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Towards Transparent Governance: Proposing an Ethics Committee for Enhanced Conduct Oversight in the Shire of Serpentine Jarrahdale

Executive Summary

Although robust in many facets, the local governance system faces pressing challenges, especially concerning the Code of Conduct complaints management system. Central to these challenges are impartiality, transparency, and the potential for political motivations to interfere in a fair process. This paper underscores the need for reforms and posits the establishment of an "Ethics Committee" as a robust solution. The proposed committee offers enhanced trust, fairness, and reduced political influence, ultimately aligning the complaints process closer to community expectations and fairer outcomes. This paper builds a compelling case for the suggested changes, advocating for improved governance, trust, and transparency in the Shire of Serpentine Jarrahdale.

Introduction

Local governments serve as the cornerstone for delivering essential community services and infrastructures. Individuals chosen to represent their communities on councils or council committees bear a significant responsibility: they are not only entrusted to make prudent decisions and manage public resources effectively but are also expected to uphold the highest standards of professional and ethical conduct.

Historically, each local government, including the Shire of Serpentine Jarrahdale, had to develop and implement an individual Code of Conduct for its council members, committee members, and employees. However, stakeholder feedback and a comprehensive review of the *Local Government Act 1995* identified a clear need for governance reforms. The community and sector stakeholders felt that a uniform Code of Conduct would better reflect the community's expectations regarding behaviour, ensuring a consistent approach across all local governments.

The Local Government Amendment Act 2019 was introduced in response to these concerns. One of its major reforms was the establishment of a Model Code of Conduct (often referred to simply as "Model Code"). The Model Code's regulations, enacted in 2021, mandate that every local government adopt this standard, delineating clear behavioural expectations and procedures for council members, committee members, and candidates. The Shire of Serpentine Jarrahdale's current Code of Conduct for Councillors, Committee Members, and Candidates is based on this Model Code.

The Code is structured into six parts, from defining behavioural requirements and complaint procedures to including standard forms for lodging and responding to complaints. Particular emphasis is placed on personal integrity, maintaining respectful relationships, and ensuring orderly council or committee meetings. Notably, the process for addressing alleged breaches of the Code is specified, including the roles of the complaints officer and the council.

However, while establishing a standardised Code is a step forward, it's essential to reflect on its implementation, its effectiveness in addressing issues, and whether further refinements are necessary to ensure the highest standards of conduct within local government.

Statement of the Problem

Although rooted in well-intended reforms, the Shire of Serpentine Jarrahdale's current Code of Conduct complaints management system has raised various concerns among its members and the community. These concerns primarily revolve around its ability to deliver impartial decisions, uphold transparency, and remain immune from political motivations. These challenges undermine the very purpose of the Code and compromise the trust and respect it was designed to support. This section seeks to delve into these problems in detail:

Impartiality Concerns

The foundation of any complaints management system should be the impartiality with which complaints are assessed and resolved. However, in the present system:

Conflict of Interest: When subject to a complaint, a councillor still holds the privilege of being part of the Council that assesses the complaint. This proximity creates an inherent conflict of interest, as a council member might influence the outcome.

Unbalanced Representation: When complaints are presented to the council, the accused councillor can contribute additional information and debate the matter. This privilege is not extended to the complainant. Consequently, the complainant's voice is effectively silenced – unless they are a fellow councillor – thereby denying them the right to natural justice. Their inability to speak to the item, especially when it's being debated in closed sessions, undermines the procedural fairness of the complaints management process.

Transparency Issues

Public trust in local governance hinges on transparency. Yet, the current system has inherent flaws:

Confidential Handling: The confidential nature of how complaints are addressed means that the community is often kept in the dark about proceedings unless a complaint is upheld. This opacity does not foster trust; rather, it breeds suspicion and fosters rumours.

Restricted Publication: Only upheld complaints have their forms published, offering a skewed view of the system's functionality and the issues at hand.

Potential for Political Motivations

A system vulnerable to manipulation for political gains fundamentally defeats the purpose of an unbiased Code of Conduct. The existing process is susceptible to:

Political Infighting: Given that the council, consisting of colleagues and, at times, political rivals, adjudicates complaints, there are potential avenues for settling political scores.

Perceived "Kangaroo Court" Operations: The potential bias, coupled with the lack of transparency, has led to perceptions of the complaints process resembling a "kangaroo court" – a term suggesting that proceedings are heavily biased, offering little chance of procedural fairness.

In essence, the very structure of the current Code of Conduct complaints management system invites concerns over its impartiality, transparency, and susceptibility to political motivations. For a system meant to uphold integrity and trust, these issues present serious barriers to its effective functioning and the public's confidence in local governance.

Position

The principle of maintaining ethical and impartial conduct within local governance is paramount. It forms the foundation of public trust and ensures that the needs of the community are met without prejudice. While the current system has served its purpose, evident challenges necessitate its evolution.

Proposed Change: Formation of an "Ethics Committee"

To address the issues outlined in the previous section, I propose the establishment of an "Ethics Committee". This committee would address and resolve complaints under the Code of Conduct.

Reasons for the Change

Impartiality

Entrusting complaints management to an independent committee ensures impartiality in the decision-making process. The inherent conflict of interest presented by the current system, where the council is both judge and party, would be eliminated.

Transparency

With a dedicated committee in place, there is potential for improved transparency in handling complaints. Decisions can be documented and shared in a manner that respects confidentiality while keeping the community informed.

Protection from Political Influence

Having a committee, especially one of community members, significantly reduces the chance of decisions being influenced by political motivations. It ensures that every complaint is treated on merit rather than any underlying political agenda.

