

TASMANIA

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**LOCAL GOVERNMENT AMENDMENT (CODE OF  
CONDUCT) BILL 2015**

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# LOCAL GOVERNMENT AMENDMENT (CODE OF CONDUCT) BILL 2015

*(Brought in by the Minister for Planning and Local Government, the Honourable Peter Carl Gutwein)*

## A BILL FOR

### An Act to amend the *Local Government Act 1993*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### 1. Short title

This Act may be cited as the *Local Government Amendment (Code of Conduct) Act 2015*.

#### 2. Commencement

This Act commences on a day to be proclaimed.

#### 3. Principal Act

In this Act, the *Local Government Act 1993*\* is referred to as the Principal Act.

#### 4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

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- (a) by inserting the following definitions after the definition of *closing day*:

***code of conduct*** means the model code of conduct as adopted by a council under section 28T, as amended or substituted from time to time under that section;

***code of conduct complaint*** means a complaint made under section 28V and, where appropriate, includes a part of such a complaint;

- (b) by omitting “section 28G;” from the definition of *Code of Conduct Panel* and substituting “section 28K;”;

- (c) by inserting the following definition after the definition of *electoral roll*:

***Executive Officer*** means the Executive Officer appointed under section 28M;

- (d) by inserting the following definition after the definition of *member*:

***model code of conduct*** means a model code of conduct made by the Minister under section 28R, as amended or substituted under that section from time to time;

- (e) by omitting the definition of *Standards Panel*.

**5. Section 28D amended (Documents relating to agendas)**

Section 28D of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (4):

(4A) If the general manager considers that –

- (a) a document requested by a councillor contains private and confidential information relating to a person; and
- (b) that information is not relevant to an item on the agenda of a meeting of the council or a council committee –

the general manager may provide the document after redacting or otherwise removing that information.

- (b) by inserting the following subsections after subsection (5):

- (6) The general manager may refuse to provide the councillor with a document, or part of a document, if the general manager considers that the document, or part, is not

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relevant to an item on the agenda of a meeting of the council or a council committee.

- (7) If the general manager under subsection (4A) has provided a document to a councillor after redacting or otherwise removing that information the council may direct the general manager to provide the document to the councillor without redacting or otherwise removing any information.
- (8) If the general manager under subsection (6) has refused to provide a document or part of a document to a councillor, the council may direct the general manager –
  - (a) to provide the document or part to the councillor without redacting or otherwise removing any information from the document or part under subsection (4A); or
  - (b) to determine under subsection (4A) whether any information in the document should be redacted or otherwise removed, and then to



provide the document to the councillor, whether with or without any information being so redacted or removed.

- (9) The general manager is to comply with a direction of the council given under subsection (8).

**6. Sections 28E, 28F, 28G, 28H and 28I repealed**

Sections 28E, 28F, 28G, 28H and 28I of the Principal Act are repealed.

**7. Part 3, Division 3A inserted**

After section 28J of the Principal Act, the following Division is inserted in Part 3:

***Division 3A – Code of conduct, complaints and complaint resolution***

***Subdivision 1 – Code of Conduct Panel and Executive Officer***

**28K. Code of Conduct Panel**

- (1) The Code of Conduct Panel is established.
- (2) The Minister is to appoint as members of the Code of Conduct Panel as many of the following persons as the Minister considers appropriate:

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- (a) Australian lawyers;
  - (b) persons who have experience in local government but who are not councillors or employees of any council and have not been such councillors or employees within the immediately preceding 2 years.
- (3) Before appointing persons to be members of the Code of Conduct Panel, the Minister may give notice, in any manner he or she considers appropriate, that persons interested in being members may provide written expressions of interest to the Minister.
- (4) Schedule 2A applies in relation to the members of the Code of Conduct Panel.
- (5) The instrument of appointment of a member of the Code of Conduct Panel may include conditions of appointment that are not inconsistent with Schedule 2A.

**28L. Constitution of Code of Conduct Panel**

- (1) In the investigation and determination of a code of conduct complaint against a councillor, the Code of Conduct Panel is to be constituted by 3 members selected by the Executive Officer of whom –

- (a) one is to be an Australian lawyer;  
and
  - (b) 2 are to be persons who have  
experience in local government.
- (2) The chairperson of the Code of Conduct Panel is a person referred to in subsection (1)(b) who is appointed as chairperson by the Executive Officer.

**28M. Executive Officer**

- (1) The Secretary of the Department, on behalf of the Crown, is to appoint a person as Executive Officer in relation to the Code of Conduct Panel.
- (2) If the Secretary of the Department appoints a State Service officer or a State Service employee as Executive Officer, the following provisions apply:
  - (a) that officer or employee may hold a position or office under the *State Service Act 2000* in conjunction with the office of Executive Officer;
  - (b) the *State Service Act 2000* does not apply in relation to the office of Executive Officer;
  - (c) that officer or employee is not entitled to receive any

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remuneration as Executive  
Officer.

- (3) The Executive Officer is appointed for the term, and on the conditions, specified in his or her instrument of appointment.

