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Council code of conduct must not put free speech at risk

Aldermen should be able to speak out on issues voters care about, says

Anna Reynolds

PEOPLE often ask me why their representatives on council aren't more outspoken about the big issues that shape our

This can be frustrating for residents who expect their elected representatives to express opinions on their behalf.

Part of the answer lies in how Tasmanian aldermen (and councillors) are regulated by the Local Government Act 1993, which requires the introduction of a new Model Code of Conduct.

Aldermen are required to comply with the Model Code of Conduct, which sets guidelines on behaviour and responsibility. It's timely that the code will be reviewed in coming months, because currently the wording is vague, contradictory, and designed to intimidate and discourage aldermen from speaking openly in their role as community representatives.

The code is more than just a guide for representatives — it's tethered to a complex complaints process. Within six months anyone can lodge a complaint about an alderman. Complaints can challenge bad behaviour or misuse of office, which becomes more problematic when complaints are based on subjective judgments.

For example, it's important the code says aldermen must "make decisions solely on merit and not take irrelevant matters into account when making decisions" and to "act openly and honestly in the public interest". The problem is, without clear definitions, 'irrelevant matter' or when behaviour is in the 'public interest' will differ between aldermen and others with an interest.

The code says aldermen must "bring an open and unprejudiced mind to all matters being decided upon, and make decisions without prejudice or prejudgment."

This suggests aldermen should avoid having strong convictions and opinions on policy issues before they make a decision. Many in the community expect when they elect a representative.

It also contradicts requirements in the Act for aldermen to outline their policies at election time, to enable voters to make informed choices.

The code attempts to assist aldermen to deal with conflicts of interest, but ends up raising more questions than it answers: "unduly influenced, or seem to be unduly influenced by personal or private interests".

It requires aldermen to identify any "actual, potential or perceived conflicts at any meeting" and to "exercise reasonable care to avoid a conflict of interest that is so material that it requires removing himself/herself physically from any council discussion."

This all sounds reasonable, but leaves too much room for different interpretations that could be used to slur or silence dissent.

Let me give you an example. Earlier this year, the council sought comment from the community about changes to the planning scheme for Hobart's CBD. I proposed amendments, which were not supported by the other aldermen. Along with the council's submission as an alderman to the Tasmanian Planning Commission.

When the time came for the council to consider public comments, I declared a perceived conflict of interest (because I was a councillor) and removed myself (by sitting in the public gallery). Now with the weight of public opinion behind the same amendments, the council voted for them.

Taking a conservative approach, I declared a perceived conflict (although there was no actual conflict in that I received no vote). My course of action was entirely in line with the requirements of the code. But some people, whether by design or accident, were publicly critical and suggested I had acted inappropriately.

On the one hand, aldermen need to be fair and not biased for or against any proposal that would prevent them from doing their job. They also have a legal role to hear from, and represent, a wide range of perspectives in the community. We need to inform the process of creating new laws.

We need a strong code that prevents misconduct. However, a poorly drafted code that can be used to intimidate representatives and silence community concerns is a perverse outcome.