



PARLIAMENT OF TASMANIA

Joint Sessional Committee on Gender and Equality

Local Government Amendment (Code of Conduct) Bill 2022

Trial Bill Assessment

MEMBERS OF THE COMMITTEE

Legislative Council

Mr Duigan
Ms Forrest (Chair)
Mr Harriss
Mr Willie

House of Assembly

Mrs Alexander (until 30 May 2023)
Ms Johnston (from 30 May 2023)
Ms O'Byrne (Deputy Chair)
Dr Woodruff
Mr Young

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May 2023

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1 ABBREVIATIONS

Bill	Local Government Amendment (Code of Conduct) Bill 2022
CALD	Culturally and Linguistically Diverse
CEDAW	Committee on the Elimination of Discrimination against Women
Committee	Joint Sessional Committee on Gender and Equality
GLI	Gender Legislative Index
TASCAT	Tasmanian Civil and Administrative Tribunal
The Act	<i>Local Government Act 1993</i>

2 CHAIR'S FOREWORD

- 2.1 Gender-responsive laws make legislative systems more responsive to explicit and implicit gender issues, facilitate accountability in both legislative and policy implementation and respond to the specific needs of different sexes and different gendered perspectives on pivotal social, economic and political issues.
- 2.2 The Joint Sessional Committee on Gender and Equality (the Committee) resolved to conduct a trial bill assessment on the Local Government Amendment (Code of Conduct) Bill 2022 (the bill) and after examining the available tools for considering the gender-responsiveness of legislation, the Committee decided to pursue the Gender Legislative Index (GLI) process.
- 2.3 The Committee engaged the assistance of Dr Ramona Vijeyarasa, one of Australia's leading scholars on gender equality and the law, from the University of Technology Sydney to assist in the Committee's assessment of the bill. Dr Vijeyarasa designed the GLI to measure how domestic legislation can work better for women, while complying with international women's rights laws and standards.
- 2.4 The GLI asks seven core questions both for the bill's intention and likely effect. 'Intention' asks what the law is trying to do and what the stated purpose of its enactment is. 'Likely effect' considers the likely effect the law will have in its legislative context based on its drafting. These questions are outlined in Chapter 6 of this Report.
- 2.5 The provisions of the bill were assessed against the seven core questions as outlined in Chapter 6 of this Report.
- 2.6 The Committee informed the relevant Minister, Nic Street MP, of this work and invited him to an informal meeting to discuss the process the Committee utilised and the proposed findings and recommendations the Committee may make, noting the bill had passed the House of Assembly at that time.
- 2.7 The Committee found a number of areas where the bill could be amended to enhance its gender-responsiveness as outlined in the Committee Findings and Recommendations in Chapters 3 and 4 of this Report.

- 2.8 The Committee found a number of areas where a policy approach could be utilised to enhance a gender-responsive approach to processes related to the development and application of the code of conduct. These are outlined in the Committee Findings and Recommendations in Chapters 3 and 4 of this Report.



**Parliament House
Hobart
22 June 2023**

**Hon Ruth Forrest MLC
Chair**

3 FINDINGS

The Committee finds:

1. Gender-responsive laws create legislative systems that:
 - a. are more responsive to explicit and implicit gender issues;
 - b. facilitate accountability in both legislative and policy implementation; and
 - c. respond to the specific needs of different sexes and different gendered perspectives on pivotal social, economic and political issues.
2. A lack of provision in the bill for gender-sensitive assessment and investigation of code of conduct complaints fails in access to equal justice proceedings in relation to some key areas of assessment under the Gender Legislative Index (GLI).
3. The drafting of the code of conduct process and investigations must be:
 - a. Gender-responsive; and
 - b. informed by gender principles.
4. The code of conduct process and investigations must:
 - a. be gender-responsive;
 - b. be informed by gender principles; and
 - c. promote the consideration of matters consistently, promptly and fairly and in a non-discriminatory manner;
5. The Code of Conduct Panel membership provisions have:
 - a. no stipulation for gender balance, or other diversity; and
 - b. no stipulation for members to have undertaken gender awareness training or be supported by a gender-responsiveness expert to assist them in their work.
6. To promote gender equality training in gender awareness and gender-responsive policy development and drafting is necessary for all involved in the process.
7. The bill does not contain explicit definitions of inappropriate behaviour or prohibited conduct, such as discrimination on the basis of age, disability, race, sex, pregnancy, marital or relationship status, family responsibilities, breast-feeding, sexual orientation, gender identity, intersex status and political grounds. These terms should be defined in clause 4 of the bill. Clause 11 (section 28S amended) could be amended to require prohibited conduct to be included in the drafting of the code of conduct.
8. The mandatory implementation of a dispute resolution policy:
 - a. is a positive step to reduce the number of complaints being referred to the Code of Conduct Panel for assessment; and
 - b. provides for more informed decision-making.

9. The bill provides for the code of conduct to be prescribed by regulation. Regulatory process will be subject to a public consultation process, which will facilitate the executive in determining the code of conduct without reference to the Parliament prior to implementation.
10. The positive inclusion of the possibility of investigations without a hearing in certain circumstances:
 - a. may help avoid the re-traumatisation of a victim; and
 - b. needs to ensure this provision is not abused.
11. The remedies for serious cases of misconduct, as currently drafted in the *Local Government Act 1993*, are insufficient.
12. Some members of the public may experience accessibility and affordability challenges in making a code of conduct complaint due to:
 - a. cost barriers;
 - b. language barriers;
 - c. literacy (including digital literacy) barriers; and
 - d. the availability of detail related to the complaints process.
13. The ability for claimants to appeal the rejection of a code of conduct complaint application remains possible under amendments in the bill (section 28ZP and section 28ZJ amended). This adequately meets international standards for the attainment of justice, but cost barriers may impact accessibility.
14. There is currently a lack of relevant data collection. This may obscure any gendered impacts of the complaints' handling process:
 - a. the handling of code of conduct complaints;
 - b. the lack of disaggregation by gender; and
 - c. the lack of disaggregation by other diversity indicators.

4 RECOMMENDATIONS

The Committee recommends:

1. Mandatory gender awareness and gender-responsive training be implemented:
 - a. for all involved in the legislative process to enable gender-responsive law making;
 - b. for those involved in the drafting of the code of conduct; and
 - c. all involved in the assessment and management of the complaints handling processes.
2. The bill utilise a gender-responsive approach in the drafting of the code of conduct that:
 - a. is informed by gendered principles;
 - b. utilises trauma-informed practice principles, including the potential of gender-linked power imbalances;
 - c. includes transparent public consultation; and
 - d. utilises language and definitions of ‘prohibited conduct’, as described in law. The definition must be made explicit in the bill, including but not limited to all forms of discrimination on the basis of: age; disability; race; sex; pregnancy; marital or relationship status; family responsibilities; breast feeding; sexual orientation; gender identity; intersex status; and political grounds.
3. To give effect to Recommendation 2(d), clause 4 (section 3 amended) and clause 10 (section 28R amended) be further amended to include reference to prohibited conduct.
4. The operation of processes prescribed in the code of conduct:
 - a. be informed by gendered principles; and
 - b. utilise trauma-informed practice principles, including the potential of gender-linked power imbalances.
5. Code of Conduct Panel:
 - a. The Code of Conduct Panel membership:
 - i. be gender balanced;
 - ii. reflect the diversity of the parties to the complaint;
 - iii. utilise a trauma-informed approach to proceedings; and
 - iv. complete gender awareness and gender-responsive training or have access to a gender-responsiveness expert to assist in their decision-making.
 - b. To give effect to recommendation 5 (a) (iv), further amendment to the bill is required to clause 21 (section 28ZCA amended).
 - c. Protections for members of the Code of Conduct Panel be considered in the bill to protect members from harassment as a consequence of their position.

- i. To give effect to this recommendation an amendment to the *Local Government Act 1993* would be required.
- d. Include additional mechanisms to evaluate a Code of Conduct Panel member's potential conflict of interest be included in the bill, as currently the onus of declaration lies with the member.
 - i. To give effect to this recommendation an amendment to clause 8 (section 28OA inserted) is required.
- 6. The form and criteria for sanctions resulting from misconduct should be formalised and drafted, taking a gender-responsive approach.
- 7. Sanctions should reflect the seriousness of the offence in relation to prohibited conduct.
- 8. Data collection be improved to become gender-responsive through collection and reporting in relation to:
 - a. details of those engaging with the code of conduct complaints process, disaggregated by:
 - i. gender;
 - ii. CALD individuals; and
 - iii. other relevant diversity indicators.
 - b. the nature of the complaint processes i.e., in person or online;
 - c. the outcomes and use of the provision that investigations can be completed without the use of a hearing;
 - d. the number of complaints received;
 - e. the number of complaints investigated, the number dismissed and number upheld; and
 - f. gender awareness and gender-responsive training undertaken by:
 - i. Local Government elected members;
 - ii. Local Government employees; and
 - iii. those involved in the handling of complaints related to the code of conduct;
 - g. de-identified data regarding complaints processes be publically available to enhance accessibility to the complaints process and community understanding of the provisions in the Act; and
 - h. clause 27 (section 28ZI) of the bill be further amended to provide for the publication of data to give effect to Recommendation 8 (a-g).
- 9. Direct action to increase visibility, accessibility and public awareness of the complaint process through:
 - a. all councils ensure information is readily available and easily located on their websites;
 - b. accessible printed information available in multiple locations related to the complaints process;
 - c. the use of accessible and inclusive language, provided in multiple languages reflecting the diverse nature of the Tasmanian community;
 - d. provide clarity regarding costs and hardship provisions; and

- e. information regarding how to access additional assistance when required.
10. The opportunity for verbal complaints for those unable to provide a written complaint be considered by further amendment to section 28V under clause 14 of the bill, to enhance accessibility.