**28N. Functions of Executive Officer**

The Executive Officer has the following functions:

- (a) administrative functions in relation to the Code of Conduct Panel;
- (b) the functions specified in his or her instrument of appointment;
- (c) other functions prescribed by this Act;
- (d) other functions determined by the Minister.

**28O. Payment of remuneration and allowances to members of Code of Conduct Panel and Executive Officer**

- (1) In this section –

*State-employed Executive Officer*  
means an Executive Officer who is also a State Service officer or State Service employee.

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- (2) A member of the Code of Conduct Panel is entitled to receive the remuneration and allowances determined by the Minister from time to time.
- (3) The remuneration and allowances payable under subsection (2) to a member of the Code of Conduct Panel in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.
- (4) An Executive Officer –
  - (a) who is not a State-employed Executive Officer is entitled to receive the remuneration and allowances determined by the Minister from time to time; or
  - (b) who is a State-employed Executive Officer is entitled to receive only the allowances determined by the Minister from time to time.
- (5) The remuneration and allowances payable under subsection (4) to an Executive Officer in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.
- (6) In the case of a State-employed Executive Officer, the remuneration that would be payable to an Executive Officer in relation to a code of conduct complaint

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were he or she not a State-employed Executive Officer is payable –

- (a) to the government department in or for which the State-employed Executive Officer is employed in his or her capacity as a State Service officer or State Service employee; and
- (b) by the relevant council.

**28P. Requesting provision of information**

- (1) Each of the following persons may request, in writing, the Code of Conduct Panel or Executive Officer to provide information and documents relating to the performance of its or his or her functions as specified in the request:
  - (a) the Minister;
  - (b) the Secretary of the Department;
  - (c) the Director;
  - (d) the Board.
- (2) The Code of Conduct Panel or Executive Officer is to comply with a request made under subsection (1).

**28Q. Providing information to Code of Conduct Panel**

If a person is required to, or may, provide a document to the Code of Conduct Panel or the chairperson of the Code of Conduct Panel, the person may provide it to either the Panel or the Executive Officer.

*Subdivision 2 – Code of conduct*

**28R. Model code of conduct**

- (1) The Minister, by order, is to make a model code of conduct relating to the conduct of councillors.
- (2) The Minister, by order, may amend or revoke and substitute the model code of conduct.
- (3) The Minister is to make a copy of the model code of conduct available to each council as soon as practicable after the model code of conduct is made, amended or revoked and substituted.

**28S. Contents of model code of conduct**

- (1) The model code of conduct as made, amended or substituted under section 28R must be consistent with this Act and is to provide for the following matters:

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- (a) what constitutes a conflict of interest for a councillor and the procedure to be followed if a councillor has a conflict of interest;
- (b) the proper and improper use by a councillor of his or her office with the council;
- (c) the proper and improper use by a councillor of council resources;
- (d) the proper and improper use by a councillor of information obtained in his or her office with the council;
- (e) the right of a councillor to receive gifts and benefits and the procedure to be followed by a councillor when receiving gifts and benefits in the situations specified in the model code of conduct;
- (f) the appropriate or inappropriate behaviour of a councillor in his or her relationships with the community, other councillors and council employees;
- (g) the proper and improper manner in which a councillor represents himself or herself as a councillor, and represents the council, to the community;



- (h) any prescribed matter.
- (2) The model code of conduct may provide for any other matter relating to the conduct of councillors that the Minister considers appropriate and is consistent with this Act.

**28T. Code of conduct**

- (1) Within 3 months after the day on which an order under section 28R(1) takes effect, each council must adopt the model code of conduct, either with or without any variations permitted under subsection (3), as its code of conduct relating to the conduct of its councillors.
- (2) Within 3 months after the Minister makes available to councils an amendment to the model code of conduct or a substitute model code of conduct, a council must adopt the amendment, or revoke its code of conduct and adopt the substitute model code of conduct as its code of conduct, either with or without variations permitted under subsection (3).
- (3) In adopting the model code of conduct, an amendment to the model code of conduct or a substitute code of conduct, a council may vary the model code of conduct, amendment or substitute model code of conduct –

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- (a) in any manner that is allowed by the model code of conduct, amendment or substitute model code of conduct or is prescribed; and
  - (b) in any other manner that is not inconsistent with the model code of conduct, model code of conduct as amended or substitute model code of conduct and this Act.
- (4) The general manager is to make a copy of the council's code of conduct available –
- (a) for public inspection, free of charge, at the public office of the council during ordinary office hours and on its website; and
  - (b) for purchase at a reasonable charge.
- (5) A council is to review its code of conduct within 3 months after each ordinary election.

**28U. Compliance with code of conduct**

In performing the functions and exercising the powers of his or her office with a council, a councillor is to comply with the provisions of the council's code of conduct.

