

Plain English outline of proposed changes Local Government Amendment (Code of Conduct) Bill 2022

Proposed change	Outline of proposed change	Relevant section(s) of the Bill
A standard code of conduct for councils	The Bill provides for a single standard code of conduct made by the Minister, which will automatically apply to all councils without variation.	4, 10, 11, 12, 13, 14, 20
Behaviour standards for councillors	<p>Councils will have the option to adopt an internal behaviour standard policy that sets the standards of behaviour acceptable for councillors in their interaction with the community, other councillors and council employees.</p> <p>The behaviour standard policy is in addition to the requirements of the code of conduct and may include other matters councils consider relevant to their needs.</p> <p>Any alleged breach of a council's behaviour standard policy will be dealt with internally by the relevant council and not the Code of Conduct framework.</p>	5, 14
Local dispute resolution policy	<p>All councils will be required to adopt a dispute resolution policy within 12 months after the amendment Act commences.</p> <p>The dispute resolution policy is to set out the process for resolving disputes that either fall under a council's behaviour standard policy or the code of conduct.</p> <p>Participation in the dispute resolution process will now be a prerequisite for making complaints where appropriate.</p> <p>Every person who participates in the dispute resolution process of a council must comply with that council's dispute resolution policy.</p>	4, 5, 14
Making a code of conduct complaint	<p>The Bill provides for additional details to be included as part of a complaint, namely:</p> <ul style="list-style-type: none"> • details of actions taken under the relevant council's behaviour standard policy (if any); and • details of actions, if any, taken under the relevant council's dispute resolution policy (where applicable). <p>In addition, the general manager is required to include copies of all the documentation held by the council in respect of the dispute resolution process undertaken by the council in respect of the complaint.</p>	14, 18

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Timeframe for completing initial assessment and referral by general manager	<p>This Bill stipulates a 14-day timeframe for completing the following actions:</p> <ul style="list-style-type: none"> • initial assessment of a complaint by the general manager for statutory compliance; • referral of a complaint by a general manager to the Code of Conduct Panel or the Director; and • referral of a complaint by a general manager to the Code of Conduct Panel where the Director refuses a referral. 	17, 18
Initial assessment of a code of conduct complaint	<p>An initial assessor appointed by the Executive Officer will now be responsible for undertaking the initial assessment previously conducted by the chairperson of the Code of Conduct Panel. This includes dismissing a complaint or referring it to the appropriate authority.</p> <p>The initial assessor is to be selected from one of the Australian lawyers on the Code of Conduct Panel.</p> <p>Two additional grounds for dismissing a complaint have been inserted, namely that:</p> <ul style="list-style-type: none"> • the complainant has not participated or satisfactorily participated in the dispute resolution process where appropriate; and • it is not in the public interest to investigate the complaint. A list of matters to be considered when applying the public interest test is included. <p>Where there are multiple code of conduct complaints against the same councillor or multiple councillors of the same council:</p> <ul style="list-style-type: none"> • The Executive Officer is to appoint an initial assessor who will conduct a single initial assessment for all the complaints. • The initial assessor may recommend a joint investigation if considered appropriate. • On recommendation from the initial assessor, the Executive Officer may convene an investigative Panel to conduct a joint investigation if: <ul style="list-style-type: none"> ○ the complaints are against less than half of the councillors of the relevant council; or ○ the Director has refused to accept a referral on the matter. • If the complaints are against half or more of the councillors of the relevant council, the Executive Officer is to refer the complaints to the Director, who may accept or refuse the referral. 	4, 19, 20, 21, 23, 25

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Investigating Panel for a code of conduct complaint	<p>The Bill distinguishes the investigating Panel convened to investigate and determine a complaint from the larger Code of Conduct Panel.</p> <p>The Bill also provides that the initial assessor of a complaint is excluded from being selected as a member of the investigating Panel subsequently convened to investigate and determine the complaint.</p>	4, 7, 8, 15, 16, 19, 20, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Conflict of interest	<p>The Bill provides for the disclosure and management of interest by members of the Code of Conduct Panel.</p> <p>A member of the Code of Conduct Panel must disclose to the Executive Officer any interest that is:</p> <ul style="list-style-type: none"> • relevant to the investigation and determination of a complaint, and • would in the opinion of the member prevent them from acting fairly in their appointment either as an initial assessor or a member of an investigating Panel. <p>Where such a disclosure has been made before appointment, the Executive Officer is not to appoint the affected member as the initial assessor or a member of the investigating Panel. If the disclosure is made after appointment, the Executive Officer is to replace the affected member and notify the complainant and other members of the investigating Panel, where applicable.</p> <p>In addition, a member of an investigating Panel is to disclose to other members of the investigating Panel, any interest that is relevant to the investigation and determination of a complaint.</p> <p>As a result of the above changes, all former councillors or employees of any council are now eligible for appointment by the Minister as members of the Code of Conduct Panel. Current councillors or employees of any council will however remain ineligible for appointment to the Code of Conduct Panel.</p>	6, 9
Costs and expenses to be borne by council	The Bill provides that the relevant council is responsible for all reasonable costs and expenses incurred by the investigating Panel for a complaint.	24

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Confidentiality of determination report and related document, report or information	<p>The Bill provides that a determination report (with the addendum) is not to be included within an item on the agenda for a relevant council meeting until:</p> <ul style="list-style-type: none"> • the expiration of the review period; or • where an application is made, the review is completed, dismissed, or the application is withdrawn. <p>All persons are prevented from disclosing information, documents or records provided to them by the Executive Officer or an investigating Panel in relation to a complaint, until the related determination report has been included within an item on the agenda for a council meeting.</p> <p>General managers and mayors are, however, permitted to discuss a determination report or addendum with each other for the purpose of arranging for the report to be tabled at a relevant council meeting.</p>	30
Notification of compliance with sanctions	<p>Where a councillor has complied with the sanctions imposed on them, the councillor is required to notify the Executive Officer (no longer the general manager) of such compliance and include evidence to that effect.</p> <p>This information is to be forwarded to the Director by the Executive Officer.</p>	32
Refund of fee accompanying lodgement of code of conduct complaint	<p>This Bill stipulates a 30-day timeframe for making a refund to a complainant.</p>	34
Transitional provisions	<p>A complaint received but not finalised before the commencement of the amended provisions is to be dealt with under the previous provisions.</p> <p>A complaint received on or after the commencement of the amended provisions is to be dealt with under the new provisions.</p>	37