

CLAUSE NOTES

Local Government Amendment (Code of Conduct) Bill 2015

Clause 1: Short title

This clause is a formal provision specifying the title of the proposed Act.

Clause 2: Commencement

This clause is a formal provision specifying that the Bill will commence on the day it is proclaimed.

Clause 3: Principal Act

This clause identifies that the amendments contained in the Bill relate to the *Local Government Act 1993* (the Act).

Clause 4: Section 3 amended (Interpretation)

This clause amends section 3 of the Act as follows:

- Subclause 3(a) inserts the definition of code of conduct and code of conduct complaint.
- Subclause 3(b) substitutes a new reference for the definition of Code of Conduct Panel.
- Subclause 3(c) inserts the definition of Executive Officer.
- Subclause 3(d) inserts the definition of model code of conduct.
- Subclause 3(e) removes the definition of Standards Panel.

Clause 5: Section 28D amended (Documents relating to agendas)

The Bill amends section 28D of the Act to provide a dispute resolution process regarding the relevance of documents relating to an agenda item of a council meeting.

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

Clause 6: Sections 28E, 28F, 28G, 28H and 28I repealed

This clause removes sections 28E, 28F, 28G, 28H and 28I of the Act as these sections will no longer be relevant following the insertion of new provisions under Clause 6.

Clause 7: Part 3, Division 3A inserted (Code of conduct, complaints and complaint resolution)

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

Subdivision 1 – Code of Conduct Panel and Executive Officer

New section 28K (Code of Conduct Panel) establishes the Code of Conduct Panel. The Minister responsible for local government appoints a pool of members to the Code of Conduct Panel. The members are either Australian lawyers, or persons who have experience in local government but have not been councillors or council employees within the preceding two years. In appointing members, the Minister may seek written expressions of interest from interested persons.

Schedule 2A applies in relation to the members of the Panel. The Panel Members are subject to the conditions of the instrument of appointment, which may include conditions of employment not inconsistent with Schedule 2A.

New section 28L (Constitution of Code of Conduct Panel) provides that in the investigation and determination of a code of conduct complaint, the Executive Officer is to constitute the Code of Conduct Panel by selecting three members from the pool of members appointed by the Minister. One of the members is to be an Australian lawyer, and the other two members are to be persons with experience in local government.

The chairperson of the Panel is appointed by the Executive Officer and is to be one of the members who has experience in local government.

New section 28M (Executive Officer) provides that the Secretary of the Department of Premier and Cabinet (DPAC) appoints the Executive Officer in relation to the Code of Conduct Panel. The Executive Officer may be a State Service officer/employee and, if so, the *State Service Act 2000* does not apply. The Executive Officer is subject to the conditions specified in the instrument of appointment.

New section 28N (Functions of the Executive Officer) provides that the Executive Officer undertakes the administrative functions of the Code of Conduct Panel, and that officer functions may be specified in the instrument of appointment or determined by the Minister.

New section 28O (Payment of remuneration and allowances to members of Code of Conduct Panel and Executive Officer) provides that a member of the Code of Conduct Panel and the Executive Officer are entitled to remuneration and allowances as determined by the Minister.

The relevant council to the complaint is responsible for paying the remuneration and allowances of the Panel members and the Executive Officer, in relation to the investigation and determination of a code of conduct complaint.

An Executive Officer who is also a State Service officer/employee is only entitled to receive the allowances as determined by the Minister. The remuneration that would be payable to a State Service officer/employee is payable by the council to the Government Department for which he or she is employed.

New section 28P (Requesting provision of information) provides that the Minister, the Secretary of DPAC, the Director of Local Government (the Director) and the Local Government Board are entitled to request, in writing, the Code of Conduct Panel to provide information or documents relating to the performance of their individual functions or that of the Panel. The Code of Conduct Panel or Executive Officer is to comply with such a request.