***Subdivision 3 – Complaints against councillors***

**28V. Making code of conduct complaint against councillor**

- (1) A person may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's code of conduct.
- (2) A person may make a complaint against more than one councillor in relation to the contravention by the councillors of the relevant council's code of conduct if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged contravention of the code of conduct.
- (3) A complaint is to –
  - (a) be in writing; and
  - (b) state the name and address of the complainant; and
  - (c) state the name of each councillor against whom the complaint is made; and
  - (d) state the provision of the relevant code of conduct that the councillor has allegedly contravened; and

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- (e) contain details of the behaviour of each councillor that constitutes the alleged contravention; and
  - (f) be lodged with the general manager of the relevant council within 90 days after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and
  - (g) be accompanied by any prescribed fee.
- (4) A complaint may not be made by more than 2 complainants jointly.

**28W. Withdrawal of or from code of conduct complaint**

- (1) All complainants in a code of conduct complaint, jointly, may withdraw the complaint, at any time before the complaint has been determined by the Code of Conduct Panel, by notice in writing provided to the general manager or the Code of Conduct Panel.
- (2) If a code of conduct complaint is made by 2 complainants, one of those complainants may withdraw from the complaint, by notice in writing provided to the general manager or the Code of Conduct Panel, at any time before the

complaint has been determined by the Code of Conduct Panel.

- (3) If a notice withdrawing a code of conduct complaint, or withdrawing from a code of conduct complaint, is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the withdrawal.
- (4) On becoming aware of a notice withdrawing a code of conduct complaint or a notice withdrawing from a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the withdrawal:
  - (a) the general manager, unless the notice was originally provided to him or her under subsection (3);
  - (b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

**28X. Amendment of code of conduct complaint**

- (1) A complainant, in writing provided to the general manager or the Code of Conduct Panel, may amend a code of conduct complaint at any time before the Code of Conduct Panel commences an investigation into the complaint.

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- (2) If the Code of Conduct Panel has commenced its investigation into a code of conduct complaint, a complainant may amend the complaint with the consent of the Code of Conduct Panel.
- (3) If a notice amending a code of conduct complaint is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the amendment.
- (4) On becoming aware of an amendment to a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the amendment:
  - (a) the general manager, unless the complainant provided the amendment to the general manager;
  - (b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

**28Y. Initial assessment of complaint by general manager**

- (1) On receiving a code of conduct complaint, a general manager is to assess the complaint to determine whether it meets the requirements of section 28V.

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- (2) Subsection (1) does not apply if the general manager is the complainant.
- (3) If the general manager determines that the code of conduct complaint does not meet the requirements of section 28V, he or she is to return the complaint to the complainant and notify the complainant, in writing –
  - (a) that the complaint does not meet the requirements of section 28V for the reasons set out in the notice; and
  - (b) that the complainant may lodge an amended or substituted complaint without payment of a further fee under section 28V(3)(g) –
    - (i) within the period specified in section 28V for lodging a code of conduct complaint; or
    - (ii) if the complaint is returned to the complainant after the end of that period or less than 14 days before the end of that period, within 14 days after receiving the returned complaint.

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**28Z. Referral of code of conduct complaint by general manager**

- (1) On receiving a code of conduct complaint and after determining, if required to do so, that the complaint meets the requirements of section 28V, the general manager –
  - (a) if the complaint is against less than half of all the councillors of the council, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer; and
  - (b) if the complaint is against one half or more of all the councillors of the council, is to refer the complaint to the Director.
- (2) If a code of conduct complaint is referred to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the general manager of that determination within 28 days after receiving the referral.
- (3) If the Director fails to notify the general manager as required by subsection (2), the Director is taken to have accepted the referral of the code of conduct complaint.
- (4) If the Director accepts the referral of the code of conduct complaint –



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- (a) the complaint is taken to be a complaint made to the Director under section 339E and ceases to be a code of conduct complaint; and
  - (b) the Director is to proceed under that section in relation to the complaint.
- (5) If the Director refuses to accept the referral of the code of conduct complaint, the general manager, as soon as practicable, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer.
- (6) If a code of conduct complaint is referred to the Code of Conduct Panel, the Executive Officer is to –
  - (a) keep the original complaint or a copy of it; and
  - (b) in accordance with section 28L, constitute the Code of Conduct Panel to investigate the complaint and appoint the chairperson of the Panel; and
  - (c) provide a copy of the complaint to the chairperson.

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**28ZA. Initial assessment of code of conduct complaint by chairperson of Code of Conduct Panel**

- (1) On receiving a code of conduct complaint, the chairperson of the Code of Conduct Panel is to do an initial assessment of the complaint to determine whether to do one or more of the following:
  - (a) dismiss the whole complaint;
  - (b) dismiss part of the complaint;
  - (c) refer the whole complaint to another person or authority;
  - (d) refer part of the complaint to another person or authority;
  - (e) determine that the whole complaint is to be investigated and determined by the Code of Conduct Panel;
  - (f) determine that part of the complaint is to be investigated and determined by the Code of Conduct Panel.
- (2) The initial assessment is to be completed within such period as will enable the chairperson of the Code of Conduct Panel to comply with subsection (3).

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- (3) Within 28 days after receiving the code of conduct complaint, the chairperson of the Code of Conduct Panel –
- (a) is to notify the complainant and the general manager, in writing, of the result of the initial assessment and the reasons for it; and
  - (b) if the chairperson has determined that the whole or part of the complaint is to be investigated and determined by the Code of Conduct Panel, is to –
    - (i) notify the councillor against whom the complaint is made, in writing, of the result of the initial assessment and the reasons for it; and
    - (ii) provide a copy of the complaint to that councillor; and
    - (iii) provide a copy of the complaint to the other members of the Code of Conduct Panel.

