

# LOCAL GOVERNMENT (OFFICIAL CONDUCT) AMENDMENT BILL 2005

## EXPLANATORY MEMORANDUM

### OVERVIEW OF BILL

The development of the Local Government (Official Conduct) Amendment Bill 2005 is a new initiative for both local government and the general Western Australian community.

The purpose of the Bill is to amend the *Local Government Act 1995* to provide a disciplinary framework to deal with individual misconduct by local government council members. At present, apart from prosecution, the only avenue for action in response to inappropriate behaviour is against the whole council.

The key principles in this Bill have general support from local government.

The Bill provides a mechanism to take action against individual council members where they do not comply with a code of conduct (rules) or they contravene particular laws applying to them in Acts and Regulations.

The key matters in the Bill are:

- (i) the establishment of a statewide standards panel to deal with complaints about minor breaches which are to be contraventions of a new code (rules) of conduct with penalties including public censure, public apology or an order to undertake training, and;
- (ii) for complaints about serious breaches to be made to the Department of Local Government and Regional Development for possible referral to the State Administrative Tribunal (SAT) for determination including similar penalties as above and stronger penalties of up to six month suspension or up to five years disqualification.

The Bill contains detailed provisions enabling regulations to be made prescribing the uniform rules of conduct for council members.

The rules are to cover the following key areas:

- a) standards of general behaviour;
- b) use of information;
- c) securing unauthorised advantages or disadvantages;
- d) disclosing certain interests (not financial); and
- e) restriction on receiving, and disclosure of, certain gifts.

The Bill provides that contraventions of the rules are a minor breach and complaints are to be referred to the local government standards panel. Additional panels may be appointed should that be needed.

## **STANDARDS PANEL**

Complaints of minor breaches will initially be received by the relevant local government's complaints officer.

Each council shall appoint a complaints officer who is to be a senior local government employee or the CEO where applicable. Complaints referred to the local government must be in writing and it shall be an offence to give false or misleading information. The standards panel will deal with minor breaches and details of any decisions against a person will need to be included in a public register and are to be entered into the local government's annual report.

The panel shall consist of three persons, a chairperson from the Department of Local Government and Regional Development, a nominee from WALGA with experience in local government and a person having relevant legal knowledge.

Complaints referred to the standards panel are to be kept confidential if received during the period prior to an election.

The Bill provides for new types of penalties where the standards panel finds that a person has committed a breach. These include the panel making an order that publicly censures the council member, requires the council member to apologise publicly or requires the member to undertake training. A person not agreeing with these determinations will have a right of appeal to the State Administrative Tribunal (SAT).

## **TRIBUNAL**

Allegations of repeated minor breaches, or serious contraventions of the legislation, such as financial interest contraventions or the misuse of information for personal gain, are to be referred to the Director General of the Department of Local Government and Regional Development.

The Director General may then direct those matters to the SAT for assessment and the imposition of particular penalties where it appears that there is a case to answer. This will be an alternative to undertaking prosecution and other types of enforcement action.

The Director General may refer the matter to another enforcement agency if that agency is the more appropriate authority to deal with the matter. Allegations of criminal or corrupt behaviour would continue to be referred to the police or other appropriate authorities.

For serious breaches referred to the SAT by the Director General, the tribunal will have the penalties available to the standards panels at its disposal, as well as being able to suspend the council member for a period of not more than six months, or disqualify the council member for a period of not more than five years, from holding office as a member of a council.

The serious breaches to be dealt with by SAT are those matters for which there is an offence in an Act or Regulation and the offence is particular to the actions of council members. The most common will include non declarations of financial interest, the improper use of information to gain advantage or cause detriment and the failure to complete annual financial returns.

## **CLAUSE NOTES**

Outlined below is a brief description of each clause of the Local Government (Official Conduct) Amendment Bill 2005.

### **Clause 1: Short title**

Clause 1 cites the short title of the Act.

### **Clause 2: Commencement**

This clause sets out a commencement provision which provides for the Act to come into operation on such day as is fixed by proclamation.

### **Clause 3: Act amended**

This clause provides that the amendments in the Act are to the Local Government Act 1995.

### **Clause 4: Section 2.19 amended**

This clause amends section 2.19 dealing with the qualification for election to council by inserting reference to new sections 5.113, 5.117 and 5.119 created by this Bill and provides that a person is qualified to be elected so long as he or she has not been disqualified by an order issued under those sections.

### **Clause 5: Section 2.32 amended**

This clause amends section 2.32 which deals with how extraordinary vacancies occur in the office of an elected member. The amendment provides for a vacancy to be created when a member is disqualified by the State Administrative Tribunal under sections 5.113, 5.117, and 5.119.

