

CLAUSE NOTES

Local Government Amendment (Code of Conduct) Bill 2022

- Clause 1 Short title
- This clause provides for the short title of the Amendment Act: *Local Government Amendment (Code of Conduct) Act 2022*
- Clause 2 Commencement
- This clause provides that the *Local Government Amendment (Code of Conduct) Act 2022* will commence on a day or days to be proclaimed.
- Clause 3 Principal Act
- This clause provides for the title of the Principal Act: the *Local Government Act 1993*
- Clause 4 Section 3 amended (Interpretation)
- This clause: omits and submits the definition of 'code of conduct; inserts a definition for 'dispute resolution process', 'initial assessor' and 'investigating Panel'; and omits the definition of 'model code of conduct'
- Clause 5 Part 3, Division 3AA inserted
- This clause provides that all councils must adopt, within 12 months of the commencement of this section, a dispute resolution policy which is to be made available by the general manager on the council's website and on request.
- The dispute resolution policy is to contain prescribed information and specify the processes to be followed in respect of a dispute that may be the subject of a code of conduct complaint and prescribed matters.
- This clause also mandates compliance with the dispute resolution policy adopted by a council in resolving or attempting to resolve a dispute. This applies to the general manager, councillor and employee of the council as well as complainants participating in the dispute resolution process.
- Clause 6 Section 28K amended (Code of Conduct Panel)
- This clause amends section 28K of the Principal Act by omitting the restriction 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. The restriction is now limited to current councillors or employees of any council.

- Clause 7 Section 28L amended (Investigating Panel)
- This clause amends section 28L of the Principal Act by clarifying that the panel convened to investigate and determine a complaint is to be referred to as the investigating Panel. This is in contrast to the broader Code of Conduct Panel from which members of the investigating Panel are selected from.
- Clause 8 Section 28O amended (Payment of remuneration and allowances to members of Code of Conduct Panel and Executive Officer)
- This clause amends section 28O of the Principal Act by substituting 'the Code of Conduct Panel' with 'an investigating Panel'.
- Clause 9 Section 28OA inserted
- This clause provides for the disclosure and management of interest by members of the Code of Conduct Panel. Members are to notify the Executive Officer of any actual, potential or perceived conflict of interest in a matter relevant to the investigation and determination of a code of conduct complaint.
- The notification is to specify the nature of the conflict of interest, its relevance to the investigation and determination of the code of conduct complaint, and a statement as to whether the affected member believes that the conflict of interest will prevent them from acting fairly in respect of the investigation and determination of the relevant code of conduct complaint.
- The Executive Officer is not to appoint members to be the initial assessor or a member of the investigating Panel of the code of conduct complaint, if they have declared in their notification that the conflict of interest would prevent them from acting fairly in respect of the complaint.
- If the affected member has already been appointed as the initial assessor or a member of the investigating Panel in respect of the code of conduct complaint, they are to resign if they have declared in their notification that the conflict of interest would prevent them from acting fairly in respect of the complaint.
- Upon resignation of the affected member, the Executive Officer is to appoint a replacement and notify the complainant and other members of the investigating Panel (if the affected member is a member of the investigating Panel) of the appointment of a replacement.
- Clause 10 Section 28R amended (Code of conduct)
- This clause amends section 28R of the Principal Act by replacing 'model code of conduct' with 'code of conduct'. This is because the code of conduct issued by the Minister will automatically apply to all Tasmanian councillors without any variations at the local council level.

- Clause 11 Section 28S amended (Contents of code of conduct)
- This clause amends section 28S of the Principal Act by replacing 'model code of conduct' with 'code of conduct'. It also provides that the general manager of a council is to make a copy of the code of conduct available for purchase at a reasonable charge and for public inspection at the council's office and website.
- Clause 12 Section 28T repealed
- This clause repeals section 28T of the Principal Act which allows councils adopt the model code of conduct with or without variation.
- Clause 13 Section 28U amended (Compliance with code of conduct)
- This clause amends section 28U of the Principal Act to reflect that the code of conduct will now apply to all Tasmanian councillors without any variations at the local council level.
- Clause 14 Section 28V amended (Making code of conduct complaint against councillor)
- This clause amends section 28V of the Principal Act to reflect that the code of conduct will now apply to all Tasmanian councillors without any variations at the local council level.
- It also provides for additional information to be included in a code of conduct complaint. These are:
- details of the outcome of the council's dispute resolution process if the complainant has completed the process and reasons why the complainant is not satisfied with that outcome.
 - details of the attempts made by the complainant to resolve the issue under the council's dispute resolution process if the complainant did not commence or complete the process in respect of the complaint and an explanation as to why complainant believes that the dispute resolution process is not appropriate in respect of the complaint.
- Where a code of conduct complaint is lodged by the Director of Local Government, the Minister may appoint someone else to undertake the functions of the Director only in relation that complaint.
- Clause 15 Section 28W amended (Withdrawal of or from code of conduct complaint)
- This clause amends section 28W of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel' on 'investigating Panel for the complaint' as appropriate.

