, and newly elected council members generally have less such knowledge compared to those re-elected.

Section 80A of the Local Government Act requires councils to prepare and adopt a training and development policy for its members. The policy must be aimed at “assisting members in the performance and discharge of their functions and duties”. The administration of these activities must be included in the council’s annual report.

The Public Integrity Review recommended that the proposed Commissioner for Public Integrity should examine whether his or her office, or the Public Integrity Office, ought to play a role in the education of public officials about upholding public integrity. It was proposed this could involve training provided to senior public sector executives, council members and senior staff, and Members of Parliament about their obligations.

In his report of his investigation into matters relating to the previous Charles Sturt Council, the Ombudsman recommended that consideration should be given to amending the Local Government Act to introduce ongoing mandatory training in relation to conflicts of interest for council members and mandatory training for council members to better appreciate their public officer roles and responsibilities and the significance of the declaration on taking office.

The LGA currently runs a variety of training programs for council members and staff, including induction programs for newly elected council members.

Comment is invited on the following:

34. Should training in relation to conflicts of interest for council members be made mandatory?
35. If so, should this be achieved by amendment to the Local Government Act or by inclusion in a mandated uniform code of conduct?
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?
37. If so, should this be achieved by amendment to the Act or by inclusion in the mandated code of conduct?
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.
39. Should there be specific training for Mayors and Chairpersons of councils and presiding members of council committees?
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?

2.5 Meetings

The LGA has recently initiated consultation with councils about the *Local Government (Procedures at Meetings) Regulations 2000* to consider possible changes to improve the conduct of council meetings. The outcomes of this consultation will be jointly considered by the LGA and the Office for State/Local Government Relations, and proposals for amendment will be developed. It is proposed that Regulations will be re-made by September 2013.

This presents an ideal opportunity to review whether the meeting procedures can be amended to more effectively deal with potential conduct complaints during council meetings. It has also been suggested that there could be more attention applied to the reasonable use of council meeting time for members' questions, notices of motion and requests for information from council staff. While the right of council members to pursue matters and seek information as part of their representative role should be

protected, there may need to be a balance to ensure that council meetings can proceed effectively.

Management of meetings can be a very important factor in dealing successfully or ineffectively with disruptive or inappropriate behaviour by council members or by the public. The Mayor and the CEO have a key role to play in ensuring that council meetings are well run and effective.

Accordingly, comment is invited on the following:

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)?

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?

INVITATION TO COMMENT

Your comment is invited on matters raised in this paper and any other relevant issues. The proposals canvassed in this paper should not be seen as restricting the options available for changes designed to ensure councils in South Australia can operate optimally and meet standards appropriate to the public sector. Other suggestions are invited and will be considered.

This paper and links to the Local Government Act 1999 and associated Regulations can be found at www.localgovt.sa.gov.au or www.lga.sa.gov.au

All comments must be received no later than **Monday 7 May 2012**.

Submissions should be sent to:

Email: localgov@sa.gov.au Fax: (08) 8204 8734

Mail: Office for State/Local Government Relations
GPO Box 1815
Adelaide SA 5001

Enquiries should be directed to:
Office for State/Local Government Relations, phone: (08) 8204 8712

Please be aware that all submissions on this paper will be treated as being public. They may be referred to, or quoted, in future discussion or debate on the matters raised in the paper, and may be released to an applicant under the *Freedom of Information Act 1991*.

You should not include material you wish to be kept confidential in your submission on this paper. If you do not wish your name and/or address/email address to be made public, please indicate this clearly in your submission.

Published by the Office for State/Local Government Relations and the Local Government Association of South Australia