

FACT SHEET

Local Government Amendment (Code of Conduct) Bill 2015

The Local Government Amendment (Code of Conduct) Bill 2015 proposes a number of amendments to the *Local Government Act 1993* (the Act) to:

- provide a strengthened and streamlined councillor code of conduct framework;
- make it optional for a council to convene an Annual General Meeting (AGM);
- reduce red-tape associated with the requirements of a council to publish newspaper notices relating to AGMs and impounded animals;
- provide clarity regarding a general manager providing a councillor with private and confidential information relating to a person, in respect of a document that is relevant to an agenda item of a council meeting;
- provide the Director of Local Government (the Director) with the express power to reject a complaint under the Act if it is considered frivolous or vexatious; and
- restrict the eligibility criteria for nominating as a councillor to persons who have their principal place of residence in Tasmania.

I Councillor code of conduct

The Bill inserts a new Division 3A within Part 3 of the Act to provide new provisions relating to code of conduct complaints.

(i) Code of Conduct Panel

The new code of conduct framework replaces the 29 separate council code of conduct panels, and the Local Government Association of Tasmania (LGAT)'s Standards Panel, with a single and independent statewide code of conduct panel.

The Code of Conduct Panel is constituted by three members derived from the pool of members appointed by the Minister responsible for local government. One member is an Australian lawyer and the remaining two members are persons with experience in local government. An Executive Officer is appointed by the Department of Premier and Cabinet (DPAC) to undertake the administrative functions of the Panel. The chairperson of the Panel will be a member with experience in local government.

The relevant council to the complaint is responsible for payment of the remuneration and allowances of the Panel members and executive officer.

(ii) Model code of conduct

A council adopts a model code of conduct which prescribes the standard of behaviour that councillors are required to meet when performing their role. The model code is made by Order of the Minister and a council may supplement or amend the model code of conduct within the confines of the model code and the Act. A council is to review its code of conduct within three months after each ordinary election.

(iii) Making a code of conduct complaint

A person may make a code of conduct complaint against a councillor within 90 days after the councillor has allegedly committed the contravention.

A code of conduct complaint is referred to the Code of Conduct Panel if it is against less than half of all councillors of the council, or to the Director if it is against half or more of the councillors of the council.

(iv) Assessment and investigation of complaint

On receiving a code of conduct complaint, the chairperson of the Code of Conduct Panel decides whether to accept, dismiss or refer the complaint to another person/authority. If the code of conduct complaint is dismissed because it is frivolous or vexatious, the chairperson may direct the complainant not to make a further complaint in relation to the same matter, unless the complainant provides substantive new information.

The Code of Conduct Panel investigates and determines a code of conduct complaint with as little formality and as expeditiously as possible, and makes every endeavour to meet the prescribed timeframes. The Panel is provided with flexibility in hearing and determining complaints, but must observe the rules of natural justice.

(v) Determination of complaint and sanctions

After completing its investigation, the Code of Conduct Panel determines whether to uphold the complaint, dismiss the complaint or uphold part of the complaint and dismiss the remainder of the complaint.

If a complaint is upheld, the Panel may impose one or more of the prescribed sanctions on the councillor against whom the complaint is made. The Bill provides a new sanction to suspend a councillor for a maximum period of one month without allowances. This new sanction is in addition to the sanctions of cautioning or reprimanding a councillor, or requiring them to apologise to a person or attend counselling or a training course.

(vi) Offence

If a councillor fails to comply with a sanction imposed by the Code of Conduct Panel that requires them to apologise to a person or attend counselling or a training course, the matter is referred to the Director and that councillor may face a penalty of a fine not exceeding 50 penalty units.

(vii) Costs

The complainant and the respondent councillor bear their own costs relating to the investigation and determination of a code of conduct complaint.

(viii) Refund of fees

A council refunds a code of conduct lodgement fee under prescribed circumstances, including when the complaint is referred to the Director or another person/authority, the complaint is withdrawn by the complainant, or the complaint is upheld by the Panel.