5 INTRODUCTION

- 5.1 The Joint Sessional Committee on Gender and Equality was established on 17 August 2022 with the power to send for persons and papers, with leave to sit during any adjournment of either House and with leave to adjourn from place to place to inquire into and report upon –
- (1) (a) Any bill referred to it by either House in order to examine gender and equality impacts and any such bill so referred shall be reported upon within 10 sitting days of its referral;
 - (b) Any matter related to gender and equality referred to it by either House; and
 - (c) Any matter related to gender and equality, initiated by its own motion;
- 5.2 On 28 November 2022, the Committee resolved to conduct a trial bill assessment in order to better prepare itself for the eventuality of a bill being referred to the Committee by either House as per the resolution.
- 5.3 With this in mind, the Committee considered the bills currently before Parliament and resolved to perform a trial bill assessment on the Local Government Amendment (Code of Conduct) Bill 2022.
- 5.4 After examining the available tools for considering the gender-responsiveness of legislation, the Committee decided to pursue the Gender Legislative Index (GLI) process. The GLI ‘aims to improve accountability for upholding women’s rights in domestic legislation. It utilises a series of global benchmarks for key areas of law, which operationalise seven key questions that laws should address from a gendered perspective.’¹
- 5.5 On 24 April 2023, the Committee engaged the assistance of Dr Ramona Vijeyarasa from the University of Technology Sydney to assist in the Committee’s assessment of the bill. Dr Vijeyarasa is an Associate Professor in the Faculty of Law (Ph.D, LL.M, LL.B/B.A) at the University of Technology Sydney and is the Juris Doctor Program Head. She is one of Australia’s leading scholars on gender equality and the law, having worked for over a decade with governments and non-government organisations on a national and international scale. Dr Vijeyarasa designed the GLI to measure how domestic legislation can work better for women, while complying with international women’s rights laws and standards.
- 5.6 Dr Vijeyarasa provided the Committee with an in depth briefing regarding the use of the GLI and provided bespoke training on the Index in relation to the Bill. The briefing was aided by relevant information sources created by Dr Vijeyarasa, namely a PowerPoint presentation (Appendix A) detailing the academic context

¹ *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijeyarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

of the GLI, and a guide on ‘Good practice benchmarks’ (Appendix B) regarding the application of the GLI to the bill. This briefing provided the Committee with a clear working insight into the GLI, its relationship to the bill and international benchmarks which can be used to apply not only to the bill currently under investigation, but also towards any future bill assessments. These benchmarks will also provide gender-sensitive learning content for Members within their role as parliamentarians.

- 5.7 Having completed the trial bill assessment the Committee resolved to share its findings in a report to Parliament to demonstrate the process it would take in assessing any bills later referred to the Committee, whilst simultaneously increasing awareness of the need to consider gender issues in the drafting of future legislation.
- 5.8 Following the Committee’s work with Dr Vijayarasa, the Committee also met with the Minister for Local Government, the Honourable Nic Street, on 30 May 2023 to informally discuss its proposed findings and recommendations. Minister Street was supported at this informal meeting by Mr Mathew Healey, Executive Director, Local Government and Mr Andrei Norris, Acting Assistant Director (Policy & Engagement) Office of Local Government.
- 5.9 The Committee noted its preliminary findings with the Minister and his staff, detailing their contextual relationship to the GLI. The conversation focused on particular key points of note, the first being the Committee’s understanding of the current issues arising from the bill in relation to a lack of accessibility to the code of conduct complaints process. Further, the Committee noted the lack of gender-sensitive and trauma-informed practice in legislative drafting and code of conduct assessments. Council-based support before, during and after investigations was also lacking. The wider context of gender-sensitive and trauma-informed education and practice was discussed as a key priority for the Committee to investigate further. This was brought to the Minister’s attention.
- 5.10 The Committee detailed to the Minister the extent to which the monitoring of gender-disaggregated data in relation to code of conduct complaints (of all forms) would be of significant benefit to councils, the Office of Local Government and members of the public.
- 5.11 The Committee extends its thanks to the Minister and his Department for participating in the bill examination process.

6 PURPOSE OF THE BILL

- 6.1 The bill makes changes to the *Local Government Act 1993* (the Act), with the main changes relating to:
- the creation of a single code of conduct state-wide;
 - the implementation of a mandatory local dispute resolution policy in councils;
 - improvements to the process for the initial assessment of complaints; and
 - the improvement to processes relating to disclosure of interests and management thereof.

7 BACKGROUND TO THE BILL

- 7.1 The Government released a draft Local Government Amendment (Code of Conduct) Bill 2022, on 1 August 2022, having followed on from previous consultation on legislative changes to the Act.
- 7.2 Through the process of public consultation, the Government committed to six keys areas of reform. Some of these reforms are sought to be addressed in the bill.
- 7.3 Ten submissions were received during the consultation period on the draft bill. Submissions received by the Government on the bill generally supported the changes, with some submissions highlighting the additional need to review sanctions and eligibility requirements. The Government is considering these areas for review in 2023.

8 GENDER LEGISLATIVE INDEX (GLI)

- 8.1 With the assistance of Dr Vijayarasa, the Committee has applied the GLI² to the bill to examine gender equality. The GLI asks seven core questions both for the bill's intention and likely effect. 'Intention' asks what the law is trying to do and what the stated purpose of its enactment is. 'Likely effect' considers the likely effect the law will have in its legislative context based on its drafting. The questions of the GLI are as follows:
- Does the law guarantee access to non-discriminatory and accessible, affordable, acceptable services?
 - Does the law guarantee access to information and education or require the provision of information and education on the issue?

² *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

- Does the law guarantee non-coerced and informed decision-making and where relevant, protect women’s confidentiality?
 - Does the law promote equal relations between men and women?
 - Does the law protect women from situations of vulnerability linked to their gender?
 - Does the law guarantee accessible and effective remedies (i.e. access to justice)?
 - Does the law promote the comprehensive monitoring of the situation of women? This includes promoting gender-disaggregated data collection on the nature of the problem.
- 8.2 The law is scored on its textual meaning only and each question is scored on whether it is gender regressive, gender blind, gender neutral, gender responsive or non-applicable/inconclusive.
- 8.3 Gender regressive laws would be in direct opposition to agreed global women’s rights and would overtly oppose a gendered response. The law would “explicitly or implicitly place women in a less developed state in terms of their social, economic and political status and over-all well-being.”³
- 8.4 Gender blind laws would ignore overt gender issues and considerations, showing a lack of awareness to the different needs and interests of men and women.⁴
- 8.5 Laws in which there is no distinction on the basis of gender or sex would be gender neutral.
- 8.6 Gender responsive laws would “make legislative systems more responsive to explicit and implicit gender issues. [They facilitate] accountability – in legislative and policy implementation - to the specific needs of different sexes and to different gendered perspectives on pivotal social, economic and political issues.”⁵
- 8.7 Some laws may not provide enough information for evaluation, which may make a law inconclusive on the gender scale.⁶ Similarly some criteria might simply not be able to be applied to the law being evaluated.⁷

³ *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

⁴ *Ibid.*

⁵ ‘Scoring legislation and ranking countries’, Dr Ramona Vijayarasa, 2018, <https://www.genderlawindex.org/scoring>

⁶ *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

⁷ *Ibid.*

9 APPLICATION OF GLI TO THE BILL

9.1 ***Does the law guarantee access to non-discriminatory and accessible, affordable, acceptable services?***

9.1.1 The focus of this question is the amenity, resource or form of assistance related to the context of the bill.⁸ The benchmark for this question is that the law should guarantee free or affordable access to remedies for complainants.⁹ The questions that should be addressed then are: whether the complaints mechanism for code of conduct complaints are easily accessible; and what are the barriers to access?

9.1.2 In terms of affordability, the Committee notes that section 28V of the *Local Government Act 1993* indicates that a fee, currently \$89, is payable to make a code of conduct complaint against a councillor.¹⁰ The Committee also notes that this fee can be reimbursed in certain circumstances under section 28ZO of the Act. While this reimbursement is a positive aspect of the legislation, the fact that there is an initial fee may limit some individuals' access, particularly in light of the current cost of living pressures.

9.1.3 The Committee also considered other broader access issues. Such issues include the consideration of whether there is an awareness of the complaint mechanisms available:

- Do people know they are able to complain?
- Are the documents to make a complaint readily accessible?
- Are the documents to make a complaint understandable for complainants?
- And;
- Are forms available in relevant languages?

The Committee noted that these are questions that should be considered in the overall Act, if not necessarily relevant to the current amendment bill.

9.1.4 It was noted that currently councils have varying information publicly available regarding the code of conduct, complaints, and mechanisms and processes for the complaint. Councils need to ensure that such information is readily available with clear descriptions of the process to aid in accessibility.

9.1.5 In its current state, the Act does not speak very broadly to access and this is an aspect that could be improved upon. The Committee considered that language could be introduced into clause 14 to improve this accessibility. The Committee also noted that the amended section 28V is inadequate in addressing the

⁸ *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

⁹ *Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws*, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

¹⁰ Local Government (General) Regulations 2015, Schedule 3 – Fees, 4, November 2021, <https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2015-037>

accessibility of the complaints mechanism to members of the public and officials in terms of affordability, and the understanding of the process.