- Clause 16 Section 28X amended (Amendment of code of conduct complaint)
- This clause amends section 28X of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel' or 'investigating Panel for the complaint' as appropriate.
- Clause 17 Section 28Y amended (Initial assessment of complaint by general manager)
- This clause amends section 28Y of the Principal Act by requiring a general manager to assess a code of conduct complaint within 14 days of receipt.
- The general manager is to notify the complainant within 14 days if the general manager determines that the code of conduct complaint does not comply with the Principal Act.
- Clause 18 Section 28Z amended (Referral of code of conduct complaint by general manager)
- This clause amends section 28Z(1) of the Principal Act by requiring the general manager to make any referrals of the code of conduct complaint within 14 days of receiving and determining the complaint.
- The referral is to include copies of all the documentation held by the council in relation to the dispute resolution process undertaken by the council in respect of the complaint.
- This clause also amends section 28Z(5) of the Principal Act by requiring the general manager to refer a code of conduct complaint to the Code of Conduct Panel by providing it to the Executive Officer if the Director of Local Government refuses to accept the referral of the code of conduct complaint by the general manager.
- Section 28Z(6) of the Principal Act is also amended by requiring the Executive Officer to appoint an initial assessor for a code of conduct complaint referred to the Code of Conduct Panel.
- Clause 19 Section 28ZA amended (Initial assessment of code of conduct complaint)
- This clause amends section 28ZA of the Principal Act by providing for the appointment of an Australian lawyer as the initial assessor for a code of conduct complaint referred to the Code of Conduct Panel. The Executive Officer is to provide the initial assessor with a copy of the complaint.
- This clause further amends section 28ZA of the Principal Act by providing that the functions of the chairperson of the Code of Conduct Panel in relation to the initial assessment of a code of conduct complaint will now be performed by the initial assessor.
- Section 28ZA(3)(a) of the Principal Act is amended to require notification of the result of the initial assessment and the reasons for it to the Director. This is

in addition to the existing obligation to notify the complainant and the general manager.

Section 28ZA(3)(b) of the Principal Act is amended by replacing 'Code of Conduct Panel' with 'investigating Panel'.

Section 28ZA(3)(b)(iii) of the Principal Act is amended by requiring the initial assessor to provide a copy of the initial assessment of the code of conduct complaint to the Executive Officer. This replaces the requirement for the chairperson of the Code of Conduct Panel to provide a copy of the complaint to the other members of the Code of Conduct Panel.

Clause 20

Section 28ZB amended (Dismissal of code of conduct complaint on initial assessment)

This clause amends section 28ZB of the Principal Act by providing that the functions of the chairperson of the Code of Conduct Panel in relation to the initial assessment of a code of conduct complaint will now be performed by the initial assessor.

It also provides additional grounds for dismissing a code of conduct complaint or part of it, namely that:

- the dispute resolution process of the council is a reasonable mechanism to resolve the dispute, but the complainant has not participated, or not participated satisfactorily, in the dispute resolution process; or
- it is not in the public interest for an investigating Panel to be convened to investigate the complaint.

Section 28ZB(1)(b) of the Principal Act is amended by omitting 'of the relevant council' from '...contravention of the code of conduct of the relevant council'.

Section 28ZB(1)(c)(ii) of the Principal Act is amended by replacing 'Code of Conduct Panel' with 'investigating Panel for the complaint'.

The matters to be considered by the initial assessor when determining if it is in the public interest for an investigating Panel to be convened to investigate the complaint include, but are not limited to:

- the nature and seriousness of the alleged conduct to which the complaint relates.
- the time that has elapsed since the alleged conduct occurred.
- the availability of evidence and the recollection of any witnesses.
- the likely degree of culpability, in connection with the alleged conduct, of the councillor to whom the complaint relates.
- whether the alleged conduct could be of significant public concern.
- whether the alleged conduct has been, or is being, investigated and appropriately dealt with.