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**28ZB. Dismissal of code of conduct complaint on initial assessment**

- (1) The chairperson of the Code of Conduct Panel, on an initial assessment, may dismiss the code of conduct complaint, or part of it, if he or she considers that –
  - (a) the complaint or part is frivolous or vexatious; or
  - (b) the complaint or part does not substantially relate to a contravention of the code of conduct of the relevant council; or
  - (c) the complainant has made the complaint or part in contravention of –
    - (i) a determination of the chairperson made under subsection (2); or
    - (ii) a determination of the Code of Conduct Panel made under section 28ZI(3).
- (2) If the chairperson of the Code of Conduct Panel dismisses the code of conduct complaint or part of it on the basis that it is frivolous or vexatious, the chairperson, in the notice provided under section 28ZA(3), may direct the complainant not to make a further

complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

**28ZC. Referral of code of conduct complaint on initial assessment**

- (1) The chairperson of the Code of Conduct Panel, on an initial assessment, may refer the code of conduct complaint, or part of it, to any person or other authority that the chairperson considers appropriate if the chairperson reasonably considers that –
  - (a) the complaint discloses that an offence may have been committed; or
  - (b) the complaint would be more appropriately dealt with by that other person or authority.
- (2) The person or other authority to which the code of conduct complaint is referred –
  - (a) may accept the referral or refuse to accept the referral; and
  - (b) is to notify the chairperson of the Code of Conduct Panel of that acceptance or refusal within 28 days after receiving the referral.

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- (3) If the person or other authority to whom the code of conduct complaint is referred fails to notify the chairperson of the Code of Conduct Panel as required by subsection (2), the person or authority is taken to have accepted the referral of the code of conduct complaint.
- (4) If the person or other authority to whom the code of conduct complaint is referred accepts the referral, the code of conduct complaint ceases to be a code of conduct complaint.
- (5) If the person or other authority to which the code of conduct complaint is referred refuses to accept the referral, the chairperson of the Code of Conduct Panel is to do a further initial assessment under section 28ZA within 21 days after being notified of that refusal.
- (6) On doing a further initial assessment under section 28ZA as required by subsection (5) –
  - (a) the chairperson is to comply with section 28ZA as if doing a first initial assessment; and
  - (b) if the chairperson determined on the original initial assessment to investigate a part of the code of conduct complaint and had notified the councillor against whom the complaint was made of

that determination, the chairperson is to notify the councillor of the result of the further initial assessment in addition to any other notice the chairperson is required to provide under section 28ZA.

**28ZD. Time for investigating and determining code of conduct complaint**

- (1) The Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint –
  - (a) if the chairperson of the Panel has determined under section 28ZA to investigate and determine the whole complaint, within 90 days after that determination; or
  - (b) if the chairperson of the Panel has determined under section 28ZA to investigate and determine part of the complaint but to refer to a person or other authority another part of the complaint, within 120 days after that determination.
- (2) If the Code of Conduct Panel is unable to investigate and determine a code of conduct complaint, or part of a code of conduct complaint, within the period specified in subsection (1), the Panel is to include the reasons for that in its written

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determination made in accordance with  
section 28ZJ.

**28ZE. Conduct of investigations generally**

- (1) In the investigation of a code of conduct complaint, the Code of Conduct Panel –
  - (a) is to conduct the investigation with as little formality, and as expeditiously, as is reasonably practicable in the particular circumstances; and
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate; and
  - (c) must observe the rules of natural justice; and
  - (d) may regulate its own procedure.
- (2) In the investigation of a code of conduct complaint, the Code of Conduct Panel may –
  - (a) determine what evidence is required to enable it to determine the complaint; and
  - (b) subject to subsection (3), determine the manner in which it will accept evidence from the complainant, the councillor



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against whom the complaint is made and any witnesses.

- (3) In an investigation of a code of conduct complaint, the Code of Conduct Panel may accept evidence given orally on oath or affirmation or by written submissions and documents provided in, or annexed to, a statutory declaration.
- (4) At any time during an investigation of a code of conduct complaint, the Code of Conduct Panel, in writing, may request the complainant, the councillor against whom the complaint is made, a witness or the relevant council to provide information and documents, or further information and documents (including information, and documents containing information, of a kind referred to in section 338A), that the Panel considers may be relevant to the determination of the complaint.
- (5) A person who has been requested under subsection (4) to provide information and documents, or further information and documents, is to do so within –
  - (a) the period specified in the request; or
  - (b) such longer period as the Code of Conduct Panel, before the expiration of the period specified in the request, may allow.

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- (6) If a council or a councillor in response to a request under subsection (4) provides to the Code of Conduct Panel information, or a document containing information, of a kind referred to in section 338A, a member of the Code of Conduct Panel must not disclose that information or document to any person except as otherwise allowed by sections 28ZJ and 28ZK.