(ix) Review of Code of Conduct Panel decision

The Bill provides an appeal right from a Code of Conduct Panel determination to the Magistrates Court (Administrative Appeals Division) on the basis that the Panel failed to comply with the rules of natural justice.

(x) Publicly reporting code of conduct complaints in annual report

The Bill amends subsection 72(1) of the Act to require a council to report in its annual report the number of code of conduct complaints that were upheld by the Code of

Conduct Panel during the preceding financial year and the total costs met by the council during the preceding financial year in respect to all code of conduct complaints.

(xi) Councillor allowances

The Bill amends section 340A of the Act to provide that councillors who have had the sanction of suspension imposed on them by the Code of Conduct Panel are not entitled to receive allowances for the period of the suspension.

(xii) Immunity from liability

The Bill amends section 341 of the Act to replace the reference to the previous Code of Conduct Panel/Standards Panel with the Executive Officer and Code of Conduct Panel, in relation to immunity from liability for an honest act or omission done or made in the exercise or performance of a function under the Act or any other Act.

(xiii) Membership of Code of Conduct Panel

The Bill inserts a new Schedule 2A to provide the requirements for membership of the Code of Conduct Panel. This includes terms of office, holding other office (including the office of a State Service Officer or a State Service employee) and vacation of office.

(xiv) Vacation of office of councillor

The Bill amends Schedule 5 of the Act to provide that the office of councillor becomes vacant if a councillor breaches a code of conduct three times for which the suspension sanction is invoked, during the councillor's current term of office.

(xv) Transitional provisions

The Bill provides the transitional provisions consequent on the *Local Government Amendment (Code of Conduct) Act 2015*. This includes how a council is to handle code of conduct complaints that have commenced under the previous Act, and the continuation and termination of membership of the previous Code of Conduct Panel and the Standards Panel.

2 Council Annual General Meeting

The Bill amends section 72B of the Act to allow a council to determine whether or not to hold an AGM. If a council determines to hold an Annual General Meeting (AGM), a council is to hold it on a date no later than 15 December each year.

The Bill amends section 72(3) of the Act to provide that submissions received by a council on its annual report are to be considered at the council's AGM or if the council has decided not to hold an AGM, at the next practicable ordinary meeting of the council.

3 Council newspaper notification requirements

The Bill amends section 72B of the Act to provide that a council is only required to publish one newspaper notice regarding an AGM, instead of two notices as is currently required.

The Bill amends Division 5 within Part 12 of the Act to provide that a council is only required to publish one newspaper notice regarding an impounded animal, instead of two notices as is currently required. The single newspaper notice is to contain all relevant information in relation to the impounded animal, as specified under the Act.

4 Disclosure of information

The Bill amends section 28D of the Act to provide a specific dispute resolution process regarding the relevance of documents relating to an agenda item of a council meeting. The new process provides that, in respect to a document relating to an agenda item of a council meeting, a general manager may withhold from a relevant document private and confidential information relating to a person, if that private and confidential information is not relevant to the agenda item. If a general manager refuses to provide a document (either in whole or part) on the basis that he or she considers that it is not relevant to an agenda item, the councillor requesting the document may seek a decision of the council regarding the document and the general manager is to comply with the council decision.

The Bill amends section 338A (Disclosure of information) of the Act to exclude the application of the offence provisions relating to disclosure of information from any other disclosure of information requirement under the Act or any other law.

5 Complaints against non-compliance or offence

Without limiting the ability of the Director to determine the procedure for handling and investigating complaints made under the Act, the Bill amends section 339E of the Act to provide the Director with the express power to dismiss a complaint if he or she considers that the complaint is frivolous or vexatious.

6 Eligibility for nomination as councillor

The Bill amends section 270 of the Act to restrict the eligibility criteria for nominating as a councillor to persons who have their principal place of residence in Tasmania. The Bill also amends section 315 of the Act to provide that it is an offence to make a false or misleading statement in relation to making a notice of nomination as a candidate for the office of councillor.