

**Summary of Government response to public consultation on the draft Local Government Amendment (Code of Conduct) Bill 2022 and related matters**

Issue	Feedback	Government Response
Sanctions	<ul style="list-style-type: none"> <li>• Sanctions and other matters relating to breaches of the Code need to be strengthened to align with community standards.</li> <li>• Include more significant sanctions for matters of a more serious nature pertaining to breaches of governance standards, serious cultural issues, or loss of public confidence in local government.</li> </ul>	This will be considered as part of the Tasmanian Civil and Administrative Tribunal (TASCAT) feasibility study.
Eligibility requirements	<ul style="list-style-type: none"> <li>• Make it mandatory for all councillors to have Working With Vulnerable People registration prior to election.</li> <li>• Disqualification to hold registration should result in removal from Council</li> </ul>	<p>The Registration to Work with Vulnerable People Framework is not intended or designed as an eligibility threshold or character test for councillors.</p> <p>The Government will consider and consult separately on options, including legislative options, that could better address instances of very serious councillor misconduct that may not fall within the parameters of the current Code of Conduct Framework.</p>
Standard Code of Conduct	This should not be mandated. Councils should be able to vary the Code to suit their individual needs.	General feedback from the current and previous consultation suggests the need for consistency across definitions of terms and expectations. It is therefore prudent for there to be a Standard Code of Conduct. This is especially important considering the contemplated transfer of the Code of Conduct process to TASCAT.

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Behaviour standard policy	<p>Is there a need to legislate on this given that some councils already have similar policies in place?</p> <p>Options:</p> <ul style="list-style-type: none"> <li>• The Standard Code of Conduct should contain comprehensive provisions regarding expected behavioural standards.</li> <li>• Adoption of a Behaviour standard policy should be made mandatory – The Office of Local Government (OLG) in consultation with the Local Government Association of Tasmania (LGAT) should develop a model policy.</li> </ul>	<p>The optional requirement for councils to adopt a behaviour standard policy has been omitted in the final Bill.</p> <p>The Government will ensure the Standard Code of Conduct is as comprehensive as possible. It will also take into consideration the findings from a sector-led workplace cultural review of local government, which is currently being undertaken by LGAT.</p>
Local dispute resolution policy	<p>Local dispute resolution process is unlikely to work well between councillors and regular complainants as they have historically refused to participate under current guidelines.</p> <p>Matters to consider in preparation of model dispute resolution policy:</p> <ul style="list-style-type: none"> <li>• Mandatory participation in the local dispute resolution process.</li> <li>• Powers of dismissal at local dispute resolution level – to ensure exclusion of frivolous and vexatious complaints.</li> <li>• Methodology for assessing complaint</li> <li>• Provision for dealing with the disclosure and management of any conflict of interest arising during the dispute resolution process. It would be preferable that the mandatory 'local dispute resolution policy' also specify that any conflicts of interest – irrespective of whether the matter being considered arose from a potential breach of the code of conduct or the behaviour standard policy – are declared and managed.</li> </ul>	<p>Participation in a local dispute resolution process is now a prerequisite for lodging a code of conduct complaint, where such process is considered appropriate for resolving the complaint.</p> <p>The final Bill acknowledges that local dispute resolution may not be appropriate for all complaints.</p> <p>The amended section 28ZB allows for a complaint to be dismissed on the grounds of non-satisfactory participation in the dispute resolution process.</p> <p>OLG and LGAT will develop a model dispute resolution policy for adoption by councils. Feedback relating to the contents of the policy will be considered at this time.</p>

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	<ul style="list-style-type: none"> <li>• Costs and resourcing. Most councils do not have the human resources available to deal with these issues and staff should not be expected to in any event. It is likely that independent mediators will be engaged, and this will come at an additional cost to councils.</li> <li>• Person(s) responsible for determining complaint.</li> <li>• Appointment of independent mediator potentially from a pool of professionally accredited mediators (through LGAT or DPAC) as is the case with the State's education sector</li> <li>• LGAT to consider procurement of an informal dispute resolution provider(s) who can provide this service on a whole of sector basis 'at arm's length' (perhaps similar to how Employee Assistance Programs work). Such a provider may also be able to meet sanction requirements such as mandatory training.</li> <li>• A requirement for parties to be agreeable to the outcome of the dispute resolution process.</li> <li>• Weight to be attached to the outcome of the dispute resolution process – potential for outcome to be upheld or at the very least hold weight if the matter was then referred as a code complaint.</li> <li>• Power to dismiss complaints at initial assessment where the complainant has not genuinely participated in the local dispute resolution process or wants the complaint to be sent for initial assessment even though the complaint is trivial, vexatious, frivolous or contains no substance.</li> <li>• Consider lessons learnt from previous local dispute process.</li> </ul>	
Making a code of conduct complaint	As part of the information to be provided, include a requirement to specify reasons why the outcome of the local	This has been included in the final Bill.