- 9.1.6 Some prohibitive aspects to the public were also identified by the Committee. If appeals to courts are necessary during code of conduct determinations, access to courts can be cost prohibitive. It was also noted that the availability of code of conduct information could potentially reduce access to the public. Some individuals may not have access to internet services, or may be unable to pay for a hard copy, or attend chambers throughout the process.
- 9.1.7 The Committee rated this aspect of the law to be gender neutral on this criteria both in intention and likely effect. However, the Act and bill as introduced does not meet all accessibility measures. This matter could be addressed through further amendment.

9.2 *Does the law guarantee access to information and education or require the provision of information and education?*

- 9.2.1 This question assesses the law for its provision of education to women, or whether it provides information to women about a particular law and the protections that are contained in that law.¹¹
- 9.2.2 The considered benchmark for this question is that the law should require that individuals or groups responsible for creating the code of conduct in the first place have relevant expertise, tools and resources to strive to develop gender-responsive standards.¹² This would include providing training to relevant individuals to develop gender expertise or provide access to an expert in gender-responsive standards.
- 9.2.3 In relation to the bill, the Committee in particular noted that clause 7 (section 28L amended) or clause 22 (section 28ZCA inserted) could be modified to allow for the members of the Code of Conduct Panel to be required to have undertaken gender-responsiveness training, or for the Panel to have access to a gender-responsiveness expert to assist them in their work.
- 9.2.4 Additionally the Committee noted that whomever drafts the code of conduct must be conscious of gendered principles including gender-based violence, harassment, bullying and non-discrimination in their drafting.
- 9.2.5 The Committee is of the view that in order to achieve gender-responsive laws in the future, there needs to be regular training on an annual basis, at a minimum, for anyone involved in the legislative process.

¹¹ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

¹² Declaration for Gender Responsive Standards and Standards Development, United Nations Economic Commission for Europe, 2018, https://unece.org/DAM/trade/wp6/AreasOfWork/GenderInitiative/UNECEGenderDeclaration_English.pdf

- 9.2.6 The Committee noted this aspect of the bill and the Principal Act are currently gender blind and recommends amendments to make it gender-responsive.

9.3 Does the law guarantee non-coerced and informed decision-making and, where relevant, protect women's confidentiality?

- 9.3.1 This question looks at the extent to which the law protects the rights of women to make free decisions.¹³ There are a number of benchmarks that could be applied to this question including that the law should explicitly define inappropriate behaviour to include behaviour that constitutes harassment, including sexual harassment, gender-based violence, bullying and other behaviour prohibited by law. The Committee considers that as it stands, the law does not meet this benchmark.
- 9.3.2 The Committee notes the law should ideally contain explicit definitions of inappropriate behaviour. This stresses the importance of these terms as considerations in the processing of code of conduct complaints. In order to amplify the importance of these terms, the Committee finds the terms should be defined in clause 4 of the bill. The list of definitions should include sexual harassment, bullying, gender-based violence and other behaviour prohibited by law.
- 9.3.3 The Committee also considered that clause 11 (section 28S amended) should elaborate upon the types of prohibited conduct, such as discrimination on the basis of age, disability, race, sex, pregnancy, marital or relationship status, family responsibilities, breast-feeding, sexual orientation, gender identity, intersex status and political grounds. This would align with the benchmark of the Australian Human Rights Commission and the Committee on the Elimination of Discrimination against Women (CEDAW) General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 2017.¹⁴
- 9.3.4 Another benchmark the Committee considered the law should adhere to is to include in the code of conduct the prohibition of harassment as defined by law.¹⁵ Such definition is any behaviour that is not wanted by the person, behaviour that humiliates or intimidates the person and creates a hostile environment. This would include sexual harassment defined as any unwanted or unwelcome sexual

¹³ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women, July 2017.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhslCdCrOlUTvLRFDjh6%2Fx1pWV AeqJn4T68N1uqnZjLbtFua2OBKh3UEqIB%2FCyQlg86A6RoodwGGza1Y5fsEpkLofaa7Gx%2FouBbRocgXmVizn9JY>

¹⁵ Model Code of Conduct for Local Councils in NSW 2020, NSW Government, <https://www.olg.nsw.gov.au/wp-content/uploads/2020/08/Model-Code-of-Conduct-2020.pdf>; Harassment, Australian Human Rights Commission, <https://humanrights.gov.au/quick-guide/12040#:~:text=Employers,gender%20identity%20or%20intersex%20status>

behaviour, where a reasonable person would have anticipated the possibility the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction of consensual behaviour.

- 9.3.5 The Committee noted that the protection of the Code of Conduct Panel members from harassment should be considered. Consequently the legislation should include details on the protection of the members of the Code of Conduct Panel from harassment and discrimination.
- 9.3.6 The Committee notes the bill creates the dispute resolution policy and the requirement to attempt to use such a policy before a code of conduct complaint is lodged. This allows for better informed decision-making. The use of an initial assessor before a complaint goes to a panel also improves decision-making. The Committee notes the assessment will be completed by a single person, making the decision on whether a complaint has merit the subjective opinion of an individual.
- 9.3.7 The Committee noted this aspect of the bill and the Principal Act are currently gender blind and recommends amendments to make it gender-responsive.

9.4 Does the law promote equal relations between men and women?

- 9.4.1 This question focuses on whether the law actively and explicitly promotes inequality.¹⁶ As a benchmark the law should require equality of participation in decision making. To meet this benchmark the law should require the code of conduct be developed in a manner which includes the perspectives of both men and women and this participation should be equitable.¹⁷
- 9.4.2 The Committee considered the amendment bill and noted that clause 10 (section 28R amended) states the code will be made by the Minister. Having the code of conduct drafted by the Minister alone is not an inclusive nor an equitable process, given the level of personal power placed upon this individual. Additionally it's noted that while the Act outlines areas that will be covered by the code of conduct, the actual code itself will be proscribed in regulations. The use of regulations in this manner can allow the Executive to legislate without prior parliamentary scrutiny. Subsequently the bill fails on this benchmark.
- 9.4.4 The United Nations Economic Commission for Europe's declaration for gender-responsive standards and standard development requires there be a representative number of women in dispute resolution. To adhere to this benchmark the bill should require equality of representation in the members of

¹⁶ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

¹⁷ Let's Speak Gender: 10 Principles of Gender-Responsive Communications for Development, United National Development Program, 2018, <https://rm.coe.int/10-principles-of-gender-responsive-communications/1680a4cbb4>

the Code of Conduct Panel and in the dispute resolution and investigation processes. This could be incorporated into clauses 5 and 6 of the bill.

- 9.4.5 The above benchmark of the United Nations also states that the law should require a review of the gender balance in senior roles and seek to improve it where it is imbalanced. The Committee notes the bill could meet this benchmark by requiring that the role of the initial assessor or chair of the investigating panel be balanced with such roles going to a woman equally as often as a man. Such consideration of balance should be used where possible.
- 9.4.6 The Committee considered benchmarking a requirement for the law to prioritise the development and implementation of policies, procedures and activities that support gender inclusivity (including but not limited to, raising awareness; training for committee chairs; programme managers; members; distributing the UN Declaration to all those involved in standards development). The Committee noted this benchmark is not currently present in the amendment bill, but should be of consideration in the code of conduct.
- 9.4.7 On this criteria the law is gender blind in intention and in likely effect. The making of regulations to establish a code of conduct should be gender sensitive.

9.5 *Does the law protect women from situations of vulnerability linked to their gender?*

- 9.5.1 This question looks at the ways women might suffer discrimination or exclusion specifically for biological or societal reasons.¹⁸ Gender-responsive due diligence suggests that a law should ensure diversity of staff dealing with gender-based code of conduct complaints. This is not found in the amendment bill but the Committee notes this should be a consideration in the drafting of the code of conduct.
- 9.5.2 The Committee noted that the bill does not speak to diversity of the Code of Conduct Panel members. The Committee noted it would be beneficial to include a requirement to promote gender diversity in determining the composition of Code of Conduct Panels.
- 9.5.3 The question of accessibility to complaint mechanisms is again relevant to the area of vulnerability. It must be considered whether the possibility of making a code of conduct complaint is known to women, particularly those in marginalised groups. Consideration must also be given to the needs of members of the community who experience low literacy levels or low legal literacy.
- 9.5.4 An important benchmark regarding vulnerability is the use of a trauma-informed approach to conducting code of conduct investigations. Under clause 26 (section 28ZG amended) of the bill, a hearing need not be held where ‘neither the

¹⁸ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijeyarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

complainant nor councillor would be disadvantaged’ and ‘it is appropriate in the circumstances not to hold a hearing.’¹⁹ The Committee noted this provision of the bill to be positive as it may facilitate a paper-based investigation that could avoid the re-traumatisation of a victim. A paper-based investigation may also positively benefit those who are geographically disadvantaged or unable to attend onsite hearings due to work/family commitments or other personal circumstance.

- 9.5.5 However this section could also work in a negative way. The Committee noted the intent of section 28ZG in the Local Government Act is positive, however it is also open to abuse as a paper-based investigation may be misused.
- 9.5.6 In the meeting with Minister Street and departmental staff, the Committee noted the absence of historical data relating to the number of complaints that did not eventuate in a hearing and any outcomes from these cases. If the relevant data is not currently collected, the Committee noted it would be beneficial for the department to collect such information to evaluate the functionality of this process.
- 9.5.7 The Committee noted the importance of taking a trauma-informed approach in conducting investigations. There must be the inclusion of language that promotes a trauma-informed approach. Language should be incorporated within clause 26 (section 28ZG amended) to promote best practice.
- 9.5.8 The bill has limited discussion of accessibility and diversity, however the Act itself could be further amended to include these principles. For these reasons this criteria does not apply to the bill specifically.
- 9.5.9 Amendment to the bill should be considered to enshrine trauma-informed practice principles in the code of conduct investigations.