**28ZF. Investigation of multiple code of conduct complaints against same councillor or multiple councillors**

- (1) If there are a number of code of conduct complaints against the same councillor or different councillors of the same council and the complaints relate to the same contravention of the council's code of conduct, the Code of Conduct Panel may determine to conduct a joint investigation into all the complaints.
- (2) The Code of Conduct Panel may only make a determination to conduct a joint investigation after considering the wishes of all complainants and councillors against whom the complaints are made.
- (3) If the Code of Conduct Panel determines under subsection (1) to conduct a joint investigation and the total number of councillors involved in the investigation is half or more of all the councillors of

the relevant council, the Panel is to refer the complaints to the Director.

- (4) If the Code of Conduct Panel refers the code of conduct complaints to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the Panel of that determination within 28 days after receiving the referral.
- (5) If the Director fails to notify the Code of Conduct Panel as required by subsection (4), the Director is taken to have accepted the referral of the code of conduct complaints.
- (6) If the Director accepts the referral of the code of conduct complaints –
  - (a) the complaints are taken to be complaints made to the Director under section 339E and cease to be code of conduct complaints; and
  - (b) the Director is to proceed under that section in relation to the complaints.

**28ZG. When hearing is to be held**

- (1) Except as provided by subsection (2), the Code of Conduct Panel is to conduct the investigation of a code of conduct complaint by means of a hearing.

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- (2) The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that –
- (a) neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or
  - (b) a hearing would be inappropriate in the circumstances because of the possibility that the complainant, the councillor against whom the complaint is made or a witness may suffer intimidation or bribery; or
  - (c) a hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.
- (3) If the Code of Conduct Panel determines not to hold a hearing, the members of the Panel may participate in a meeting of the Panel by telephone, television conference, written communication or any other means of communication approved by the Panel.

- (4) At any time after the Code of Conduct Panel has determined not to hold a hearing, the Panel may determine to hold a hearing in relation to the code of conduct complaint as a whole or to part of the code of conduct complaint.

**28ZH. Hearings**

- (1) Subject to this Act, the Code of Conduct Panel may regulate the procedure of its hearings.
- (2) A hearing –
  - (a) is to take the form of an inquiry by the Code of Conduct Panel into the matters raised in the code of conduct complaint that are in dispute; and
  - (b) is not to be adversarial.
- (3) At a hearing, witnesses may be called by the complainant, the councillor against whom the complaint is made and the Code of Conduct Panel.
- (4) Evidence at a hearing is to be taken by the Code of Conduct Panel –
  - (a) on oath or affirmation; and
  - (b) subject to a requirement of the Code of Conduct Panel under subsection (5), may be given orally or in writing.

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- (5) The Code of Conduct Panel may require a person, by written notice, to attend a hearing and give evidence in person or provide documents, or both.
- (6) If the Code of Conduct Panel consents, a complainant or councillor against whom the code of conduct complaint is made may be represented at a hearing by an advocate who is not an Australian lawyer.
- (7) A hearing is closed to the public.

**28ZI. Determination of code of conduct complaint**

- (1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –
  - (a) upholding the complaint; or
  - (b) dismissing the complaint; or
  - (c) upholding part of the complaint and dismissing the remainder of the complaint.
- (2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:
  - (a) a caution;

- (b) a reprimand;
  - (c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
  - (d) a requirement to attend counselling or a training course;
  - (e) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding one month.
- (3) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

**28ZJ. Determination report**

- (1) The determination of a code of conduct complaint by the Code of Conduct Panel under section 28ZI is to be in writing and is to contain –
- (a) a summary of the complaint; and

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- (b) the determination of the Code of Conduct Panel; and
- (c) the Code of Conduct Panel's reasons for the determination; and
- (d) if the code of conduct complaint or part of it is upheld and the Code of Conduct Panel has imposed a sanction on a councillor, that sanction and a reasonable period within which the councillor is to comply with the sanction; and
- (e) if the code of conduct complaint or part of it is dismissed and the Code of Conduct Panel determines under section 28ZI(3) that the complainant may not make a further complaint in relation to the same matter, a direction to the complainant to that effect; and
- (f) a statement that a person aggrieved by the determination of the Code of Conduct Panel is entitled, under section 28ZO, to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Panel has failed to comply with the rules of natural justice.



- (2) The determination of a code of conduct complaint must not contain any information of a kind referred to in section 338A but, if the Code of Conduct Panel considers that any such information is relevant to the report and should be included, it is to include that information in an addendum to the report.

**28ZK. Notification of determination of code of conduct complaint**

- (1) In this section –

*addendum* means an addendum to a determination report referred to in section 28ZJ(2);

*determination report* means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by section 28ZJ without any addendum.