### **Clause 6: Section 5.53 amended**

This clause amends section 5.53(2) by requiring the local government annual report to contain details which are included in a Register of Complaints where there are findings against a council member.

**Clause 7: Section 5.94 amended**

This clause amends section 5.94 which allows a person as of right to inspect the local government information specified in that section.

The amendment inserts into section 5.94 a person's right to inspect any regulations prescribing rules of conduct for elected members and a register of complaints for breaches of those rules. Also, minor drafting improvements are made to section 5.94.

**Clause 8: Heading to Part 5 Division 9 replaced**

Clause 8 is a technical drafting matter inserting a new heading – Division 9 Conduct of Certain Officials.

**Clause 9: Section 5.102A inserted**

A new section 5.102A is inserted to include definitions of terms used in the new Division 9.

**Clause 10: Section 5.103 amended**

Section 5.103(2) is repealed. The requirement for a local government to review its code of conduct after each ordinary election is removed as the code will now be set in regulations.

**Clause 11: Sections 5.104 to 5.127 inserted**

**Section 5.104 Regulations may prescribe rules of conduct**

This section provides for regulations to be made prescribing rules of conduct that are to be complied with by elected members. These rules are not to limit what a Code of Conduct made under section 103 may contain.

**Section 5.105 Breaches by council members**

This section describes what are minor breaches and what are serious breaches.

Where an elected member does not comply with the rules of conduct he or she commits a minor breach.

Should the member have previously been found to have committed two or more minor breaches, then the current minor breach becomes a recurrent breach which may be treated as a serious breach.

If an elected member commits an offence under a written law applying specifically to council members, other than a local law, then the member commits a serious breach.

### **Section 5.106 Deciding whether breach occurred**

This section provides that a finding that a breach has occurred shall be based on evidence of the probability of the offence occurring.

### **Section 5.107 Complaining to complaints officer of minor breach**

This section provides that a complaint that a member has committed a minor breach may be made to the person who is the local government's complaints officer. The complaint is to be made in writing on the required form providing details of:

- the name of the complainant;
- who the alleged offender is; and
- what contravention is alleged to have occurred.

Within 14 days of receiving the complaint, the complaints officer is to send the complaint to the standards panel and also advise the complainant and the alleged offender of receipt of the complaint.

Section 5.124 makes it an offence for a person to give false or misleading information.

### **Section 5.108 Executive Director may send complaint of minor breach to complaints officer**

This section enables the Executive Director (Director General) of the Department of Local Government and Regional Development, who receives a complaint under section 5.114 of a serious breach but considers it to be a minor breach, to send it to the complaints officer of the local government concerned for it to be dealt with under section 5.110.

### **Section 5.109 Complaint initiated by complaints officer**

This section enables a complaints officer to also lodge a complaint in situations where that may be necessary.

### **Section 5.110 Dealing with complaint of minor breach**

This section provides for the standards panel to consider a complaint. It also enables the standards panel allocated the complaint to send the complaint to the Director General if it becomes a recurrent breach. It is then to be treated as a serious breach.

The section requires a standards panel to advise in writing each party of the reasons for its findings and, later, of any orders made. The member against whom the complaint was made is to be given the opportunity to make a submission on the findings. Following this, the panel is to dismiss the complaint or order one of the following:

- that the member be publicly censured;
- apologise publicly; or
- undertake training.

Two or more of these sanctions may be ordered.

#### **Section 5.111 Dealing with a recurrent breach**

This section enables the standards panel to refer a recurrent breach to the Director General or to deal with the matter itself. The parties are to be notified of a referral to the Director General.

#### **Section 5.112 Allegation of recurrent breach**

This section establishes the mechanism through which the Director General is to deal with a minor breach, which is taken to be a recurrent breach, and enables the Director General to refer it to the State Administrative Tribunal (SAT) as a serious matter. The parties must be advised of the decision to refer the matter to SAT. In the event the matter is not referred to SAT, the Director General is required to send the complaint to the complaints officer to be dealt with by the standards panel which referred the complaint to the Director General.

#### **Section 5.113 Punishment for recurrent breach**

This section enables SAT, having made a finding on a recurrent breach, to make various orders under section 5.117.

#### **Section 5.114 Making complaint of serious breach**

This section empowers a person to make a complaint to the Director General that a council member has committed a serious breach. The complaint is to be made in writing on the required form providing particular details. A complaint can only be made within the time period for which proceedings can be commenced for the particular offence.

#### **Section 5.115 Complaints officer to send complaint of serious breach to Executive Director**

This section provides that a complaints officer may send a complaint of a serious breach to the Director General and to advise all parties of that action. This will apply where a serious complaint is incorrectly sent to a local government complaints officer rather than the Director General.

