TASMANIA

LOCAL GOVERNMENT AMENDMENT (CODE OF CONDUCT) BILL 2014

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LOCAL GOVERNMENT AMENDMENT (CODE OF CONDUCT) BILL 2014

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

A BILL FOR

An Act to amend the Local Government Act 1993

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

1. Short title

This Act may be cited as the Local Government Amendment (Code of Conduct) Act 2014.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

*No. 95 of 1993
4. **Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

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

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

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

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

(c) by inserting the following paragraph after paragraph (e) in the definition of *electoral advertising*:

(f) any notice, poster, pamphlet or other print on the internet or any broadcast on the internet;

(d) by inserting the following definition after the definition of *electoral roll*:
Executive Officer means the Executive Officer appointed under section 28M;

(e) by inserting the following definition after the definition of member:

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

(f) by omitting the definition of Standards Panel.

5. Sections 28E, 28F, 28G, 28H and 28I repealed

Sections 28E, 28F, 28G, 28H and 28I of the Principal Act are repealed.

6. Part 3, Division 3A inserted

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

Division 3A – Code of conduct, complaints and complaint resolution
Subdivision 1 – Code of Conduct Panel and Executive Officer

28K. Code of Conduct Panel

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

(a) Australian lawyers;

(b) persons who have experience in local government.

(3) Before appointing persons to be members of the Code of Conduct Panel, the Minister may give notice, in any manner he or she considers appropriate, that persons interested in being members may provide written expressions of interest to the Minister.

(4) Schedule 2A applies in relation to the members of the Code of Conduct Panel.

(5) The instrument of appointment of a member of the Code of Conduct Panel may include conditions of appointment that are not inconsistent with Schedule 2A.

28L. Constitution of Code of Conduct Panel

(1) In the investigation and determination of a complaint against a councillor in a particular council, the Code of Conduct Panel is to be constituted by 2 members of whom –
(a) one is to be an Australian lawyer; and

(b) one is to be a member who has experience in local government but who is not a councillor or employee of the particular council and has not been such a councillor or employee within the immediately preceding 5 years.

(2) The chairperson of the Code of Conduct Panel is the person who has experience in local government referred to in subsection (1)(b).

28M. Executive Officer

(1) The Secretary of the Department, on behalf of the Crown, is to appoint a person as Executive Officer in relation to the Code of Conduct Panel.

(2) If the Secretary of the Department appoints a State Service officer or a State Service employee as Executive Officer the following provisions apply:

(a) that officer or employee may hold a position or office under the State Service Act 2000 in conjunction with the office of Executive Officer;
(b) the *State Service Act 2000* does not apply in relation to the office of Executive Officer;  

(c) that officer or employee is not entitled to receive any remuneration as Executive Officer.

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

28N. Functions of Executive Officer

The Executive Officer has the following functions:

(a) administrative functions in relation to the Code of Conduct Panel;  

(b) the functions specified in his or her instrument of appointment;  

(c) other functions prescribed by this Act;  

(d) other functions as determined by the Minister, by order.
28O. Payment of fees and allowances to members of Code of Conduct Panel and Executive Officer

(1) A member of the Code of Conduct Panel is entitled to receive the fees and allowances determined by the Minister, by order, from time to time.

(2) An Executive Officer –

(a) who is not also a State Service officer or State Service employee is entitled to receive the fees and allowances determined by the Minister, by order, from time to time; or

(b) who is also a State Service officer or State Service employee is entitled to receive only the allowances determined by the Minister, by order, from time to time.

(3) An order under subsection (1) may be combined with an order under subsection (2).

28P. Costs of Executive Officer not related to code of conduct complaint

(1) In this section –

State-employed Executive Officer

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

(2) If the Executive Officer performs any function under this Act (including the provision of information under section 28Q) that is not directly related to the processing, investigation and determination of a code of conduct complaint, the fees and allowances payable to the Executive Officer under section 28O are payable by all councils in equal shares.

(3) In the case of a State-employed Executive Officer, the fees that would be payable to an Executive Officer by the councils under subsection (2), were he or she not a State-employed Executive Officer, are payable to the government department in or for which the State-employed Executive Officer is employed in his or her capacity as a State Service officer or State Service employee.