- (2) Within 28 days after determining a code of conduct complaint, the Code of Conduct Panel is to provide a copy of its determination report to –
- (a) each complainant; and
  - (b) each councillor against whom the complaint is made; and

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- (c) the general manager of the relevant council; and
  - (d) the Director.
- (3) If the Code of Conduct Panel has produced an addendum, it is to provide a copy of it to –
  - (a) if the complainant is a councillor, that complainant; and
  - (b) each councillor against whom the complaint is made; and
  - (c) the general manager of the relevant council; and
  - (d) the Director.
- (4) If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.
- (5) If the general manager receives a determination report and also an addendum, the general manager is to ensure –
  - (a) that a copy of the determination report without addendum is tabled at the first meeting of the relevant council at which it is

practicable to do so and which is open to the public; and

- (b) that a copy of the determination report with addendum is tabled at the first meeting of the relevant council at which it is practicable to do so and which is closed to the public.

**28ZL. Councillor to comply with sanction imposed for contravention of code of conduct**

- (1) In this section –

*determination report* means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by section 28ZJ.

- (2) If, when determining a code of conduct complaint, the Code of Conduct Panel imposes a sanction on a councillor that requires the councillor to apologise to a person or to attend counselling or a training course, the councillor must comply with that sanction within the period specified in the determination report.

Penalty: Fine not exceeding 50 penalty units.

- (3) Within 7 days after a councillor has fully complied with a sanction referred to in

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subsection (2), the councillor is to notify the general manager that he or she has done so.

- (4) If a councillor fails to comply with a sanction referred to in subsection (2) within the period specified in the determination report, the relevant general manager is to notify the Director, in writing, of that fact.
- (5) On receipt of a notice provided under subsection (4), the Director is to deal with the notice as if it were a complaint under section 339E.

**28ZM. Costs of parties relating to code of conduct complaint**

The complainant in a code of conduct complaint and the councillor against whom the complaint is made are to bear their own costs relating to the investigation and determination of the complaint.

**28ZN. Refund of fee accompanying lodgement of code of conduct complaint**

A council must refund to each complainant who has lodged a code of conduct complaint, in equal shares, any fee paid with the lodgement in accordance with section 28V(3)(g) in any of the following circumstances:

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- (a) the complaint is referred to the Director by the general manager under section 28Z(1)(b) and accepted by the Director;
- (b) the whole complaint is referred to a person or other authority by the chairperson of the Code of Conduct Panel on initial assessment under section 28ZA(1)(c) and is accepted by that person or authority;
- (c) the whole complaint is withdrawn at any time before it is referred by the general manager to the Code of Conduct Panel under section 28Z(1);
- (d) the complaint or part of the complaint is upheld on determination by the Code of Conduct Panel;
- (e) all councillors against whom the complaint is made resign or lose the office of councillor before the complaint is dealt with as specified in paragraph (a), (b), (c) or (d), as the case requires.

***Subdivision 4 – Reviews of Code of Conduct Panel decisions***

**28ZO. Review of Code of Conduct Panel decision**

If a person is aggrieved by the determination of a code of conduct complaint by the Code of Conduct Panel on the ground that the Panel failed to comply with the rules of natural justice –

- (a) the person may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on that ground; and
- (b) that determination is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**8. Section 72 amended (Annual report)**

Section 72 of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (b) in subsection (1):
  - (ba) a statement of the number of code of conduct complaints that were upheld either wholly or in part during the preceding financial year;

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- (bb) the total costs met by the council during the preceding financial year in respect of all code of conduct complaints dealt with under Division 3A of Part 3 during the preceding financial year;
- (b) by omitting from subsection (2)(a) “2 copies” and substituting “one copy”;
- (c) by omitting paragraph (d) from subsection (2) and substituting the following paragraph:
  - (d) advertise the availability of the report, together with an invitation to electors to lodge with the council submissions on the report, in a daily newspaper circulating in the municipal area.
- (d) by omitting subsection (3) and substituting the following subsection:
  - (3) Submissions received by the council on its report are to be discussed –
    - (a) if the council holds an Annual General Meeting, at the Annual General Meeting; or
    - (b) if the council does not hold an Annual General Meeting, at the next

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practicable ordinary  
meeting of the council.

**9. Section 72B amended (Annual General Meeting)**

Section 72B of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) A council may determine whether or not to hold an Annual General Meeting.

(1A) If a council determines to hold an Annual General Meeting, the council must hold it on a date that –

(a) is not later than 15 December in each year; and

(b) is at least 14 days after the date of the first publication of a notice under subsection (2).

(2) If a council determines to hold an Annual General Meeting, the council must publish on at least one occasion in a daily newspaper circulating in the municipal area a notice specifying the date, time and



place of the Annual General Meeting.

- (b) by inserting in subsection (3) “at an Annual General Meeting” after “present”;
- (c) by omitting from subsection (3)(b) “or other prescribed newspaper”.

**10. Section 195 amended (Notice of impounding)**

Section 195(2) of the Principal Act is amended as follows:

- (a) by omitting “give the following details:” and substituting “contain the following information, details and statements:”;
- (b) by omitting paragraph (d) and substituting the following paragraphs:
  - (d) a statement that fees, costs and charges may be payable to the council in relation to its impounding, maintenance and treatment;
  - (e) if any fee, cost or charge referred to in paragraph (d) is ascertainable at the time the notice is prepared, the amount of that fee, cost or charge;
  - (f) a statement that the animal may be sold, given away or destroyed if –

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- (i) the animal is not claimed within 14 days after its impounding; or
- (ii) any fee, cost or charge referred to in paragraph (d) is not paid within 14 days after the date of the notice;
- (g) the date on or the period during which, and the place at which, the animal may be sold, given away or destroyed if it is not claimed.