- the sanctions available to deal with the alleged conduct.
- whether the alleged conduct may be indicative of, and may expose, entrenched or systemic behaviour.

If the initial assessor for a code of conduct complaint dismisses the complaint, or part of it because the complainant has not participated, or not participated satisfactorily, in the dispute resolution process where it is a reasonable mechanism to resolve the dispute, the initial assessor may direct the complainant not to make a further complaint in relation to the same matter until –

- the complainant has participated satisfactorily in the dispute resolution process of the council in relation to the complaint; and
- the complainant has taken and completed the actions, specified in the notice, as necessary to have participated satisfactorily in the dispute resolution process.

Clause 21 Section 28ZC amended (Referral of code of conduct complaint on initial assessment)

This clause amends section 28ZC of the Principal Act by providing that the functions of the chairperson of the Code of Conduct Panel in relation to the initial assessment of a code of conduct complaint will now be performed by the initial assessor.

Clause 22 Section 28ZCA inserted

This clause provides that the Executive Officer is to, upon receipt of an initial assessment of a code of conduct complaint, convene an investigating Panel in respect of the complaint and provide each member with a copy of the complaint and the initial assessment of the complaint.

The investigating Panel for a code of conduct complaint is not to include the initial assessor of the complaint.

Clause 23 Section 28ZD amended (Time for investigating and determining code of conduct complaint)

This clause amends section 28ZD of the Principal Act by providing that the functions of the chairperson of the Code of Conduct Panel in relation to the initial assessment of a code of conduct complaint will now be performed by the initial assessor.

This clause also amends section 28ZD of the Principal Act by replacing 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.

This clause further amends section 28ZD of the Principal Act by requiring the investigating Panel to make every endeavour to investigate and determine the complaint if the initial assessor for the complaint has determined to investigate

and determine part of the complaint and dismiss the rest of the complaint, within 90 days after that determination.

Clause 24 Section 28ZE amended (Conduct of investigations generally)

This clause amends section 28ZE of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.

This clause provides that the relevant council is responsible for all of the reasonable costs and expenses incurred in respect of the investigation of a code of conduct complaint by the investigating Panel for the complaint.

This clause amends section 28ZE(6) of the Principal Act by omitting 'Code of Conduct' from 'a member of the Code of Conduct Panel'.

Clause 25 Section 28ZF amended (Investigation of multiple code of conduct complaints against same councillor or multiple councillors)

This clause amends section 28ZF of the Principal Act by providing that the Executive Officer may appoint a single initial assessor to do a single initial assessment of multiple code of conduct complaints against the same councillor or different councillors of the same council if the complaints relate to the same contravention of the code of conduct.

The single initial assessor appointed may, upon completion of the initial assessment, recommend to the Executive Officer that a joint investigation of the complaints be conducted by a single investigating Panel. This recommendation may only be made after the initial assessor has considered the wishes of all complainants and councillors against whom the complaints are made.

Section 28ZF(3) of the Principal Act is amended by providing that the Executive Officer may, on the recommendation of the initial assessor to conduct a joint investigation by a single investigating Panel, –

- convene an investigating Panel to conduct a joint investigation into all the complaints if:
 - the complaints are against less than half of the councillors for the relevant council; or
 - the Director of Local Government has not accepted a referral where the complaints are against half, or more than half, of the councillors for the relevant council.
- refer the complaints to the Director of Local Government where the complaints are against half, or more than half, of the councillors for the relevant council.

This clause amends section 28ZF(4) and (5) of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' and 'Panel' with 'Executive Officer'.

- Clause 26 Section 28ZG amended (When hearing is to be held)
- This clause amends section 28ZG of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint' and other incidental changes.
- Clause 27 Section 28ZH amended (Hearings)
- This clause amends section 28ZH of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel' or 'investigating Panel for a code of conduct complaint' and other incidental changes.
- This clause amends section 28ZH(4)(b) of the Principal Act by omitting 'Code of Conduct' from 'a requirement of the Code of Conduct Panel'.
- Clause 28 Section 28ZI amended (Determination of code of conduct complaint)
- This clause amends section 28ZI of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.
- Clause 29 Section 28ZJ amended (Determination report)
- This clause amends section 28ZJ of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint' and omitting all occurrences of 'Code of Conduct' in 'Code of Conduct Panel'.
- This clause provides that the investigating Panel may recommend in the determination report that the Director considers making a recommendation to the Minister under section 214L of the Act for the issuance of a performance improvement direction in respect of matters raised during the investigation of a complaint.
- Clause 30 Section 28ZK amended (Notification of determination of code of conduct complaint)
- This clause amends section 28ZK of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.
- This clause provides that the rules surrounding the inclusion of a determination report and an addendum within an item on the agenda of the relevant council meeting provided for in section 28ZK(4) and (5) of the Principal Act do not apply in respect of a determination report until –
- the expiry of the period during which a person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination to which the determination report relates; and

- if an application for such a review is made –
 - the review is completed or dismissed; or
 - the application is withdrawn.