28Q. Provision of information

(1) Each of the following persons may request, in writing, the Code of Conduct Panel or Executive Officer to provide information and documents relating to the performance of its or his or her functions as specified in the request:

(a) the Minister;
(b) the Secretary of the Department;
(c) the Director;
(d) the Board.

(2) The Code of Conduct Panel or Executive Officer is to comply with a request made under subsection (1).

Subdivision 2 – Code of conduct

28R. Model code of conduct

(1) The Minister is to make an order setting out a model code of conduct relating to the conduct of councillors.

(2) The Minister, by order, may amend or revoke and substitute the model code of conduct.

(3) The Minister is to make a copy of the model code of conduct available to each council as soon as practicable after the model code of conduct is prescribed, amended or revoked and substituted.

28S. Contents of model code of conduct

(1) The model code of conduct as made, amended or substituted under section 28R must be consistent with this Act and is to provide for the following matters:
(a) what constitutes a conflict of interest for a councillor and the procedure to be followed if a councillor has a conflict of interest;

(b) the proper and improper use by a councillor of his or her office with the council;

(c) the proper and improper use by a councillor of council resources;

(d) the proper and improper use by a councillor of information obtained in his or her office with the council;

(e) the right of a councillor to give and receive gifts and the procedure to be followed by a councillor when giving and receiving gifts in the situations specified in the model code of conduct;

(f) the appropriate or inappropriate behaviour of a councillor in his or her relationships with the community, other councillors and council employees;

(g) the proper and improper manner in which a councillor represents himself or herself as a councillor, and represents the council, to the community;
(h) any prescribed matter.

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

28T. Code of conduct

(1) A council, by 1 July 2015, must adopt the model code of conduct, either with or without variations permitted under subsection (3), as its code of conduct relating to the conduct of its councillors.

(2) Within 3 months after the Minister makes available to the councils an amendment to the model code of conduct or a substitute model code of conduct, a council must adopt the amendment, or revoke its code of conduct and adopt the substitute model code of conduct as its code of conduct, either with or without variations permitted under subsection (3).

(3) In adopting a model code of conduct or an amendment to the model code of conduct, a council may vary the amendment or model code of conduct –

(a) in any manner that is allowed by the model code of conduct or is prescribed; and
(b) in any other manner that is not inconsistent with the model code of conduct and this Act.

(4) The general manager is to make a copy of the council’s code of conduct available —

(a) for public inspection at the public office of the council during ordinary office hours; and

(b) for purchase at a reasonable charge; and

(c) on its internet site free of charge.

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

A councillor is to comply with the provisions of the code of conduct in performing the functions and exercising the powers of his or her office with a council.

**Subdivision 3 – Complaints against councillors**

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

(1) A person may make a complaint against one or more councillors in relation to the contravention by the councillor or councillors of the relevant council’s code of conduct.
(2) A complaint is to –

(a) be in writing; and

(b) state the name and address of the complainant; and

(c) state the name of each councillor against whom the complaint is made; and

(d) state the provision of the relevant code of conduct that the councillor has allegedly contravened; and

(e) contain details of the behaviour of each councillor that constitutes the alleged contravention; and

(f) be lodged with the general manager of the relevant council within 90 days after the councillor or councillors against whom the complaint is made committed the alleged contravention of the code of conduct; and

(g) be accompanied by any prescribed fee.

(3) A complaint may not be made by more than 2 complainants jointly.

(4) A complaint under this section may be made for and on behalf of a complainant
(5) For the purposes of subsection (2)(g), the Minister, by order, may prescribe fees in relation to the lodging of a code of conduct complaint.

28W. Withdrawal of or from code of conduct complaint

(1) All complainants in a code of conduct complaint, jointly, may withdraw the complaint, by notice in writing provided to the general manager or the Code of Conduct Panel, at any time before the complaint has been finally determined by the Code of Conduct Panel.

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

(3) If a notice withdrawing a code of conduct complaint or withdrawing from a code of conduct complaint is provided to the general manager after the complaint has been referred to the Executive Officer, he or she is to notify the following persons, in writing, of the withdrawal:
(a) the Executive Officer if the general manager has referred the complaint to the Executive Officer;

(b) the Code of Conduct Panel if it has been constituted.