9.6 *Does the law guarantee accessible and effective remedies (i.e. access to justice)?*

- 9.6.1 This question explores the role of the law in guaranteeing women access to proportional and appropriate remedies, which could take the form of fines, protection orders, civil remedies or imprisonment.²⁰
- 9.6.2 One benchmark the Committee examined was that the law should consider the need for independent, gender-sensitive investigations of gender-related code of conduct complaints. The investigation process should include a commitment to addressing gender-linked power imbalances during dispute resolution processes.²¹ This benchmark is not present in the bill but should be present in the code of conduct when drafted. An amendment to clause 17 (section 28Y

¹⁹ Local Government Act 1993, s 28ZG (2)(a), <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-095>

²⁰ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijayarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

²¹ ‘Provide for Remediation,’ Gender-Responsive Due Diligence, 2021, <https://www.genderduediligence.org/implement-grdd/step-6/>

amended) to include reference to gender-sensitive investigations would address this.

- 9.6.3 Another benchmark considered by the Committee was that the law should establish a mechanism for redress and access to justice, in cases of non-compliance with the prohibition on direct and indirect discrimination on grounds of sex.²² The Committee noted it is questionable whether the remedies are sufficient and appropriate as currently expressed in the bill. Clause 31 (section 28ZL amended) of the amendment bill indicates that it takes three suspensions of a councillor before they can be removed from office. For instance, it was unclear how the number of three suspensions was arrived at. The Committee questioned whether this would be appropriate in the case of serious misconduct, such as instances of sexual harassment or bullying. Minister Street informed the Committee of the ongoing work being done in this area to create a stream at the Tasmanian Civil and Administrative Tribunal (TASCAT) noting this matter would be progressed through that work.
- 9.6.4 The Committee considered clause 32 (section 28ZM amended) noting this section only refers to an apology or training as sanctions resulting from determination reports. The Committee noted however that other sections of the Act not amended by this bill also discuss sanctions of a caution, reprimand and suspension for a period not exceeding 3 months.²³ To enhance gender-responsiveness there is a need for clarity and a response to non-compliance, particularly in cases of discrimination and harassment.
- 9.6.5 The Committee considered the benchmark that a law should allow independent review in accordance with international standards by all decisions of administrative bodies, which ensures that a decision rejecting an application is reasoned and the claimant is able to appeal to a competent body.²⁴ The amendments make no changes to the ability of a code of conduct complaint to be reviewed on failure to comply with natural justice (section 28ZP), thus retaining this right. This benchmark is met by clause 29 (section 28ZJ amended) allowing for review in the Magistrates Court (Administrative Appeals Division) for natural justice reasons. This can be cost or time prohibitive to many should there be potential grounds for appeal.
- 9.6.6 The creation of the requirement for members of the Code of Conduct Panel to declare any actual, potential or perceived conflicts of interest in matters relevant to the investigation is beneficial to ensure procedural fairness, however it places this obligation solely on the member. Mechanisms should be available to

²² *Beijing Declaration and Platform for Action*, The Fourth World Conference on Women, September 1995, <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

²³ *Local Government Act 1993*, s 28ZI (2), <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-095>

²⁴ *General recommendation No.33 on women's access to justice*, Convention on the Elimination of All Forms of Discrimination Against Women, August 2015, <https://digitallibrary.un.org/record/807253?ln=en>

question a panel member's conflict outside of an appeals court process following a determination.

- 9.6.7 The Committee finds the law is gender blind on this criteria both in intention and likely effect.

9.7 Does the law promote the comprehensive monitoring of the situation of women? This includes promoting gender-disaggregated data collection on the nature of the problem.

- 9.7.1 This question considers whether there is a requirement under the law for the collection and dissemination of statistical data, particularly in relation to women.²⁵ The CEDAW Committee has recommended such data should be disaggregated to include considerations such as marital status, ethnicity, disability and rural status.²⁶
- 9.7.2 The bill does not have any provision for data collection included within it. There are several benchmarks that the Committee considers should be included:
- the law require the conduct of yearly research to learn about any differences in experiences in standards development based on gender;²⁷
 - the law require the collection of sex-aggregated data on participants in standards and/or code of conduct development;²⁸
 - the law require the collection of data on the gender ratio of employees at all different levels;²⁹
 - the law require the development of training tools to enhance the gender awareness and gender equality of employees;³⁰ and
 - the law require the monitoring and recording of the participation in, and impact of, any training provided.³¹
- 9.7.3 The Committee noted the bill could be amended further to provide for monitoring of the code of conduct complaints made, accepted and investigated, with accessible, de-identified public data released to promote transparency and accountability. This could also be achieved by policy decision within the department.
- 9.7.4 The Committee noted that training is only discussed in the amendment in relation to the use of training as a sanction. There is an opportunity to legislate the training of councillors and those who assess or investigate complaints in areas of

²⁵ Gender Legislative Index Methodology Note: Measuring the gender-responsiveness of domestic laws, Dr Ramona Vijeyarasa, June 2019, https://www.genderlawindex.org/GLI_Methodological_Note.pdf

²⁶ Ibid.

²⁷ Declaration for Gender Responsive Standards and Standards Development, United Nations Economic Commission for Europe, 2018, https://unece.org/DAM/trade/wp6/AreasOfWork/GenderInitiative/UNECEGenderDeclaration_English.pdf

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

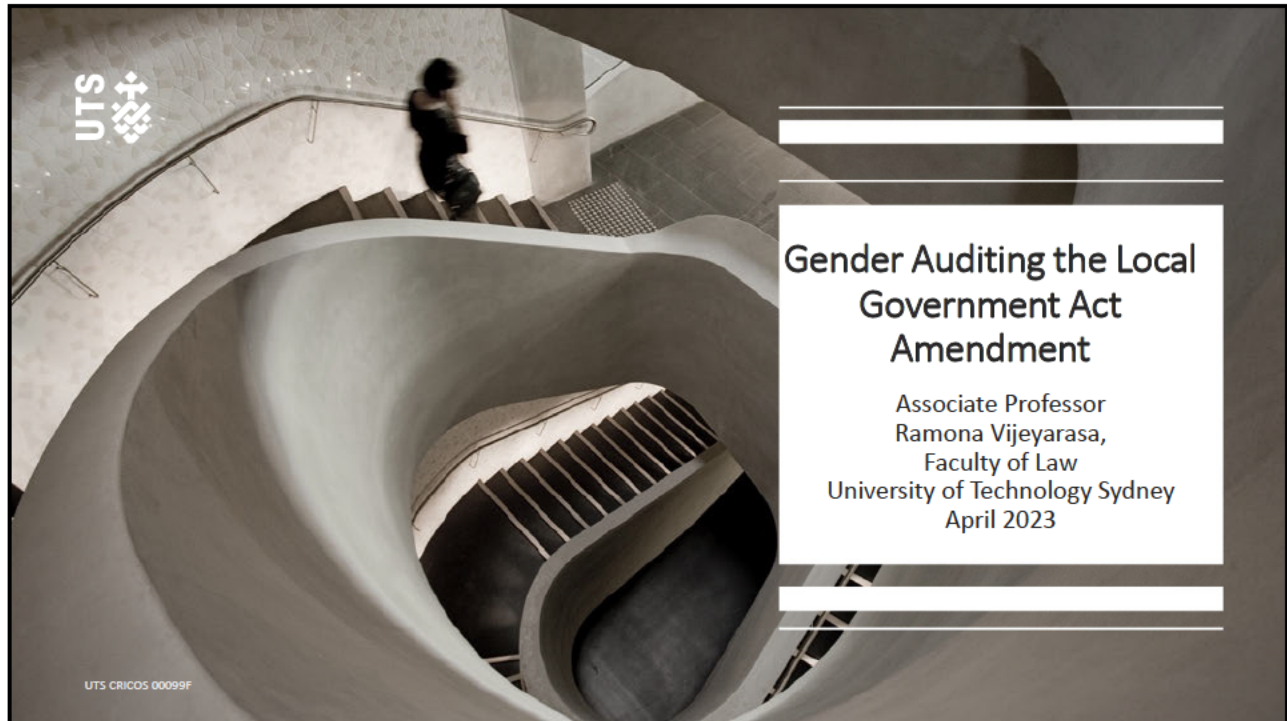
gender awareness. To promote a consistent outcomes focus, monitoring the decisions of those who assess complaints, to ensure processes are being followed in a consistent manner, could identify further training needs.

- 9.7.5 Data collection can be a useful tool in assessing the efficacy of legislation. In the case of code of conduct complaints, the Committee considered it valuable to collect data that could further inform the complaints process. The amendment bill has the potential to include reporting provisions for the Code of Conduct Panel including a requirement to regularly publish data on the number of complaints received and how many were dismissed, investigated or heard. Such an amendment could be provided for within section 28ZI and drafted to ensure confidentiality is maintained as appropriate.
- 9.7.6 In correspondence from the Director of Local Government, Mr Mathew Healey to the Committee dated 29 May 2023, Mr Healey informed the Committee:
1. The Office of Local Government has maintained data on code of conduct complaints since 2015.
 2. The data includes details on how complaints were dealt with including whether it was dismissed or upheld.
 3. The data collected does not include whether a complaint was dealt with face-to-face or online.