**11. Section 196 amended (Fees, costs and charges)**

Section 196 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

- (1) The owner of an impounded animal is liable to pay the fees, costs and charges incurred by the council in respect of the impounding, maintenance and treatment of the animal.

**12. Section 197 amended (Sale or destruction of unclaimed animals)**

Section 197 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

(b) any fee, cost or charge payable by the owner has not been paid within 14 days of the date of the notice given under section 195.

(b) by omitting subsections (2) and (3).

**13. Section 270 amended (Eligibility for nomination as councillor)**

Section 270(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

(ab) has his or her principal place of residence in Tasmania; and

**14. Section 315 amended (False or misleading statements)**

Section 315 of the Principal Act is amended by inserting “making a notice of nomination under section 271,” after “information,”.

**15. Section 338A amended (Disclosure of information)**

Section 338A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “A councillor” and substituting “Except as required, or allowed, by this Act, another Act or any other law, a councillor”;

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- (b) by omitting from subsection (3) “A member” and substituting “Except as required, or allowed, by this Act, another Act or any other law, a member”;
- (c) by omitting from subsection (4) “An employee” and substituting “Except as required, or allowed, by this Act, another Act or any other law, an employee”.

**16. Section 339E amended (Complaints against non-compliance or offence)**

Section 339E of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6) Without limiting the power of the Director under subsection (5) to determine the procedure for handling complaints or investigating matters, the Director may dismiss a complaint at any time after receiving it if the Director considers that the complaint is frivolous or vexatious.

**17. Section 340A amended (Allowances)**

Section 340A(5) of the Principal Act is amended by inserting “section 28ZI(2)(e) or” after “under”.

**18. Section 341 amended (Immunity from liability)**

Section 341 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (1) and substituting the following paragraphs:
  - (c) the Executive Officer; or
  - (ca) a member of the Code of Conduct Panel or an audit panel; or
- (b) by omitting from subsection (2) “a Code of Conduct panel,”;
- (c) by omitting subsection (3).

**19. Section 349A inserted**

After section 349 of the Principal Act, the following section is inserted in Division 3:

**349A. Savings and transitional provisions consequent on *Local Government Amendment (Code of Conduct) Act 2015***

The savings and transitional provisions set out in Schedule 8A have effect.

**20. Schedule 2A inserted**

After Schedule 2 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 2A – MEMBERSHIP OF CODE OF  
CONDUCT PANEL**

Section 28K(4)

**1. Interpretation**

In this Schedule –

*member* means a member of the Code  
of Conduct Panel.

**2. Term of office**

- (1) A member is to be appointed for a period of not more than 4 years that is specified in the member's instrument of appointment.
- (2) If a member becomes a councillor or employee of a council, that member's appointment is terminated.

**3. Holding other office**

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office, is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to an appointed member unless the holder's office is the

office of a State Service officer or  
a State Service employee.

**4. State Service Act**

- (1) A person may hold the office of a member in conjunction with the office of a State Service officer or a State Service employee.
- (2) The *State Service Act 2000* does not apply to a person referred to in subclause (1) in his or her capacity as a member.

**5. Vacation of office**

- (1) A member may resign from office by written notice provided to the Minister.
- (2) A member vacates office if he or she –
  - (a) dies; or
  - (b) resigns; or
  - (c) is removed from office under subclause (3).
- (3) The Minister may remove a member from office if –
  - (a) the Minister is satisfied that the member is no longer qualified to be a member of the Code of Conduct Panel; or

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- (b) the Minister is satisfied that the member is unable, because of absence, illness or any other reason, to perform adequately or completely the duties of the office of a member; or
- (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (d) the member has been convicted in Tasmania of any offence punishable by imprisonment for a term of 12 months or longer or elsewhere of any offence which if committed in Tasmania would be punishable by imprisonment for a term of 12 months or longer; or
- (e) the Minister is satisfied that the member is no longer a fit and proper person to be a member of the Code of Conduct Panel.

**21. Schedule 5 amended (Office of Councillors)**

Clause 3 of Schedule 5 to the Principal Act is amended by inserting after subclause (1) the following subclause:



- (1A) The office of a councillor also becomes vacant when a general manager receives notice from the Code of Conduct Panel that the councillor has had upheld against him or her a code of conduct complaint in respect of which the sanction of suspension has been imposed under section 28ZI(2)(e) if, during the councillor's current term of office, that is the third code of conduct complaint in respect of which the councillor has had imposed on him or her such a sanction (whether in relation to a contravention of the same provision, or different provisions, of the code of conduct).