New section 28Q (Providing information to Code of Conduct Panel) clarifies that if a person is to provide a document to the Code of Conduct Panel, it can be provided to the Panel or the Executive Officer.

Subdivision 2 – Code of conduct

New section 28R (Model code of conduct) provides that the Minister is to make a model code of conduct, by order, relating to the conduct of councillors. The Minister may amend/revoke/substitute the model code by order and is to provide a copy of the model code (or the amended/revoked/substituted code) as soon as practicable to councils.

New section 28S (Contents of model code of conduct) provides that the model code of conduct must be consistent with the Act and is to provide for conflict of interest, use of the office of councillor, use of council resources, use of council information, receiving gifts and benefits, behaviour, representation, any prescribed matter, and any other matter provided in the model code of conduct that the Minister considers is appropriate and that is consistent with the Act.

New section 28T (Code of conduct) provides that a council is to adopt the model code of conduct as its code of conduct within three months after the Ministerial Order making the model code takes effect.

A council is also required to meet the same timeframe in relation to a model code that is amended/substituted by the Minister.

A council may amend the model code, provided the amendment is allowed under the model code and the Act.

A council is to make a copy of the council's code of conduct available for public inspection (free of charge) at the public office of the council (during office hours) and on the council's website, and available for purchase at a reasonable charge.

A council is to review its code of conduct within three months after each ordinary election.

New section 28U (Compliance with code of conduct) requires a councillor to comply with the provisions of his or her council's code of conduct while performing their role of councillor.

Subdivision 3 – Complaints against councillors

New section 28V (Making code of conduct complaint against councillor) provides that a person may make a code of conduct complaint against one councillor, or more than one councillor if the complaint relates to the same behaviour and the same code of conduct contravention.

A complaint may not be made by more than two complainants jointly.

A written code of conduct complaint is lodged with the general manager of the council within 90 days after the councillor against whom the complaint is made allegedly committed the contravention of the code of conduct, and is to include the required information and be accompanied by any prescribed fee.

New section 28W (Withdrawal of or from code of conduct complaint) allows a complainant (or two complainants jointly) to withdraw from a code of conduct complaint, by notice in writing to the general manager or the Code of Conduct Panel, at any time prior to the final determination of the complaint by the Panel. This section also outlines the notification requirements relating to a withdrawn code of conduct complaint.

New section 28X (Amendment of code of conduct complaint) allows a complainant to amend a code of conduct complaint, by notice in writing to the general manager or the Code of Conduct Panel, at any time prior to the final determination of the complaint by the Panel. If the Panel has commenced its investigation into a code of conduct complaint, the Panel must consent to the amendment. This section also outlines the notification requirements relating to an amended code of conduct complaint.

New section 28Y (Initial assessment of complaint by general manager) provides that the general manager of a council is to undertake an initial assessment of a code of conduct complaint to ensure it meets the requirements of section 28V.

This requirement does not apply if the general manager is the complainant. If the general manager considers that the complaint does not comply, he or she is to notify the complainant in writing of the reasons it does not comply and advise that the complainant may lodge an amended/substituted complaint without payment of a further fee.

This section also outlines the timeframes within which an amended/substituted code of conduct complaint is to be provided and the associated notification requirements.

New section 28Z (Referral of code of conduct complaint by general manager) provides that once the general manager had determined that the code of conduct complaint complies with section 28V, he or she is to refer the complaint to the Executive Officer if the complaint is against less than half of all councillors of the council, or the Director if the complaint is against half or more of the councillors of the council.

If the Director accepts the complaint, it becomes a complaint under section 339E of the Act. If the Director rejects the complaint, the Executive Officer constitutes a Code of Conduct Panel to investigate the complaint.

The Director is to notify the general manager within 28 days as to whether it is accepted as a complaint under section 339E of the Act. This section also includes the associated notification requirements.