Mr Healey noted his willingness to consider how data collection and the application of the GLI could improve accessibility, promote gender equality and improve the treatment of women.³²

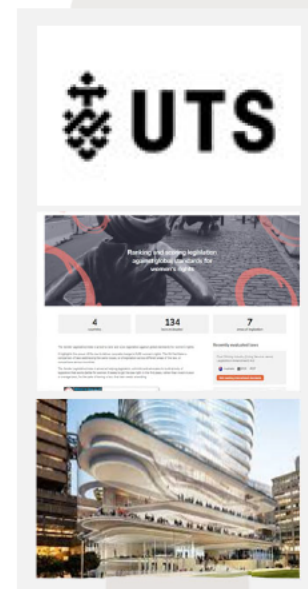
- 9.7.7 This criteria is non-applicable and/or inconclusive to the bill and thus gender neutral. However, amendment to the bill or departmental policy could assist in meeting this criteria.

³² Correspondence Mathew Healey, Director of Local Government, 29 May 2023 (Appendix C).



About me

- ✓ Associate Professor in the Faculty of Law (Ph.D, LL.M, LL.B/B.A at the University of Technology Sydney & Juris Doctor Program Head
- ✓ One of Australia's leading scholars on gender equality and the law, with over a decade of experience working for and advising international organisations and non-governmental organisations in Australia and globally
- ✓ Designer behind the Gender Legislative Index – a tool designed to measure how well domestic legislation can work better for women and in compliance with international women's rights law



Overview



UNIVERSITY OF
TECHNOLOGY SYDNEY

1. Bringing a gender lens – Australia & CEDAW since 1981
2. The goal of gender-responsive law-making
3. What gender-responsive law making requires



Premise behind the GLI

“Gender-responsive legislation makes legislative systems more responsive to explicit and implicit gender issues. It facilitates accountability – in legislative and policy implementation – to the specific needs of different sexes and to different gendered perspectives on pivotal social, economic and political issues”.

Making the law work for women: Standard-setting through a new Gender Legislative Index, *Alternative Law Journal* (2019) 44(4): 275-280

Alternative Law Journal
Volume 44, Issue 4, December 2019, Pages 275-280
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Article

Making the law work for women: Standard-setting through a new Gender Legislative Index

Ramona Vijeyarasa

Abstract

This article is premised on the fact that every area of law needs a gender perspective. It discusses the prospects for a Gender Legislative Index, a tool to enable us to evaluate and score legislation, by placing laws on a scale from gender-regressive to gender-responsive, when set against global benchmarks from international law – primarily CEDAW. In doing so, this article defines and defends the need for gender-responsive legislation, showing how a common set of standards for global good practice can be developed and the shortcomings, but also advantages, of an online tool to benchmark, score and rank laws.

Keywords

Gender index, gender-responsive legislation, CEDAW, women's rights, gender and the law, legislative drafting

Differential treatment and experiences in law

1. In which ways does the policy affect the everyday lives of women and men in general or specific groups of women and men?
2. Are there any gender differences and/or gaps in the policy sector (with regard to rights, participation/representation, access to and use of resources, values and norms that affect gender-specific behaviour)?



(From the "Gender Mainstreaming Cycle" of the European Institute for Gender Equality)

5

Gender Legislative Index

Home Search Index Women Leaders Benchmarking Scoring Glossary of Terms About the GIL Login

4 countries

134 laws evaluated

7 areas of legislation

The Gender Legislative Index is a tool to rank and score legislation against global standards for women's rights. It highlights the power of the law to deliver concrete change to fulfil women's rights. The GIL facilitates a comparison of laws addressing the same issues, or of legislation across different areas of the law, or comparisons across countries.

The Gender Legislative Index is aimed at helping legislators, activists and academics to build a body of legislation that works better for women. It seeks to get the law right in the first place, rather than invest in poor or average laws, for the sake of having a law, that later needs amending.

Recently evaluated laws

Coal Mining Industry (Long Service Leave) Legislation Amendment Act

Australia 2011 81/7

Not meeting international standards

The Liquor Amendment (2011) Act 2011

Australia 2011 84/1

Not meeting international standards

Pay Work Act

Australia 2011 84/1

Not meeting international standards

A refresher:
How to bring a
gender
perspective to
law-making

www.genderlawindex.org

Search Index - By Category

6

The scoring behind the GLI...



1. Does the law guarantee access to non-discriminatory and accessible, affordable, acceptable services?
2. Does the law guarantee access to information and education or require the provision of information and education on the issue?
3. Does the law guarantee non-coerced and informed decision-making and where relevant, protect women's confidentiality?
4. Does the law promote equal relations between men and women?
5. Does the law protect women from situations of vulnerability linked to their gender?
6. Does the law guarantee accessible and effective remedies (i.e. access to justice)?
7. Does the law promote the comprehensive monitoring of the situation of women? This includes promoting gender-disaggregated data collection on the nature of the problem.

Meeting international standards

Mostly meeting international standards

Partially meeting international standards

Not meeting international standards

Complete disregard for international standards

Insufficient information to make an evaluation

● Inconclusive or NA ● Gender Regressive ● Gender Blind ● Gender Neutral ● Gender Responsive

www.genderlawindex.org

7

Benchmarking – Codes of conduct

8

Scenario

There is a harassment case against a Councillor by a local business owner. The local business owner submits a complaint.

Issue: How do the provisions of the Local Government Amendment (Code of Conduct) Bill ensure that the processes in response is a gender-responsive one.

Consider:

- Can we guarantee the business owner can make a complaint? Knowledge (in a diversity of language)? Access to complaints mechanisms? Affordability?
- Who receives the complaint and what do they do with it?
- Who assesses the complaint on its merits and makes a determination?
- What capacity do the officials involved have to consider the complaint?
- How can we guarantee the victim's complaint is fairly considered, and that there is transparency and accessibility in appeals processes?
- What data is collected and made available about the complaint?
- How can we ensure that the scenario is not repeated in the future?
- For any of these questions, does the gender of the Councillor, the business owner or any other parties involved, matter?

9

Two elements to gender-responsive codes of conduct

Environment

- Formation/functioning of Code of Conduct panel/institution (environment)

Substance

- Gender perspective to substantive issues

10

Core issues emerging in the Bill: A summary

1. **Affordability, accessibility and availability** of complaints mechanisms
2. **Gender capacity** and awareness (for those who create the Code of Conduct, for those who investigate, for those who sit on Codes of Conduct Panels)
3. Complaints concerning **gender-based harm** (sexual harassment, gender-based violence, bullying and other behaviour prohibited by law)
4. **Trauma-informed** approach to conducting investigations
5. **Women's participation** in decision-making and gender-balance in decision-making bodies
6. **Independence and transparency** in decision-making and access to independent review of decisions
7. Mechanisms for **redress** and access to justice (e.g. in cases of non-compliance with the prohibition on direct and indirect discrimination on grounds of sex, or concerning gender-based harms)
8. **Data** collection and monitoring – on participation, representation, complaints and complainants

11

Turning to the benchmarks...but first, a pause for questions

1. Does the law guarantee access to non-discriminatory and accessible, affordable, acceptable services?
2. Does the law guarantee access to information and education or require the provision of information and education on the issue?
3. Does the law guarantee non-coerced and informed decision-making and where relevant, protect women's confidentiality?
4. Does the law promote equal relations between men and women?
5. Does the law protect women from situations of vulnerability linked to their gender?
6. Does the law guarantee accessible and effective remedies (i.e. access to justice)?
7. Does the law promote the comprehensive monitoring of the situation of women? This includes promoting gender-disaggregated data collection on the nature of the problem.

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APPENDIX B

Good practice benchmarks: Local Government Code

For the purpose of conducting a gender audit of Tasmania's Local Government Amendment (Code of Conduct) Bill 2022

Introductory note

The task at hand is to conduct a gender audit of Tasmania's *Local Government Amendment (Code of Conduct) Bill 2022*. There exists is very limited guidance (in Australia or internationally) when it comes to applying a gender lens to local government codes of conduct, their design, implementation and scope. Yet a key first step in auditing a bill is to identify these benchmarks. Several different sources were consulted for this purpose. Some are directly relevant (e.g. NSW Model Code of Conduct). Others are peripherally relevant and speak to the creation of codes of conduct, but not necessarily for use vis-à-vis conduct of a government official. Other broader standards (e.g. regarding harassment or discrimination) were also consulted.

The amendment has mainly two points. One is to grant the Minister the right to issue a Code of Conduct. The other is a reform of the procedural aspects regarding its enforcement.

What becomes evident is that the scope of these standards addresses both the environment and the substance. That is, it is relevant to consider the form that investigating panels and dispute resolution bodies take and how these bodies function and how representative they should be. It is also importance to address the substance, that is, what gendered standards should these bodies apply to achieve gender-responsive outcomes.

Some of these benchmarks may only appear in the code of conduct to be drafted (made by the Minister if the Bill is passed as proposed). Some of these benchmarks should appear in the law itself. In some instances, they may

appear in both. If they are present in the enacted law and the Code, this may send a message of the amplified importance of that particular benchmark.

Note that in some instances, these benchmarks have been met in the draft amendment. It may be worth the Gender & Equality Audit Committee highlighting these instances as they may have been incorporated into the bill without the intention of being gender-responsive. Their gender-responsive aspects should be made explicit in the Committee's report.