Committee Composition and Authority

Based on sections 5.8, 5.9, and 5.10 of the *Local Government Act 1995*, the proposed Ethics Committee would consist of:

Three Community Members

As permitted under section 5.9(2)(f), this committee would be made up of "other persons only". This ensures maximum impartiality since these members would be removed from the immediate dynamics of the council. To further ensure impartiality, it is recommended that Council endorse a list of suitable community members which the CEO could draw on as required to staff the committee.

Delegated Authority

In line with section 5.8, the Ethics Committee would be granted the authority to manage and decide on complaints. This delegation ensures that complaints are handled efficiently without necessitating the referral of recommendations back to the council, thereby eliminating the benefits and impartiality.

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Comparison with State Government's Options

Council considered

This option, where all complaints are addressed directly by the council, presents inherent conflicts of interest. Given our past experiences and challenges, continuing this approach is not ideal.

Committee considered

The establishment of a dedicated committee aligns with this option. The proposal for an Ethics Committee provides a balanced approach, ensuring impartiality and efficiency in the complaints process. Forming a behaviour review committee with members from surrounding local governments and an independent expert may be a refinement to the current proposal worth considering. However, given that council is accountable to the ratepayers and community, this population should be drawn on to form the committee.

CEO considered

While delegating the function to the CEO removes council members from the decision-making process, it may not always be the most appropriate approach. It could put undue pressure on the CEO and may not completely address concerns about impartiality.

The establishment of an "Ethics Committee" presents a comprehensive solution to the challenges faced by the current complaints management system. It aligns with the community's expectation for a transparent, impartial, and efficient process and ensures that the very principles the Code of Conduct was built upon are upheld.

Benefits of the Change

The establishment of an "Ethics Committee" to handle complaints under the Code of Conduct promises numerous advantages not only to the council and local government but, most crucially, to the community it serves:

Enhanced Trust

With decisions made by an impartial committee, the community can have greater faith that complaints are being addressed without bias. Trust in the local government can be fortified when processes are clear, consistent, and free from potential conflicts of interest.

Guaranteed Fairness

A system wherein the decision-makers are removed from the immediate dynamics of the council guarantees a more equitable handling of complaints. Every case can be judged on its merits, free from the influence of political dynamics or personal affiliations or allegiances.

Transparency

The potential for better documentation and communication about the decisions made by the Ethics Committee can provide a higher degree of openness. While respecting confidentiality, essential details can be shared, keeping the community informed.

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Reduced Political Influence

Minimising the role of council members in the complaints process mitigates the risks associated with political motivations. This ensures the integrity of the process and avoids the potential misuse of the complaints system for political gains.

Upheld Standards of Conduct

With a dedicated committee focusing on ethical standards, there's a more rigorous defence of the principles outlined in the Code of Conduct. This means better behaviour from council and committee members and higher standards of governance.

Possible Counterarguments and Rebuttals

Counterargument 1: Establishing an "Ethics Committee" will add another layer of bureaucracy, slowing the decision-making process.

Rebuttal: On the contrary, by specialising in managing complaints, the Ethics Committee can expedite decisions, with meetings only on an "as required" basis. Its focused mandate means it won't be bogged down by the diverse range of issues the council handles. Specialisation can lead to swifter resolutions while realising the gains of greater fairness and transparency.

Counterargument 2: Community members might not have the expertise required to judge the intricacies of some complaints.

Rebuttal: The committee can be equipped with training and access to expert advice as needed. Furthermore, having community members ensures a perspective grounded in common sense and community values, which is invaluable. Additionally, the same counterargument could be equally applied to the council-based decision-making process.

Counterargument 3: There's no guarantee that the Ethics Committee will be free from biases or influences.

Rebuttal: While no system is flawless, the proposed committee composition – made up of community members and possibly members from surrounding local governments – disperses influence and reduces the potential for bias. A diverse committee is more likely to ensure balanced decision-making. While council will need to select community members to be committee members, risk could be further mitigated by creating a 'panel' of suitable community members, with membership selected via a randomised process.

Counterargument 4: Transitioning to a new system might be time-consuming and disruptive.

Rebuttal: Any change requires some adaptation. However, in the long run, improved trust, transparency, and efficiency benefits far outweigh the temporary inconveniences of transition. Moreover, with careful planning and phased implementation, disruptions can be minimised.

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While there are potential objections to the proposed changes, the overarching benefits and long-term improvements in governance, trust, and transparency make a compelling case for the establishment of an "Ethics Committee". The solutions offered aim to bring the council closer to the community's expectations and enhance the credibility of the local government's complaint management system.

Conclusion

The essence of good governance lies in the ability to self-reflect, evolve, and adapt to the demands of changing times and community expectations. While the current Code of Conduct complaints management system served its purpose, it has exhibited deficiencies that necessitate reform. The establishment of an "Ethics Committee" isn't merely a structural change; it represents a stride towards transparent, impartial, and community-centric governance. While valid, the challenges and potential objections are far outweighed by the overarching benefits this change promises for the Shire of Serpentine Jarrahdale. As custodians of public trust and service, we have the onus to champion reforms that bolster our commitment to ethical governance, enhancing the credibility and effectiveness of our local government system.

Recommendations

That Council:

1. Provides in-principle endorsement of the attached position paper's Ethics Committee construct, recognising its potential to elevate the standards of governance, bolster public trust, and align more closely with community expectations on accountability and transparency.
2. Requests the CEO bring a report to Council by 31 March 2023 detailing the necessary policy amendments, procedural changes, and actionable steps required to enact the establishment of the Ethics Committee, ensuring a smooth transition and clear guidance for future operations.