New section 28ZA (Initial assessment of code of conduct complaint by Code of Conduct Panel) provides that, on receiving a code of conduct complaint, the chairperson of the Code of Conduct Panel is to do an initial assessment of the complaint and determine whether to accept the complaint (or part of it) for investigation/determination by the Panel, dismiss the complaint (or part of the complaint, or refer the complaint (or part of it), or refer the complaint (or part of it) to another person or authority.

The chairperson is to complete the initial assessment and notify the relevant persons within 28 days of receiving the complaint.

New Section 28ZB (Dismissal of code of conduct complaint on initial assessment) provides that the chairperson of the Code of Conduct Panel can dismiss a code of conduct complaint if he/she considers that the complaint is frivolous or vexatious, does not substantially relate to a contravention of the council's code of conduct, or the chairperson or the Panel has previously directed the complainant not to make a further complaint in relation to the matter unless substantive new information is provided.

If the chairperson dismisses the complaint on the basis that it is frivolous/vexatious, he or she may direct the complainant not to make a further complaint in relation to the same matter, unless substantive new information is provided.

New Section 28ZC (Referral of code of conduct complaint on initial assessment) provides the chairperson of the Code of Conduct Panel with the power to refer a code of conduct complaint to any person or other authority, if the complaint discloses that an offence may have been committed or the complaint would be more appropriately dealt with by that person or authority.

The person or authority to which the complaint is referred may accept or refuse the complaint within the specified timeframe. If the referral is refused, the chairperson of the Panel is to do a further initial assessment of the complaint within 21 days of that refusal.

After undertaking the further initial assessment, the chairperson is to notify the councillor against whom the complaint was made of the result, in addition to the specified notification requirements under section 28ZA.

New Section 28ZD (Time for investigating and determining code of conduct complaint) provides that the Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within the specified timeframes.

The timeframe is 90 days if the chairperson determined to investigate and determine the whole complaint.

The timeframe is 120 days if the chairperson determined to investigate and determine part of the complaint, but refer part of the complaint to another person or authority.

If the Panel is unable to investigate and determine a complaint within the prescribed timeframes, the Panel is to include the reasons for that in its written determination report.

New Section 28ZE (Conduct of investigations generally) provides that the Code of Conduct Panel is to conduct the investigation of a code of conduct complaint with as little formality and as expeditiously as is possible under the circumstances and may regulate its own procedure. The Panel is not bound by the rules of evidence but must observe the rules of natural justice. With regards to evidence, the Panel determines what it requires to determine the complaint and the manner in which it is provided.

A complainant, councillor, witness or council is to comply with a request from the Panel to provide information/documents that the Panel considers may be relevant to the complaint, within the period specified by the Panel.

A council and a councillor are not exempt from the requirement to provide information/documents to the Panel only because the information/document relates to confidential council information under section 338A of the Act.

If confidential information is provided to the Panel, the Panel must not disclose that information/document to any person except as otherwise allowed under sections 28ZJ and 28ZK.

New Section 28ZF (Investigations of multiple code of conduct complaints against same councillor or multiple councillors) provides that the Code of Conduct Panel may conduct a joint investigation if there are multiple complaints against the same councillor or different councillors of the same council and the complaints relate to the same contravention of the council's code of conduct. In doing so, the Panel must consider the wishes of all complainants, and councillors against whom the complaints are made.

The Panel is to refer the joint complaint to the Director if it involves half or more of the councillors of a council.

The Director is to notify the Panel within 28 days as to whether or not the complaint is accepted as a complaint under section 339E of the Act.

New Section 28ZG (When hearing is to be held) provides the instances in which a Code of Conduct Panel may investigate a complaint without holding a hearing. This includes when the Panel considers that the complainant and the councillor against whom the complaint is made will not be disadvantaged and it is appropriate under the circumstances.

If a Panel determines not to hold a hearing, the members of the Panel may facilitate a meeting via telephone/television conference/written communication or other means of communication approved by the Panel.

