

# City *of* HOBART

## Managing conflict of interest for councillors discussion paper – submission

# About the City of **HOBART**

The City of Hobart is the local government body covering the central metropolitan area of lutruwita/Tasmania's capital city nipaluna/Hobart.

The present-day council entity was legislated in 1852 with the role of Lord Mayor created in 1934.

As enshrined in legislation, the key function of local government is:

- To provide for the health, safety and welfare of the community;
- To represent the interests of the community; and
- To provide for the municipal area's peace, order and good government.

The City of Hobart delivers a range of services to over 56,000 residents and employs over 550 staff.

## Introduction

The City of Hobart is committed to good governance to ensure that we deliver upon the community's expectations. Our Capital City Strategic Plan states our vision to be a "city of ethics and integrity. We govern with transparency and accountability, encouraging and welcoming active civic involvement".

This vision is underpinned by the City's Governance Framework which outlines what good governance entails in a local government context, including the roles and responsibilities of Elected Members and Council officers and the principles of good governance.

## Key issues

We understand that the proposed framework will introduce the following guiding principles:

1. Integrity
2. Impartiality
3. Transparency
4. Accountability
5. Proactivity and responsiveness
6. Consistency.

We agree that the proposed reforms are consistent with these guiding principles and are supportive of the approach implement a state-wide legislative framework to better manage personal interests (both pecuniary and non-pecuniary).

The discussion paper and addendum reference the arrangements for state and federal members of parliament as a starting point for discussion. This is understandable and we support in principle a regime that is broadly consistent with other jurisdictions. However, there are characteristics unique to local government that should be factored in when designing a legislative response. For example, a key distinction between state/federal and local government is that an individual councillor has a far greater ability to influence the decision making of a local government organisation. It is therefore important that the legislative framework is set to allow for appropriate management of conflicts in a local government context.

Under the present arrangements, the onus rests on councillors to identify and manage conflicts of interest and there is no fallback provision for mayors or CEOs to intervene in the event a conflict has not been appropriately managed other than lodging a code of conduct complaint. The City of Hobart welcomes the proposal to provide Council with the power to overturn a councillor's decision. In doing so, the State should provide guidance on making appropriate decisions and management options.

In delivering these reforms, it is important that there is clarity in defining what constitutes public/professional capacity and personal capacity as it relates to receipt of gifts or donations. Ambiguity in this area has the potential to undermine the principles and objectives of the proposed reform.

Consideration should also be given to how councils can best manage situations in which close associates of elected members tender for work. Prohibiting this in some circumstances, or requiring relevant procurements to be approved by council after having been made aware of the conflict, should be part of the legislative framework.

In developing this framework, we encourage consideration be given to the following:

- Including “friends” in the definition of close associates. While this may be difficult to clearly define “friends” and ensure a consistency of assessment, it is important that the framework recognise that friendship may influence decision making and lead to an actual, perceived or potential conflict of interest.
- “look through provisions” in relation to family and business trusts and nominee companies. Look through provisions will ensure that the true beneficiary of these structures is identified and disclosed in the Personal Interest Return. It is understood that similar provisions are used by the Australian Taxation Office in the examination of these legal structures.

Ultimately, the success of the proposed reforms will require training support to work in tandem with the legislative change to ensure that objectives of the reforms are realised without adverse consequences. We encourage the State Government to work closely with the sector to ensure the appropriate supports are put in place to manage the introduction of these reforms.

## City of Hobart's Public Interests Register Policy

In its current term, Council has resolved to adopt a Public Interests Register Policy. This policy establishes a process for elected members to publicly disclose interests to help mitigate the risk of inappropriate decision (or perceived inappropriate decisions) and reputational damage to the City of Hobart. This policy was made in the absence of a holistic legislative framework such as that proposed through this discussion paper.

The City of Hobart's Public Interests Register Policy provides for:

- Elected members to make a statement of interests (including spouse/partner's interests) to the CEO
- The statement of interests to be published online
- To be updated within 28 days of obtaining a new interest

The Policy includes the following matters as interests:

- Shareholdings in public and private companies where the combined total value of the shares is more than \$10,000
- Trusts that the elected member is a trustee or a beneficiary of
- Property the elected member owns or has a beneficial interest in within the municipal area of Hobart, excluding primary residence
- Registered directorships of companies
- Personal debt over \$10,000 (excluding financial institutions)
- Any paid employment in the preceding 6 months where the income exceeds \$10,000 in that period
- Any sponsored travel or hospitality received where the value exceeds \$300
- Unincorporated associations in which the elected member is a member and performs a leadership role
- Any other interests where a conflict of interest with an elected member's public duties could foreseeably arise or be seen to arise, and
- Any election campaign donation.

In resolving to establish this policy, Council noted that there is no legislative power to compel elected members to comply with the policy, rather it is at the discretion of elected members to comply with the policy. This can undermine the effectiveness of the policy and is potentially inconsistent with guiding principle of consistency as proposed by the discussion paper.