LOCAL GOVERNMENT MANAGERS AUSTRALIA QUEENSLAND INC.

9 January 2020

Committee Secretary
Parliamentary Economics and Governance Committee
Parliament House
George Street
Brisbane, Qld 4000

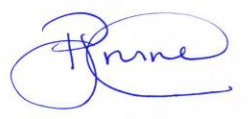
Dear Mr Power

Thank you for the opportunity to provide comment on Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019. Local Government Managers Australia Queensland (LGMA) is pleased to offer the following comments for the Committee's consideration.

LGMA is the peak body representing the interests of local government officers in Queensland. Our membership derives from CEOs and managers in local government throughout the state. In considering the Bill, LGMA has consulted with members and has reflected their concerns in our commentary. As such, LGMA has not made comment on political implications or commented on matters relating to elected members (except where such matters have direct implications for the administration of council).

As always, LGMA appreciates the opportunity to provide input into the development of the legislation and officers are available to discuss any matters in more detail if this would be of assistance.

Yours sincerely



Peta Irvine
Chief Executive Officer

General Comment

Local Government Managers Australia broadly supports the intent and approach of the Bill. Provisions which enhance integrity and transparency of local government decision-making and operations are welcomed and clarity in regard to some currently 'grey' areas relating to the application of conflict of interest amendments are of value.

In considering the tabled amendments, LGMA has concerns with or some observations on the issues as listed below. However, the amendments also give rise to future regulatory change and there are a number of issues associated with the proposed, pending regulatory changes that are of concern and have been highlighted (noting that actual wording has yet to be made available so any comments relate only to the assumed implications).

Administrative Support Staff

Many councils currently provide support staff to Mayors and Councillors to assist them in administering their duties. These administrative staff are employees of Council, appointed by the CEO or delegate, but they necessarily take direction from the elected member/s to whom they are allocated.

The amendments recognising the different nature of these staff members' relationships with elected members as versus other officers and then clarifying the nature of the direction that can be provided is an important and necessary amendment and is supported.

Political Staff

LGMA recognises the intent of the amendments regarding political staff ('councillor advisors') to create clarity of reporting, employment conditions and responsibilities. The amendments seek to legitimise and regulate a practice that has developed over recent years in larger councils but all with slightly different administrative arrangements. One of the critical issues in the current environment is a disconnect between the legislative provisions, which state that councillors cannot direct employees, and what is happening in practice which is that the political staff report directly to the Mayor but they are attached to the council structure reporting to the CEO.

While the amendments do give some clarity and resolve the issue of taking direction, they do not address the matter of managing the performance of the councillor advisor given the positions generally report directly to the mayor and take direction from the mayor rather than via the CEO. Under proposed s. 197A(4)(d), the matter of how a councillor advisor is dealt with in the event of a disciplinary matter is raised but it is unclear how this would work in practice.

It is suggested that clarity will be required across a range of issues associated with the proposal. For example, will the Councillor advisor be bound by all staff policies? Who is ultimately responsible for discipline/dismissal of a Councillor advisor in the event of poor performance? If there is conflict between the Councillor advisor and a staff member, who has responsibility for managing resolution of that conflict? (At present, for conflict between Council staff, the CEO has sole jurisdiction). In short, there are practical issues associated with the Councillor advisor role in terms of how it fits into the industrial relations framework.

Further, it is noted that the intent is that "Councillor advisors" provisions would only apply to prescribed local governments. Presumably this will only be the largest of the Queensland councils and we would strongly urge further consultation with those councils directly affected by these provisions to deal with the practical implications, particularly in relation to the industrial relations framework.

Conflict of interest provisions

The proposed conflict of interest provisions appear sensible and generally workable. There are two practical issues raised for consideration.

Firstly, it is strongly recommended that these provisions do not commence until after the March 2020 elections so that the new provisions can be incorporated into Councillor induction programmes that will commence after that time. Endeavouring to change terminology/processes only a month or so before the end of a Council term would be nonsensical.

Secondly, the reference to a "related party of a councillor" will cause practical confusion. It is clear where someone is a family or direct business associate. However, "a close personal friendship" will be difficult to apply in practice and CEOs will be asked for advice from councillors about when someone has or has not a close personal friendship. This will be particularly the case in smaller councils/communities where everyone knows each other quite well. We can foresee practical problems with the inclusion of "a close personal friendship" provision.

Timeframes and processes for filling Councillor vacancies

Two issues are raised for consideration in relation to the proposed changes.

Firstly, based on practical experience, running an appointment process in the final 3 months before an election is impractical. In practice, electioneering is already happening 3 months out from an election and undertaking an appointment process in this period is fraught with practical problems. While the appointment process set out in section 166B looks generally sensible, it should not apply in the last 3 months or so prior to election and the provision to allow a Council to run with a vacancy for those few months should continue.

Secondly, the proposed process for appointing the runner-up for a vacancy in the office of Council in an undivided local government may not work in practice. Some runner-ups may have left town or others may not be interested in being a councillor due to their changed personal circumstances some years later (e.g. new employment). Working down the list of people who were not elected to find who should represent a community does not seem the best approach. A lot can happen in 3 years and if the community had wanted that candidate to be their representative, they would have voted for them at the time of the initial election. The best way to determine who should represent a community is to ask the community via a by-election.

Definition of "ordinary business matters"

The current definition works well in practice. We do not understand the basis or need for any change to that definition. Such change will bring uncertainty and confusion in relation to a number of decision-making processes (in particular, how Councils undertake amendments to their planning schemes which occur on a regular basis). Changing the definition of something that works well in practice at the moment will cause issues.

Proposed Regulation

The proposed regulation will include provisions relating to closed meetings and informal meetings. Both are of concern from a practical, administrative perspective.

Closed meetings: The removal of provisions allowing employee appointment, dismissal or discipline is of significant concern and, in particular, will have implications in small communities where even when the officer's name may be omitted, identity is still obvious.

Informal meetings: Again, the intent to improve transparency of decision-making is important and is supported. The application of COI provisions to informal meetings is supported and is consistent with previously outlined amendments regarding COIs. In practical terms, Councillors have meetings with staff every day and multiple Councillors might wish to meet with the Chief Executive Officer on a range of issues.

It is understood that the intent of bringing more structure to informal meetings is to stop or regulate those informal meetings that emulate decision-making forums (e.g. meetings to review Council agendas). This approach is supported.

However, the anticipated provisions governing the operation of all informal Councillor meetings may impact the practical functioning of a council and limit discussion of complex issues. Informal meetings serve a purpose in allowing councillors to hear from experts and ask questions and to explore a wide range of implications. Limiting this discussion could impact the quality of the ultimate decision-making. Caution is therefore urged in creating a regulatory environment that is overly proscriptive in regard to informal meetings. The focus should be on regulating informal meetings that relate to a Council decision making process (e.g. meetings to review Council agendas). Regulation of other Councillor workshops that are not decision-making forums should be avoided as it would remove a valuable and practical way for senior staff to interact with Councillors on a day-to-day basis.

Further advice if required

LGMA is committed to making officers available to provide advice on the practical implications of provisions as these are considered in the drafting of the regulation.