Criteria	Global standard	Relevant clause	Should appear in law?	Should appear in Code of Conduct?
1. Does the law guarantee access to non-discriminatory and accessible, affordable, acceptable services?	Law guarantee free or affordable access to remedies for complainants? Grievance mechanisms must be accessible and may not be if they are not affordable. <i>Clause 34 of the Amendment provides various grounds for reimbursement of the fee. However, it is essential that the fee does not deter complaints from being submitted in the first place.</i>	Clause 14 – Section 28V amended	✓	✓
2. Does the law guarantee access to information and education or require the provision of	The law requires the individual or groups responsible for creating the Code of Conduct to have the relevant expertise, tools and resources to strive to develop gender responsive standards. This includes providing committees with any necessary training to develop their gender expertise and ensuring committees include a gender expert or have access to gender expertise (e.g. via a network of gender experts)	Clause 7 – 28L re constitution of code of conduct panel' Clause 22 – 28ZCA	✓	

information and education?	(United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development")	inserted re convening of investigating panel		
3. Does the law guarantee non-coerced and informed decision-making and where relevant, protect women's confidentiality?	Law explicitly defines inappropriate behaviour to include behaviour that constitutes harassment, including sexual harassment, gender-based violence, bullying and other behaviour prohibited by law (NSW Model Code of Conduct 2020). <i>To amplify the importance of defining inappropriate behaviour in these terms, should appear in Clause 4 of Act.</i>	Clause 11 Section 28S amended	✓	✓
	Law should require the Code of Conduct to include a prohibition on harassment, defined in the law, or in the Code of Conduct developed pursuant to the Act, as any behaviour is not wanted by the person offends, humiliates or intimidates the person, and creates a hostile environment. This includes sexual harassment, defined as any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour (NSW Model Code of Conduct 2020 ; Australian Human Rights Commission) <i>Note: It may be worth envisaging the need to protect members of the panel against harassment.</i>	Clause 11 Section 28S amended	✓	✓
	Law requires Code of Conduct to prohibit harassment or discrimination on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation (NSW Model Code of Conduct 2020 ; Australian Human Rights Commission ;	Clause 11 Section 28S amended	✓	✓

	(Beijing Declaration and Platform for Action, 1995, para. [180](c); CEDAW Committee, General Recommendation No. 35 on Gender-based Violence against Women, 2007, para 30(f))			
	Code of Conduct must require Councillors to consider matters consistently, promptly and fairly including in a non-discriminatory manner (NSW Model Code of Conduct 2020)	Clause 11 Section 28S amended	✓	✓
4. Does the law promote equality between men and women?	Law requires participation in decision-making i.e. Code of Conduct developed in a participatory manner that includes the perspectives of women and men (Council of Europe Gender Responsive principles) (i.e. equitable participation and influence by men and women) (International Institute for Sustainable Development Framework for Gender-Responsive National Adaptation Plan) <i>Note: The proposal for the Code to be developed by the Minister alone would fall foul of this benchmark.</i>	Clause 4(3) Clause 10 – Section 28R amended	✓	
	Law requires a representative number of women in dispute resolution in investigation; participation in Codes of Conduct Panel (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development")	Clause 5 – New division 3AA; Clause 6 – Section 28 L as amended re constitution	✓	✓
	Law requires a review the gender balance in senior roles and seeks to improve it where it is imbalanced (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development"). <i>Note: This would pertain to the role of initial assessor or any role created that establishes a chair of the Investigating Panel. It does not mean that panels may always be chaired by a woman, but a consideration of balance in the overall chairing of panels, especially in bigger local governments with, potentially, more cases and in aggregated terms across the State.</i>	Clause 6 – Section 28K amended 28L amended	✓	

	Law requires the development and implementation of policies, procedures and activities which support gender inclusivity (e.g. raising awareness; training for committee chairs, programme managers, members; distributing this declaration to all those involved in standards development, etc.) (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development")	Not present in amendment		✓
5. Does the law protect women from situations of vulnerability linked to their gender?	Law must ensure diversity of staff dealing with gender-based conduct of conduct complaints (Gender-responsive due diligence.org)	Clause 16 (Section 28X amended)		✓
	Law should require the visibility of Code of Conduct complaint mechanisms to all individuals, including women and marginalised groups, taking into account potential lower literacy levels (Gender-responsive due diligence.org)	Clause 16 (Section 28X amended)	✓	✓
	There should be a trauma-informed approach to conducting investigations (Department of Health Victoria). <i>Note: The amendment provides that a hearing need not be held where neither the complainant or councillor would be disadvantage and 'it is appropriate in the circumstances not to hold a hearing'. This may facilitate a paper-based investigation that could avoid re-traumatising the victim and is potentially a position inclusion if 'disadvantage' and 'appropriate' are understood with this gender-responsive goal in mind.</i>	✓ Clause 26 – Section 28ZG Amended	✓	
6. Does the law guarantee accessible and effective remedies	Law should consider the need for independent, gender-sensitive investigations of gender-related code of conduct complaints ¹ and a commitment to addressing gender-linked power imbalances during dispute resolution processes Gender-responsive due diligence.org	Clause 17 – (Section 28Y, 28Z, 28ZA,		✓

¹ Gender-related complaints have been defined in another context – specifically a handbook on gender and complaint mechanisms in the armed forces – as complaints submitted by men and women related to their gender roles. In many cases, a person's complaints does not appear to be related to their gender but upon further investigation, it becomes clear that the person is being treated unequally because she is a woman or because of the non-conformity with stereotypes. See NATO Science

(i.e. access to justice)?		28ZC amended)		
	The law establishes mechanisms for redress and access to justice in cases of non-compliance with the prohibition on direct and indirect discrimination on grounds of sex (Beijing Declaration and Platform for Action, 1995, para. 178(b)). <i>Note: It is questionable whether the remedies are sufficient and appropriate, given it takes three complaints in one term before an officer is removed.</i>	<p>Clause 30 – Section s28ZK amended</p> <p>Clause 21 Section 28ZL amendment refers only to suspension.</p> <p>Clause 32 S 28ZM refers to an apology, training and a penalty at best.</p>	✓	
	The law allows for independent review in accordance with international standards by all decisions of administrative bodies, ensures that a decision rejecting an application is reasoned and the claimant is able to appeal it to be a competent body (Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on women's access to justice, 2015, Art. 53).	✓ See Clause 29 – Section s28ZJ(1)(f) amended		

7. Does the law promote comprehensive monitoring of the situation of women? This includes promoting gender-disaggregated data collection on the nature of the problem.	Law requires the conducting of yearly research with committee members to learn about any differences in experiences in standards development based on gender (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development") <i>Note: In this case, it could be addressed through a recommendation to reassess the code along these lines after some time in force.</i>	Not present in amendment		✓
	Law requires collection of sex-disaggregated data on participants in standards development (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development") <i>Note: Here as the code in the bill will be developed by the Minister, it would need to be envisaged in a process of consultation.</i>	Not present in amendment		✓
	Law requires the collection of data on the gender ratio of employees at all different levels (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development")	Not present in amendment		✓
	Law requires the development of training tools to enhance the gender awareness of employees (United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development") <i>Note: At present, training only appears in the Act as a sanction against a counsellor who is required to attend a training course.</i>	Not present in amendment		✓
	Law requires the monitoring and recording of the participation in and impact of any training provided(United Nations Economic Commission for Europe Declaration for "Gender-Responsive Standards and Standards Development")	Not present in amendment		✓

	<i>Note: At present, training only appears in the Act as a sanction against a counsellor who is required to attend a training course.</i>			
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APPENDIX C

Department of Premier and Cabinet

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GPO Box 123 HOBART TAS 7001 Australia
Ph: 1300 135 513 Fax: (03) 6233 5685
Web: www.dpac.tas.gov.au



Hon Ruth Forrest MLC
Committee Chair
House of Assembly, Parliament House
Email: genderandequality@parliament.tas.gov.au

Dear Ms Forrest

Thank you for your letter of 26 April 2023 regarding the trial bill assessment of the *Local Government Amendment (Code of Conduct) 2022* by the Joint Sessional Committee on Gender and Equality (the Committee).

In response to the questions of the Committee:

1. Yes, the Office of Local Government has maintained data on code of conduct complaints since 2015. The data includes details on how the complaints were dealt with, including whether it was dismissed or upheld.
2. A Code of Conduct Panel can determine to consider a complaint without conducting hearings, or conduct hearings either face-to-face or online. The data collected unfortunately does not include details of how the complaint was considered. I would be happy to review the determination reports for complaints over a reasonable period if this would be of value to the Committee.

With regard to the Committee's third question, the Office would be happy to maintain data on the number of complaints considered through face-to-face hearings. It would, however, be useful to understand how this data can assist in promoting gender and equality. I would also be very interested in any lessons that can be drawn from the Gender Legislative Index with regard to improving the accessibility for, and treatment of women in the code of conduct complaints process.

Thank you again for your correspondence.

Your sincerely

Mathew Healey
Director of Local Government

29 May 2023

APPENDIX D – MINUTES OF PROCEEDINGS

JOINT SESSIONAL COMMITTEE ON GENDER AND EQUALITY

MONDAY, 28 November 2022

The Committee met in Committee Room 2, Parliament House, Hobart at 11:02a.m.

Members Present:

Mrs Alexander
Mr Duigan (via WebEx)
Ms Forrest
Mr Harriss
Ms O'Byrne (via WebEx)
Mr Willie
Dr Woodruff
Mr Young

APOLOGIES

No apologies were received.

MINUTES

The minutes of the meeting held on 21 November last were read and confirmed. (Mr Willie).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the Committee adjourned until Wednesday 15 March 2023.

Confirmed.

JOINT SESSIONAL COMMITTEE ON GENDER AND EQUALITY

MONDAY, 24 April 2023

The Committee met in Committee Room 1, Parliament House, Hobart at 9:02a.m.