New Section 28ZH (Hearings) provides that the Code of Conduct Panel may regulate the procedure of its hearings, which are not to be adversarial, are closed to the public and are to take the form of an inquiry into the matters raised in the complaint that are in dispute.

At a hearing, witnesses may be called by the complainant, the councillor against whom the complaint is made and the Panel. Evidence is to be taken on oath/affirmation, and the Panel may require a person, by written notice to attend a hearing and give evidence orally or in writing.

A complainant or councillor against whom the complaint is made may be represented by an advocate who is not an Australian lawyer, at the consent of the Panel.

New Section 28ZI (Determination of code of conduct complaint) provides that after completing its investigation, the Code of Conduct Panel is to determine whether it upholds the complaint, dismisses the complaint, or upholds part of the complaint and dismisses the remainder of the complaint.

If the complaint is upheld (or part of it), the Panel may impose one or more of the prescribed sanctions on the councillor against whom the complaint is made.

The sanctions include a caution, a reprimand, a requirement to apologise to a person, a requirement to attend counselling or a training course, or suspension for a maximum period of one month without allowances.

If the complaint (or part of it) is dismissed, the code of conduct panel may determine that the complainant may not make another complaint in relation to the same matter within the next 12 months, unless substantive new information is provided.

New Section 28ZJ (Determination report) provides that the Code of Conduct Panel provides a written determination report relating to a complaint, which is to contain a summary of the complaint, the Panel's determination (and the reasons for the determination), any sanction imposed (and associated timeframe for compliance with sanction) and a statement that a person has the right to appeal the Panel's decision to the Magistrates Court (Administrative Appeals Division) for a review of the decision on the ground that the Panel has failed to comply with the rules of natural justice.

The determination report is also to notify the complainant of a determination by the Panel not to make a further complaint about the same matter under subsection 28ZJ(3).

Any information that is only available to a closed council meeting is to be included in an addendum to the report, not in the report.

New Section 28ZK (Notification of determination of code of conduct complaint) provides that within 28 days after determining a complaint, the Code of Conduct Panel is to provide a copy of its determination report to the complainant, the councillor against whom the complaint is made, the general manager and the Director.

If the Panel produces an addendum to the report, it is not to be provided to a complainant that is not a councillor.

The general manager tables a copy of a determination report at the first open council meeting at which it is practicable to do.

If the general manager receives an addendum, he or she tables it at the next closed council meeting at which it is practicable to do so.

New Section 28ZL (Councillor to comply with sanction imposed for contravention of code of conduct) provides that if a councillor fails to comply with a sanction that requires them to apologise to a person or attend counselling or a training course, in the timeframe specified by the Panel, the matter is referred to the Director and that councillor may face a penalty of a fine not exceeding 50 penalty units.

The councillor is responsible for notifying the general manager that he/she has complied with a sanction, within seven days of having done so.

New Section 28ZM (Costs of parties relating to code of conduct complaint) provides that the complainant, and the respondent councillor, will bear their own costs relating to the investigation and determination of the code of conduct complaint.

New section 28ZN (Refund of fee accompanying lodgement of code of conduct complaint) provides that a council must refund a code of conduct complaint lodgement fee if: the complaint is referred by the general manager to the Director (and accepted); the whole complaint is referred to another person or authority by the Panel (and accepted); the whole complaint is withdrawn by the complainant (or complainants jointly) prior to the referral by the general manager to the Panel; the complaint (or part of it) is upheld by the Panel; or the respondent councillor(s) resign/lose office before the complaint is dealt with.

Subdivision 4 – Reviews of Code of Conduct Panel decisions

New Section 28ZO (Review of Code of Conduct Panel decision) provides an appeal right from a Code of Conduct Panel determination to the Magistrates Court (Administrative Appeals Division) on the basis that the Panel failed to comply with the rules of natural justice.