This clause also provides that the requirement to keep the addendum confidential in section 28ZK(8) of the Principal Act does not apply in respect of the disclosure of a copy of the determination report with the addendum solely for the purpose of arranging for the report and addendum to be included within an item on the agenda for a meeting of the relevant council.

This clause further makes it an offence (maximum of 50 penalty units) for a person to disclose a document, report, or any information provided to the person by the Executive Officer or the investigating Panel in relation to a code of conduct complaint, unless the determination report, to which the document, report or information relates, has been included within an item on the agenda for a meeting of the relevant council. The exception to this is if the disclosure is solely for the purpose of arranging for the determination report to be included on the agenda for a meeting of the council.

Clause 31 Section 28ZL amended (Effect of third suspension)

This clause amends section 28ZL of the Principal Act by changing the definition of 'third suspension' to mean the third, or a subsequent, suspension of a councillor if –

- the suspension is imposed, during the prescribed period –
 - by an investigating Panel under section 28ZI(2)(e); or
 - by the Minister under section 214O; and
- the suspension relates, directly or indirectly, to a code of conduct complaint (whether in relation to a contravention of the same provision or different provisions of a code of conduct, or of the same or a different code of conduct).

This clause amends section 28ZL(2) of the Principal Act by replacing 'the Code of Conduct Panel' with 'an investigating Panel'.

Clause 32 Section 28ZM amended (Councillor to comply with sanction imposed for contravention of code of conduct)

This clause amends section 28ZM of the Principal Act by replacing all occurrences of 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.

This clause amends section 28ZM(3) of the Principal Act by require that a councillor is to notify the Executive Officer, rather than the general manager when they have complied with a sanction. The councillor is also to provide evidence of that compliance.

The Executive Officer is to notify the Director of Local Government of the notification by a councillor as soon as practicable after that notification. The Executive Officer is to specify the evidence provided by the councillor in the notice to the Director.

The Director may, after notification by the Executive Officer, request for further evidence of compliance from the councillor.

This clause amends section 28ZM of the Principal Act by replacing 'general Manager' with 'Executive Officer'.

Clause 33

Section 28ZNA amended (Costs of training to be borne by council)

This clause amends section 28ZNA of the Principal Act by replacing 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.

Clause 34

Section 28ZO amended

This clause amends section 28ZO of the Principal Act by renumbering the section and omitting all references to 'general manager' and 'chairperson of the Code of Conduct Panel'.

It also changes the reference in section 28ZO(1)(c) of the Principal Act from 'section 28Z(1)' to 'section 28Z(1)(a)'.

This clause further provides that a refund to a complainant is to be made within 30 days after the specified circumstances that resulted in the refund being payable.

Clause 35

Part 3, Division 3A, Subdivision 4: Heading amended

This clause amends Subdivision 4 of Division 3A of Part 3 of the Principal Act by changing the heading from 'Reviews of Code of Conduct Panel decisions' to 'Reviews of investigating Panel decisions'.

Clause 36

Section 28ZP amended (Review of investigating Panel decision)

This clause amends section 28ZP of the Principal Act by replacing 'Code of Conduct Panel' with 'investigating Panel for a code of conduct complaint'.

Clause 37

Section 349C inserted

This clause provides for transitional provisions consequent on *Local Government Amendment (Code of Conduct) Act 2022*. It provides that 'commencement day' means the day which the section commences.

Complaints received by a general manager before the commencement day but not finalised before that day is to be dealt with under the Act as in force immediately before the commencement day.

Complaints received by a general manager on or after the commencement day is to be dealt with in accordance with the Act, as in force on or after the

commencement day, regardless of whether the complaint relates to behaviour that occurred before the commencement day.

Clause 38 Repeal of Act

This clause repeals the amending Act on the first anniversary of the day on which the last uncommenced provision of the Act commences.