Members Present:

Mrs Alexander (via WebEx)

Mr Duigan (via WebEx)
Ms Forrest
Mr Harriss
Ms O'Byrne (via WebEx)
Mr Willie
Dr Woodruff (via WebEx)
Mr Young

APOLOGIES

No apologies were received.

TRIAL BILL ASSESSMENT BRIEFING

The Committee received a briefing from the following witness in relation to the use of the Gender Legislative Index (GLI) as a tool for the assessment of legislation, including an assessment of the Local Government Amendment (Code of Conduct) Bill 2022:-

- Dr. Ramona Vijeyarasa, Senior Lecturer in Law, University of Technology Sydney.

At 10:42 a.m. the witness withdrew.

CONSIDERATION OF BRIEFING

The Committee considered the briefing, acknowledging the expertise and insight offered by Dr Vijeyarasa.

Resolved, to write to the Minister for Local Government advising the Minister and representatives of the trial work of the Committee on the Local Government Amendment (Code of Conduct) Bill 2022 and inviting them to attend a meeting of the Committee to discuss the process further (Ms Forrest).

Resolved, to write to the Local Government Association of Tasmania (LGAT) and the Chairperson of the Local Government Board to request information regarding access to disaggregated data on Code of Conduct complaints, specifically regarding the number of complaints, if a hearing was conducted and if any

such hearings were conducted face to face (Ms O'Byrne).

Resolved, for the secretariat to draft two reports as a consequence of the briefing. First, a report detailing the discussion of the Local Government Amendment Bill. Second, a report detailing the Committee's strong recommendation to prioritise awareness, education and training relating to gender and equality for Members of Parliament, Parliamentary staff and Government public servants (Dr Woodruff).

Resolved, to write to the Premier advising him of the Committee's decision to implement the GLI as an assessment process, which will further inform the approach Committee Members take to their role as parliamentarians. The letter is to suggest that the Cabinet be made aware of the GLI to consider in the progress of legislation (Mr Willie).

MINUTES

The minutes of the meeting held on 15 March last were read and confirmed (Mr Harris).





At 11:37a.m. the Committee adjourned until Wednesday 26 April 2023.
Confirmed.

**JOINT SESSIONAL COMMITTEE ON
GENDER AND EQUALITY
TUESDAY, 30 May 2023**

The Committee met in Committee Room 3, Parliament House, Hobart at 1:11 p.m.

Members Present:

Mr Duigan
Ms Forrest
Mr Harriss
Ms O'Byrne
Mr Willie
Dr Woodruff
Mr Young

APOLOGIES

No apologies were received.
It was noted that on this day Ms Johnston has been elected to the Committee to replace Mrs Alexander.

TRIAL BILL ASSESSMENT

DISCUSSION WITH MINISTER

The Committee welcomed the following to the Committee to discuss the Committee's work with Dr Vijayarasa relating to the Local Government (Code of Conduct) Bill 2022:-

- Hon Nic Street MP, Minister for Local Government;
- Mathew Healey, Executive Director, Local Government, Office of Local Government, Department of Premier and Cabinet (via WebEx)

- Andrei Norris, Acting Assistant Director (Policy & Engagement), Office of Local Government
- Melissa Geard, Adviser, Local Government, Office of the Hon Nic Street MP

The Chair outlined the methods used so far by the Committee in relation to the trial bill assessment process.

Discussion of the issues identified commenced.

At 1:34 p.m. Ms O'Byrne and Mr Willie withdrew.

Discussion continued.

At 1:58 p.m. Minister Street, Mr Healey, Mr Norris and Ms Geard withdrew.

Resolved, to write to Minister Street thanking him for his time before the Committee today (Ms Forrest).

Resolved, for Members to consider findings and recommendations from the report as written so far and for the Secretariat to add to the report covering today's discussion with the Minister (Dr Woodruff).

Resolved, to send the Minister for Local Government a copy of the report on the trial bill assessment when complete and to attach to said report the documents provided by Dr Vijayarasa as appendices (Mr Young).

The Committee discussed potentially providing information to Ministers on gender considerations for bills in the future.

The Committee also discussed considering writing to the Premier regarding the Committee process for this bill and the need to be cognisant of gender responsiveness in the legislative process.



MINUTES

The minutes of the meeting held 26 April 2023 were read and agreed to (Mr Duigan).

OTHER MATTERS: -

None.

At 2:09 p.m. the Committee adjourned until Tuesday 13 June 2023.

Confirmed.

JOINT SESSIONAL COMMITTEE ON GENDER AND EQUALITY TUESDAY, 13 June 2023

The Committee met in Committee Room 1, Parliament House, Hobart at 9:59 a.m.

Members Present:

Mr Duigan

Ms Forrest

Mr Harriss

Ms O'Byrne (via WebEx)

Mr Willie

Mr Young

Dr Woodruff

APOLOGIES

Ms Johnston was an apology.

MINUTES

The minutes of the meeting held 26 April 2023 were read and agreed to (Mr Duigan).



PRIVATE COMMITTEE DELIBERATION

The Committee discussed potential other organisations to contact in relation to the Gendered Bias in Healthcare Inquiry.

The Committee considered the Local Government Amendment (Code of Conduct) Bill 2022 trial bill assessment report.

Para 2.4 remove repeated words.

Para 2.5 - insert comma after 2023;

- insert Ramona in first mention of Dr Vijayarasa's name;
- remove 'and advising organisations and non-governmental organisations' and replace with 'governments and non-government organisations'

Para 2.8 first sentence insert 'preliminary' before 'findings'

Para 2.9 - third sentence, replace 'further, the Committee noted the lack of gender-sensitive and trauma practice in legislative drafting, in code of conduct assessments, and, in relation to this bill, council based support before, during and after investigations' and insert instead 'Further, the Committee noted the lack of gender-sensitive and trauma-informed practice in legislative drafting and code of conduct assessments. Council-based support

before, during and after investigations was also lacking.'

- Final sentence, insert full stop after 'further' and amend remove 'and' and replace with 'This'

Para 2.10 replace 'beneficence' with 'benefit'

Para 2.11 remove the word 'again' and remove 'noting the engaged response of the guests to the discussion and the interest in future steps of the Committee.'

At 11.09 a.m. Ms O'Byrne joined the meeting in person.

Para 5 insert (GLI) after Gender Legislative Index

Para 6 remove 'Local Government (code of Conduct) amendment'

Para 6.1.2 remove the word 'crisis' and replace with 'pressures.'

Para 6.1.3 make list of questions dot points; remove the word 'commented' and replace with 'noted'

Para 6.1.4 remove 'and the complaint process' and replace with 'and mechanisms and processes for the complaint.'

Para 6.1.6 after 'public' in second sentence, remove 'as' and insert instead a full stop. Remove 'or not be able to'

At 11.25 a.m. Mr Duigan withdrew

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OTHER MATTERS: -

NONE.

At 4:29 p.m. the Committee adjourned until 9 a.m. Wednesday 14 June 2023.
Confirmed.

**JOINT SESSIONAL COMMITTEE ON
GENDER AND EQUALITY
WEDNESDAY, 14 June 2023**

The Committee met in Committee Room 1, Parliament House, Hobart at 8:59 a.m.

Members Present:

*Mr Duigan
Ms Forrest
Mr Harriss
Ms Johnston
Ms O'Byrne
Mr Willie
Mr Young*

APOLOGIES

Dr Woodruff was an apology

[REDACTED]

[REDACTED]

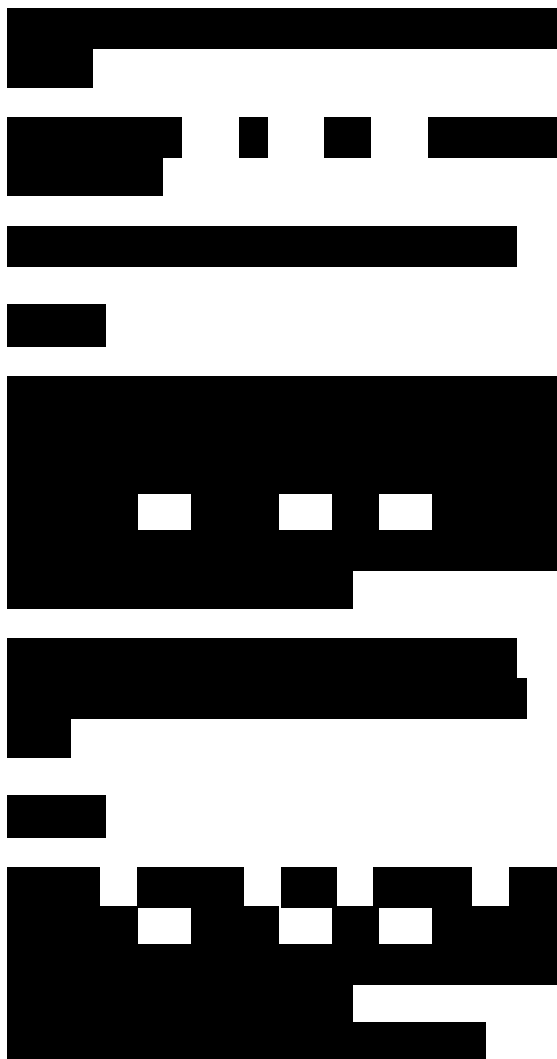
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



OTHER MATTERS: -

Consideration of report – Local Government (Code of Conduct) Bill 2022 trial bill assessment.

Para 6.1.7 – remove all words after 'gender' and insert instead 'The Committee rated this aspect of the law to be gender neutral on this criteria, both in intention and likely effect.'