Clause 8: Section 72 amended (Annual report)

Subsection 72 of the Act is amended to require a council to report in its annual report the number of code of conduct complaints that were upheld by the Code of Conduct Panel during the preceding financial year and the total costs met by the council during the preceding financial year in respect to all code of conduct complaints.

A council is required to publish a newspaper notice advertising the availability of its annual report and invite electors to lodge submissions on the report.

Submissions received by a council on its annual report are to be considered at the council's Annual General Meeting (AGM) or if the council has decided not to hold an AGM, at the next practicable ordinary meeting of the council.

Section 72 is also amended to require a council to provide one copy of its annual report to the Director.

Clause 9: Section 72B amended (Annual General Meeting)

Section 72B of the Act is amended to allow a council to determine whether or not to hold an AGM. If a council determines to hold an AGM, it must hold it on a date no later than 15 December each year, and publish a newspaper notice specifying the date, time and place of the Meeting.

Clause 10: Section 195 amended (Notice of impounding)

Division 5 of the Act is amended to provide that a council is only required to publish one newspaper notice regarding an impounded animal for which the owner cannot be found.

The single newspaper notice is to contain the particulars specified in the prescribed 'notice of impounding' under the Act. This includes a statement that fees/costs/charges may be payable in relation to the animal's impounding (and the amounts if known at the time) and the instances in which a council may sell/give away/destroy the impounded animal.

Clause 11: Section 196 amended (Fees, costs and charges)

Section 196 of the Act is amended to remove the requirement for a council to notify the owner of an impounded animal, in writing, of the fees/costs/charges payable in respect of an impounded animal, as this information is now included in the single newspaper notice under section 195 of the Act. This section also provides that the owner of an impounded animal is liable to pay the fees, costs and charges incurred by the council in respect of the impounding of the animal.

Clause 12: Section 197 amended (Sale or destruction of unclaimed animals)

Section 197 of the Act is amended to remove the requirement for a council to publish a second newspaper notice notifying the owner of an impounded animal of when the council

may sell/give away/destroy an impounded animal, as this information is contained in the single newspaper notice under section 195 of the Act.

Clause 13: Section 270 amended (Eligibility for nomination as councillor)

Subsection 270(1) of the Act is amended to restrict eligibility for nominating as a councillor to persons who have their principal place of residence in Tasmania.

Clause 14: Section 315 amended (False or misleading statements)

Section 315 of the Act is amended to explicitly provide that a person must not, in making a notice of nomination as a candidate for the office of councillor under the Act, make a statement knowing it to be false or misleading or omit any matter from a statement knowing that without that matter the statement is misleading.

Clause 15: Section 338A amended (Disclosure of information)

Section 338A of the Act is amended to clarify that the offence provisions relating to disclosure of information do not apply to disclosure of information required under the Act or any other law.

Clause 16: Section 339E amended (Complaints against non-compliance or offence)

Section 339E of the Act is amended to provide that the Director has the overt power to dismiss a complaint made to him under the Act on the basis that he/she considers it to be frivolous and/or vexatious.

Clause 17: Section 340A amended (Allowances)

Section 340A of the Act is amended to provide that councillors who have had the sanction of suspension imposed on them by the Code of Conduct Panel are not entitled to allowances for the period of the suspension.

Clause 18: Section 341 amended (Immunity from liability)

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

Clause 19: Section 349A inserted (Savings and transitional provisions consequent on *Local Government Amendment (Code of Conduct) Act 2015*)

New Section 349A gives effect to the savings and transitional provisions set out in the new Schedule 8A.

Clause 20: Schedule 2A inserted (Membership of Code of Conduct Panel)

New Schedule 2A provides the requirements for membership of the Code of Conduct Panel.

Schedule 2A(1) (Interpretation) clarifies that 'member' means a member of the Code of Conduct Panel.

Schedule 2A(2) (Term of office) provides that a Code of Conduct Panel member is appointed for a maximum of four years, as specified in the member's instrument of appointment. A member's appointment is terminated if that member becomes a councillor or employee of a council.