### **Section 5.116 Allegation by Executive Director of serious breach**

This section provides that if a complaint is received from a person or a local government's complaints officer, the Director General may send it to SAT or decide that it can be dealt with in another way. This may involve other action by the Director General or other enforcement agencies. This action cannot be taken against the alleged offender if a court has previously prosecuted the matter.

The Director General is to advise all parties within 14 days of receipt of the complaint that the matter has been received and that the Director General will proceed to making a decision on the matter of whether or not to refer the matter to SAT.

### **Section 5.117 Punishment for serious breach**

This section provides the various actions that SAT may order to be taken if it finds that a council member has committed a serious breach. These are public censure, public apology, training, suspension as a member for not more than six months, or disqualification for not more than five years, from being an elected member of a council. Combinations of these sanctions may be ordered. Also, SAT may make a suspended order for the suspension or disqualification orders. A suspended order may operate for a period of up to 2 years.

The Director General may make an allegation to SAT that a person has failed to comply with a condition relating to a suspended order. SAT may consider the matter and direct that the suspended order should apply.

### **Section 5.118 Carrying out orders**

This section requires the chief executive officer (CEO) of a local government to publicise any censure ordered by a standards panel or SAT for a minor breach and report on any failure of a member to comply with an order. The section also requires the Director General to advise SAT of any failure of a member to comply with an order for a recurrent or serious breach.

### **Section 5.119 State Administrative Tribunal's enforcement powers**

This section provides that where a member fails to comply with an order of a standards panel or SAT, SAT may then take further action to suspend or disqualify the member.

### **Section 5.120 Complaints officer**

This section requires each local government to designate a senior employee as a complaints officer for the purposes of receiving

complaints to be dealt with by standards panels. If it does not, then the CEO is the complaints officer.

#### **Section 5.121 Register of certain complaints**

This section requires the complaints officer to keep and record in a register details of each complaint for which there has been a finding against the person. The register is to include details of the names of the parties to the complaint, a description of the minor breach and the order against the person.

#### **Section 5.122 Standards panel**

This section requires the Minister to establish a standards panel and such other panels as may be required. Schedule 5.1 applies to a standards panel.

#### **Section 5.123 Confidentiality**

This section provides for all complaints that are made within a campaign period (from nominations until election day) to be treated in confidence until the panel finally deals with the matter or the campaign period ceases. This applies to a person who is party to a complaint, performs a function relating to complaints, or is anyone who becomes aware of information about the complaint. It is an offence for a person to break that confidentiality with a maximum penalty of \$5,000.

It is not an offence if the disclosure of the information is made for the purpose of investigating the matter, or the disclosure is required by law.

#### **Section 5.124 Giving false or misleading information**

This section provides that it is an offence for a person to give false or misleading information in a complaint or when giving information. The penalty is a maximum fine of \$5,000.

#### **Section 5.125 Review of certain decisions**

This section provides for a right of appeal to SAT by a party to a complaint in respect to a standards panel decision.

#### **Clause 12: Section 9.69A inserted**

Section 9.69A is added to clarify that the Director General is required to comply with the *Corruption and Crime Commission Act 2003* in notifying the Commission.

**Clause 13: Schedule 5.1 inserted**

Schedule 5.1 Provisions about standards panels

1. Terms used in this schedule

The term “member” is defined.

2. Membership of standards panel

This provides for 3 members appointed by the Minister. One is to be an officer of the Department, one is to be a person with experience as a council member and one is to be a person having relevant legal knowledge.

3. Deputies

This provides for deputies to be appointed and when they may attend meetings.

4. Submission of lists

This deals with WALGA forwarding a list of persons eligible for appointment to the Minister. The Minister shall appoint one of those persons as a member.

5. Term of office

The term of appointment to a panel shall be for a maximum period of 4 years, however, a person is eligible for appointment for subsequent terms.

6. Vacation of office

This specifies the circumstances where a member’s office becomes vacant and the situation where the Minister may remove a person from the position of member.

7. Dissolution of standards panel

The Minister may dissolve a panel where it has dealt with all complaints allocated to it.

8. Meetings

This clause deals with the meeting procedures of the panel. It also provides for the Departmental member to be the presiding member, all members to attend to achieve a quorum and circumstances where a member is disqualified from acting.

9. Remuneration and Allowances

This provides for the panel members, except for state public servants, to be paid remuneration and allowances as determined by the Minister on the recommendation of the Minister for Public Sector Management. Local governments are to be responsible for making these payments to the panel members in relation to complaints relating to their particular council members. These payments shall be apportioned between different local governments as the standards panel determines if two or more complaints are dealt with on the same occasion.

10. Protection

This clause provides protection to a panel member when acting in good faith.

11. Annual Report

The standards panel shall prepare an annual report for the Minister which shall be laid before each House of Parliament.