Para 6.6.1 – insert comma after word 'women' first occurring.

Para 6.2.2 - remove 'the' in 'first place have the relevant expertise,'

Para 6.2.4 – remove the words 'such as' and replace with 'including'

- Insert after 'including' 'gender-based violence'.

Para 6.2.5 – insert after 'on an annual basis', 'at a minimum'

Para 6.2.6 – remove sentence and insert instead 'The Committee noted this aspect of the bill and the Principle Act are currently gender blind and recommends amendments to make it gender responsive.'

Para 6.3.2 – Remove 'that' after 'The Committee notes' and replace the word 'feels' with 'finds'

Para 6.3.4 – insert comma after 'unwanted sexual behaviour' and remove the word 'that' after 'the possibility'

Para 6.3.5 – remove the word 'commented' and insert instead 'noted' – remove the word 'also' after 'harassment should'

Para 6.3.6 – Remove 'that' from after 'It was noted'

- Insert hyphen between 'decision' and 'making'
- end sentence after 'Decision-making.'
- Remove the words 'However, the' and insert instead 'The Committee notes the'

Para 6.3.7 – remove sentence and insert instead 'The Committee noted this aspect of the bill and the Principal Act are currently gender blind and recommends amendments to make it gender responsive.'

Para 6.4.2 – remove 'that' after 'states'

- Remove the words 'set down' and insert instead 'prescribed'
- Remove the sentence 'The use of regulation in this manner can allow the Executive to legislate without reference to the parliament which, in turn, insufficiently subjects the exercise of legislative power to parliamentary scrutiny.' Insert instead 'The use of regulations in this manner can allow the Executive to legislate without prior parliamentary scrutiny.'
- Remove the word 'law' and replace with 'the bill'

Para 6.4.3 – paragraphed removed and moved to recommendations

Para 6.4.4 – remove the word 'that' after 'requires'

- remove the word 'amendment' following 'benchmark the'
- changes 'process' to 'processes'

Para 6.4.5 – remove the word 'considers' and insert instead 'notes'

- Replace the word 'male' and insert instead 'man'
- Remove all words following 'Such consideration of balance should be used where possible.'

Para 6.4.6 – Remove the word 'Finally'

- Replace 'consider' with 'considered'
- Replace 'benchmark' with 'benchmarking'
- Remove e.g. and replace with 'including but not limited to'
- Remove etc.

- At 5:17 p.m. the Committee adjourned until 1.10 p.m. Wednesday 21 June 2023.
Confirmed.

JOINT SESSIONAL COMMITTEE ON GENDER AND EQUALITY WEDNESDAY, 21 June 2023

The Committee met in Committee Room 1, Parliament House, Hobart at 1:10 p.m.

Members Present:

Mr Duigan (via WebEx)
Ms Forrest (via WebEx)
Mr Harriss
Ms Johnston
Ms O'Byrne
Mr Young

APOLOGIES

Dr Woodruff was an apology for the first 13 minutes

CONSIDERATION OF REPORT – LOCAL GOVERNMENT (CODE OF CONDUCT) BILL 2022 - TRIAL BILL ASSESSMENT.

The Committee further considered the Local Government (Code of Conduct) Amendment Bill 2022, trial bill Assessment Report:-

The Chairs forward was considered:

Para 2.6 – capitalise 'Chapter'

- Insert 'the relevant' before the word Minister
- Change the last occurring 'has' to 'had'.

Para 9.3.3 – remove the words 'CEDAW Committee, General Recommendations No.35' and replace with 'Committee on the Elimination of Discrimination against Women (CEDAW) General recommendation No. 35 on gender-based violence

against women, updating general recommendation No. 19 2017'.

Para 9.4.7 – insert new sentence after the full stop, 'The making of regulations to establish a code of conduct should be gender sensitive.'

Para 9.5.3 – insert full stop after 'marginalised groups'

- Remove 'and also taking into account low literacy levels or low legal literacy' and insert instead 'Consideration must also be given to the needs of members of the community who experience low literacy levels or low legal literacy.'

At 1.23 p.m. Dr Woodruff came to the Table.

Para 9.5.1 – Insert hyphen between 'gender based.'

Para 9.5.4 – Remove 'views this section' and insert instead 'noted this provision'

Para 9.5.5 – Remove 'considered that' and insert instead 'noted'

Para 9.5.6 – Remove the sentence 'The Committee would be interested in any available historical data relating to the number of complaints which did not eventuate in a hearing and any outcomes from these such cases.' Insert instead 'In the meeting with Minister Street and departmental staff, the Committee noted the absence of historical data relating to the number of complaints that did not eventuate in a hearing and any outcomes from these cases.'

- Remove the first occurring 'such.'

Para 9.5.8 – remove the words 'Local Government (Code of Conduct) Amendment' and '2022 itself'

- Insert after 'the Act' 'itself.'

Para 6.5.7 – Remove 'also considered the benchmark of taking a trauma-informed approach in' and insert instead 'noted the importance of taking a trauma-informed approach in.'

- Remove the sentence 'As such, it would be good to see language around a trauma informed approach to conducting investigations incorporated within clause 26 (section 28ZG amended' and insert instead 'There must be the conclusion of language that promotes a trauma-informed approach. Language should be incorporated within clause 26 (section 28ZG amended) to promote best practice.'

Insert new Para 9.5.9 –

'Amendment to the bill should be considered to enshrine trauma-informed practice principles in the code of conduct investigations.'

Para 9.6.3 – Insert comma after 'justice'

- Move the sentence 'it was unclear how the number of three suspensions was arrived at' to follow 'from office.' Insert 'For instance' before relocated 'it was.'
- Insert 'of' following 'case'

Para 9.6.4 – Remove 'Section' and insert instead 'section'

- Insert 'a' after 'clarity and'
- Remove 'in relation to' after 'clarity and a response'

Para 9.6.5 – Remove comma after 'for natural justice reasons' and insert instead a full stop.

- Remove 'however' and 'and/.'

Para 9.7.2 – Remove 'Local Government (Code of Conduct) Amendment'

- Remove 'considered including' and insert instead 'considers should be included.'

Para 9.7.4 - after 'decisions of' insert 'those'

Para 9.7.5 – Insert 'regularly' after 'a requirement to'

- Remove original instance of 'regularly'

Para 9.7.6 – Remove 'the' before 'code of conduct complaints'

- Remove 'the' before 'complaints were dealt with'
- Replace final occurring 'the' with 'a'

The Committee considered the draft Findings:

Finding 1 - remove are: and insert instead 'Are' in front of 'more' in a.

Finding 3 – Insert 'be:' after 'must' and remove 'be' from the start of a. and b.

- Insert 'and' after responsive;

Finding 4 – insert 'and' after 'principles:'

Finding 5 – insert 'and' following 'diversity;'

- Remove 'requirement' in both a. and b. and insert instead 'stipulation'

Finding 6 - insert at beginning of finding 'To promote gender equality,'

- Remove 'to promote gender equality' from the end of the sentence.

Finding 7 – remove the word 'copy' and insert instead 'drafting'

Finding 8 – after 'assessment;' insert 'and'

Finding 9 – Remove 'The bill provides for the determination of provisions of the code of conduct will be as prescribed by regulation' and insert instead 'The bill provides for the code of conduct to be prescribed by regulation.'

- Remove the word 'Acknowledging' and capitalise 'the'
- Remove the words 'this facilitates' and insert instead 'which will facilitate'

Finding 10 – Change c. and d. to a. and b.

Finding 11 – Insert after 'Act' '1993' (italics)

Finding 12 – Remove this finding

Finding 13 – after 'may' remove the words 'face accessibility challenges related to making a code of conduct complaint' and insert instead 'experience accessibility and affordability challenges in making a code of conduct complaint'

- Renumber finding to 12

Finding 14 - Remove finding

Finding 15 – Renumber finding to 13

Finding 16 – Insert a full stop following 'collection'. Remove 'which' and insert instead 'This'

- Remove 'related to'
- Insert 'the lack' before 'disaggregation' in both b. and c.
- Insert 'and' following gender

The Committee considered the draft Recommendations:-

Recommendation 1 – Remove 'gender responsiveness' and insert instead 'gender-responsive'

Recommendation 2 – In d. – insert a full stop after 'law', remove 'be made explicit in the bill to include all types of discrimination including discrimination on the basis of' and insert instead 'The definition must be explicit in the bill, including but not limited to, all forms of discrimination on the basis of:'

Recommendation 4 – Remove 'proscribed' and insert instead 'prescribed'

Recommendation 5 – Insert 'and' after 'proceedings;'

- Replace 'responsiveness' with 'responsive' in the first occurring in iv.
- amend d. Insert 'Include' before 'additional'
- Remove 'for the evaluation' and insert instead 'to evaluate'
- Insert 'an' before 'amendment'

Recommendation 6 – Split this into two separate recommendations – Remove '6. The form and criteria for sanctions as a result of misconduct be formalised and drafted in a gender-responsive context with a focus on prohibited behaviour and sanctions for serious

offences be strengthened' and insert instead '6. The form and criteria for sanctions resulting from misconduct, should be formalised and drafted, taking a gender-responsive approach. 7. Sanctions should reflect the seriousness of the offence in relation to prohibited conduct.'

Recommendation 7 – Renumbered to 8

- In g. after 'in the Act;' insert 'and'

Recommendation 8 – Renumbered to 9

Recommendation 9 – Renumbered to 10

Resolved, that the Report, as amended, be the Report of the Committee.

At 2:25 p.m. the Committee adjourned until at date to be decided.

Confirmed.