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	dispute resolution process is not accepted (essentially, grounds of appeal).	
Initial assessment	Consider a pool of 2 – 3 lawyers specifically assigned to conduct initial assessments. These lawyers would not sit on any investigating Panel. They would also be required to meet twice a year with the LGAT President and CEO to remain abreast of current local government matters specifically those that may be impacting the complaint process.	<p>The Government disagrees with this proposal. It will be useful for the initial assessors to sit on investigating Panels to gain knowledge and experience about that aspect of the Code of Conduct process.</p> <p>Meetings between Panel members, LGAT and potentially OLG could be useful, however, the Act cannot impose such requirements.</p>
	<p>Consider additional grounds for dismissing a complaint:</p> <ul style="list-style-type: none"> <li>• a clause which allows dismissal to occur based on the outcome of the local process being considered reasonable</li> <li>• pattern of complaints from regular complainants.</li> </ul>	<p>The first additional ground is contained in section 28ZB.</p> <p>The second ground should fall under assessment of frivolous, vexatious or trivial.</p>
	<p>Need to clarify:</p> <ul style="list-style-type: none"> <li>• what constitutes frivolous, vexatious and trivial</li> <li>• the guidelines for the public interest test</li> <li>• when a complainant/respondent has not satisfactorily participated in the resolution dispute process and the use of 'where appropriate' in that context</li> </ul>	<p>An explanatory material about constitutes frivolous, vexatious and trivial will be published as part of the review process. It should be noted that this information is already contained in the <i>Initial Assessment Guidelines for the Code of Conduct Panel</i>.</p> <p>The final Bill contains guidelines for the public interest test similar to that contained in the <i>Integrity Commission Act 2009</i>.</p>

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		The assessment of satisfactory participation in the dispute resolution process and the appropriateness of the dispute resolution process should be left to the discretion of the initial assessor who is a lawyer.
	Panel should be reserved for matters of a more serious nature pertaining to breaches of governance standards, serious cultural issues or loss of public confidence in local government.	Agreed.
Timeframe for completing initial assessment and referral by the General Manager	<p>Fourteen days is too short for respondents to access legal advice in relation to complaints and the appropriate course of action for them to take regarding dispute resolution.</p> <p>Given that dispute resolution is the first port of call after initial assessment of statutory compliance, 28 days would be a more realistic timeframe.</p>	<p>The 14-day period provided for in the Bill is for a council to process complaints at the initial assessment stage.</p> <p>This would be after attempts at resolving the complaint under the local dispute resolution process. By the initial assessment stage, parties should have sought legal advice if required.</p>
Costs and expenses to be borne by council	<p>Where a complaint is dismissed the cost of the investigation should be borne by the complainant.</p> <p>The Code of Conduct Panel should be empowered to award administrative costs associated with the assessment, hearing and determination process at the discretion of the Panel.</p> <p>The Code of Conduct Panel should be empowered to award costs for expenses incurred for legal advice and/or representation of the councillor/s associated with the defence of a complaint, awarded at the discretion of the Panel, should the Panel find in favour of the defendant.</p>	This will be considered as part of the TASCAT feasibility study.

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Insurance policy	Consider the inclusion of insurance protections for councillors as is afforded to directors who preside on boards of incorporated associations in a voluntarily capacity, through protections such as Directors Liability Insurance policies	This is beyond the scope of the Framework review.
Conflict of Interest	Past elected representatives and employees should not within two years of last service, act as mediator for a dispute resolution process or sit as a member of the Code of Conduct panel that is considering a complaint in relation to the Council in which they served.	<p>The final Bill removes existing restrictions on persons who have been councillors or employees of any council within the immediately preceding two years of a complaint from being on the Code of Conduct Panel. Only current councillors and current employees of a council are restricted from being members of the Code of Conduct Panel.</p> <p>The restrictions have been replaced with a provision dealing with the disclosure and management of interests by members of the Code of Conduct Panel.</p> <p>A similar disclosure of interest provision will be considered in the development of the model dispute resolution policy by OLG and LGAT.</p>
	Consistency is required between the Draft Bill and Model Code of Conduct – the Draft Bill uses 'direct, indirect or perceived', whereas the Model Code uses 'actual, potential or perceived'. The Integrity Commission also uses 'actual, potential or perceived' in its educational material.	Agreed. All occurrences of 'direct, indirect or perceived' have been changed to 'actual, potential or perceived' in the final Bill.

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	<p>It would be preferable for the principal Act to use terms and definitions that are consistent with the Commission's usage, and with common usage.</p> <p>Investigating Panel (28OA(4)(b)) - The provision for a member of the investigating panel to determine that he or she is not precluded from acting fairly is overly reliant on that person's subjective decision. Such assessments are better made by someone who does not have the conflict, for example, by the investigating panel convened in the matter and to which the declaration is made.</p>	<p>If other members of the investigating Panel disagree with the affected Panel member's subjective decision not to resign, they should be able to resolve this internally.</p> <p>The Government has chosen not to legislate on this as parties to a complaint can apply to the Magistrates Court (Administrative Appeals Division) for a review of the Panel's determination on the ground that the Panel failed to comply with the rules of natural justice.</p>
Other matters	Consider the potential for parties to be afforded legal representation in circumstances of alleged more serious breaches and that appeal rights should be available.	This is being considered as part of the TASCAT feasibility study.