Schedule 2A(3) (Holding other office) provides that the holder of an office who is required to devote the whole of his/her time to the duties of that office is not disqualified from holding that office and also the office of a Panel member or from accepting any remuneration payable to a Panel member, unless the holder's office is the office of a State Service officer/employee.

Schedule 2A(4) (State Service Act) clarifies that a person may be a Panel member and a State Service officer/employee and that the *State Service Act 2000* does not apply to the person in his/her capacity as a Panel member.

Schedule 2A(5) (Vacation of office) provides that a Panel member may resign from office by written notice to the Minister. A Panel member vacates his/her position if he/she dies or resigns. The Minister may remove a member from office if satisfied that the member is no longer qualified, able or suitable to be a Panel member, under the prescribed circumstances.

Clause 21: Schedule 5 amended (Office of Councillors)

Schedule 5 of the Act is amended to provide that the office of councillor becomes vacant when a councillor is found to have breached a code of conduct and received the sanction of suspension on three occasions during the councillor's current term of office.

Clause 22: Schedule 8A inserted (Savings and Transitional Provisions Consequent on *Local Government Amendment (Code of Conduct) Act 2015*)

New Schedule 8A provides the transitional provisions consequent on the *Local Government Amendment (Code of Conduct) Act 2015*.

Schedule 8A (1) (Interpretation) inserts definitions relevant to Schedule 8A. This includes defining the commencement day of the Act, the new Act (the Act in force after the commencement day of the *Local Government Amendment (Code of Conduct) Act 2015*), the previous Act (the Act in force prior to the commencement day), the previous Code of Conduct Panel (as defined under the previous Act), the previous Regulations (the *Local Government (General) Regulations 2005 or 2015* as in force prior to commencement day) and the Standards Panel (as defined under the previous Act).

Schedule 8A (2) (Code of conduct) provides that until a council adopts the model code of conduct, the council's previous code of conduct will be in force.

Schedule 8A (3) (Complaints under previous Act) provides that, before the new Act commences, a code of conduct complaint that is made under the previous Act, for which the councillor against whom the complaint has been made has not been notified of the complaint, the complaint is to be dealt with as a code of conduct complaint under the new Act.

The previous Act and Regulations continue to apply if the councillor has either not yet made an election or has lodged an election to have the complaint referred to the Local Government Association of Tasmania (LGAT)'s Standards Panel.

If a councillor has not lodged an election to have the complaint referred to LGAT's Standards Panel, and the council has not yet referred the complaint to the Code of Conduct Panel, the complaint is to be dealt with as a new code of conduct complaint under the new Act.

Schedule 8A (4) (Continuation of, and termination of membership of, previous Code of Conduct Panel) provides that a council is to terminate the membership of its previous Code of Conduct Panel once the council is satisfied that the Panel will not be required to deal with any code of conduct complaints made under the previous Act.

Until such a termination is made, the appointment of the members continues.

If a previous Code of Conduct Panel is required to deal with a complaint under the previous Act and it is necessary to appoint a new member, the previous Act continues to apply so as to allow the appointment of a new member to the Panel.

A member of the previous Code of Conduct Panel is not entitled to receive any benefit in respect of a termination of appointment.

Schedule 8A (5) (Continuation of, and termination of membership of, Standards Panel) provides that a Standards Panel member's appointment is to be terminated once LGAT is satisfied that the Standards Panel will no longer be required to deal with a code of conduct complaint made under the previous Act or an appeal of a code of conduct complaint under the previous Act.

Until such a termination is made, the appointment of the members continues. If a Standards Panel is required to deal with a complaint under the previous Act and it is necessary to appoint a new member, the previous Act continues to apply so as to allow the appointment of a new member.

A member of the previous Code of Conduct Panel is not entitled to receive any benefit in respect of a termination of appointment.

Clause 23: Repeal of Act

A formal provision relating to repeal that is included in all amendment Bills.