## **22. Schedule 8A inserted**

After Schedule 8 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 8A – SAVINGS AND TRANSITIONAL  
PROVISIONS CONSEQUENT ON *LOCAL  
GOVERNMENT AMENDMENT (CODE OF CONDUCT)  
ACT 2015***

Section 349A

### **1. Interpretation**

- (1) In this Schedule –

*commencement day* means the day on which the *Local Government Amendment (Code of Conduct) Act 2015* commences;

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***new Act*** means this Act as in force on and after the commencement day;

***previous Act*** means this Act as in force immediately before the commencement day;

***previous Code of Conduct Panel*** means a Code of Conduct Panel as defined in the previous Act;

***previous Regulations*** means –

- (a) if the *Local Government (General) Regulations 2005* are in force immediately before the commencement day, those regulations as in force immediately before that day; or
- (b) if the *Local Government (General) Regulations 2015* are in force immediately before the commencement day, those regulations as in force immediately before that day;

***Standards Panel*** means a Standards Panel as defined in the previous Act.

- (2) A reference in this Schedule to regulation 22C of the previous Regulations is a reference to –
- (a) regulation 22C of the *Local Government (General) Regulations 2005*; or
  - (b) the regulation in the *Local Government (General) Regulations 2015* that substantially corresponds to that regulation 22C –

as appropriate, and a reference to the application of the previous Regulations in relation to that regulation is a reference to the *Local Government (General) Regulations 2005* or the *Local Government (General) Regulations 2015*, also as appropriate.

## **2. Code of conduct**

On and after the commencement day until a council adopts the model code of conduct under section 28T, the code of conduct of the council that was in force under the previous Act immediately before the commencement day continues in force and is taken to be the council's code of conduct within the meaning of this Act.

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**3. Complaints under previous Act**

(1) If –

- (a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; but
- (b) immediately before the commencement day, the mayor or deputy mayor has not, under regulation 22C of the previous Regulations, notified the councillor against whom the complaint is made of the complaint –

the complaint is to be dealt with, investigated and determined as a code of conduct complaint under the new Act.

(2) If –

- (a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act and the mayor or deputy mayor has, under regulation 22C of the previous Regulations, notified the councillor against whom the complaint is made of the complaint; but
- (b) the 7-day period within which, under regulation 22C of the

previous Regulations, the councillor may lodge an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel has not expired –

the previous Act and previous Regulations continue to apply in relation to the complaint until the end of that 7-day period.

(3) If –

- (a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and
- (b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel –

the previous Act and previous Regulations continue to apply in relation to the complaint, its hearing and a determination.

(4) If –

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- (a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and
- (b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has not lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel; and
- (c) the mayor or deputy mayor has not referred the complaint to a previous Code of Conduct Panel –

the complaint is to be dealt with as a code of conduct complaint under the new Act.

- (5) If –
  - (a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and
  - (b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has not lodged an

election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel; and

- (c) the mayor or deputy mayor has referred the complaint to a previous Code of Conduct Panel –

the previous Act and previous Regulations continue to apply in relation to the complaint, its hearing and determination and in relation to an appeal made under section 28F of the previous Act against the decision of the previous Code of Conduct Panel.

**4. Continuation of, and termination of membership of, previous Code of Conduct Panel**

- (1) At any time on or after the commencement day, a council is to terminate the appointments of the members of its previous Code of Conduct Panel once the council is satisfied that the Panel will not be required, by reason of clause 3, to deal with, hear and determine a complaint made under section 28F of the previous Act.
- (2) On and after the commencement day until the appointment of a member of a

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previous Code of Conduct Panel that was in force immediately before the commencement day is terminated under subclause (1), that appointment continues and for that purpose the previous Act applies to that appointment.

- (3) If, on or after the commencement day, a previous Code of Conduct Panel is required, by reason of clause 3, to deal with, hear and determine a complaint made under section 28F of the previous Act and it is necessary to appoint a new member to the Panel, the previous Act continues to apply –
- (a) so as to allow the appointment of the new member to the Code of Conduct Panel; and
  - (b) to the appointment of the new member until the appointment is terminated under subclause (1).
- (4) A member of the previous Code of Conduct Panel is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member under subclause (1).

**5. Continuation of, and termination of membership of, Standards Panel**

- (1) At any time on or after the commencement day, the Local Government Association of Tasmania is



to terminate the appointments of the members of its Standards Panel once that Association is satisfied that the Panel will not be required, by reason of clause 3, to deal with, hear and determine –

- (a) a complaint made under section 28F of the previous Act; or
  - (b) an appeal against the determination of such a complaint by a previous Code of Conduct Panel.
- (2) On and after the commencement day until the appointment of a member of a Standards Panel that was in force immediately before the commencement day is terminated under subclause (1), that appointment continues and for that purpose the previous Act applies to that appointment.
- (3) If, on or after the commencement day, the Standards Panel is required, by reason of clause 3, to deal with, hear and determine a complaint under section 28F of the previous Act or an appeal against the determination of such a complaint by a previous Code of Conduct Panel and it is necessary to convene the Standards Panel or appoint new members to the Standards Panel, the previous Act continues to apply –

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- (a) so as to allow the convening of the Standards Panel and the appointments of members, or new members, to the Standards Panel; and
  - (b) to the appointment of each of those members and new members until the appointment is terminated under subclause (1).
- (4) A member of a Standards Panel is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member under subclause (1).

**23. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.