(4) If a notice withdrawing a code of conduct complaint or a notice withdrawing a complainant from a code of conduct complaint is provided to the Code of Conduct Panel under subsection (1), (2) or (3), the Code of Conduct Panel is to notify the following persons, in writing, of the withdrawal:

(a) the Executive Officer;

(b) the general manager;

(c) the councillor against whom the complaint is made if the councillor has been notified of the complaint.

28X. Amendment of code of conduct complaint

(1) A complainant may amend a code of conduct complaint at any time before the Code of Conduct Panel commences an investigation into the complaint.

(2) If the Code of Conduct Panel has commenced its investigation into a code of conduct complaint, a complainant may
amend the complaint with the consent of
the Code of Conduct Panel.

(3) If a notice amending a code of conduct complaint is provided to the general manager after the complaint has been referred to the Executive Officer, he or she is to notify the following persons, in writing, of the amendment:

(a) the Executive Officer if the general manager has referred the complaint to the Executive Officer;

(b) the Code of Conduct Panel if it has been constituted.

(4) If a notice amending a code of conduct complaint is provided to the Code of Conduct Panel under subsection (1), (2) or (3), the Code of Conduct Panel is to notify the following persons, in writing, of the amendment:

(a) the Executive Officer;

(b) the general manager;

(c) the councillor against whom the complaint was made if the councillor has been notified of the complaint.
28Y. **Initial assessment of complaint by general manager**

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

(2) If the general manager determines that the code of conduct complaint does not meet the requirements of section 28V, he or she is to return the complaint to the complainant and notify the complainant, in writing –

(a) that the complaint does not meet the requirements of section 28V for the reasons set out in the notice; and

(b) that the complainant may lodge an amended or substituted complaint without payment of a further fee under section 28V(2)(g) –

(i) within the period specified in section 28V for lodging a code of conduct complaint; or

(ii) if the complaint is returned to the complainant after the end of that period or less than 14 days before the end of that period, within 14
days after receiving the returned complaint.

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

(1) On receiving a code of conduct complaint and after determining that the complaint meets the requirements of section 28V, the general manager –

   (a) if the complaint is against less than half of all the councillors of the council, is to refer the complaint to the Executive Officer; and

   (b) if the complaint is against one half or more of all the councillors of the council, is to refer the complaint to the Director.

(2) If a code of conduct complaint is referred to the Executive Officer, he or she is to –

   (a) make and keep a copy of the complaint; and

   (b) constitute a Code of Conduct Panel to investigate the complaint; and

   (c) provide the original complaint to the Code of Conduct Panel.

(3) If a code of conduct complaint is referred to the Director, the Director is to
determine whether he or she accepts or refuses to accept the referral and is to notify the general manager of that determination within 28 days after receiving the referral.

(4) If the Director fails to notify the general manager as required by subsection (3), the Director is taken to have accepted the referral of the code of conduct complaint.

(5) If the Director accepts the referral of the code of conduct complaint –

(a) the complaint is taken to be a complaint made to the Director under section 339E and ceases to be a code of conduct complaint; and

(b) the Director may proceed under that section in relation to the complaint.

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

(1) On receiving a code of conduct complaint, the Code of Conduct Panel is to do an initial assessment of the complaint to determine whether to do one or more of the following:

(a) dismiss the whole complaint;

(b) dismiss part of the complaint;
(c) refer the whole complaint to a person or another authority for investigation and determination;

(d) refer part of the complaint to another authority for investigation and determination;

(e) investigate and determine the whole complaint;

(f) investigate and determine part of the complaint.

(2) The initial assessment is to be completed within such period as will enable the Code of Conduct Panel to comply with subsection (3).

(3) Within 28 days after receiving the code of conduct complaint, the Code of Conduct Panel –

(a) is to notify the complainant and the general manager, in writing, of the result of the initial assessment and the reasons for it; and

(b) if the Panel has determined to investigate the complaint or part of the complaint, is to –

(i) notify the councillor against whom the complaint is made, in writing, of the result of
the initial assessment and the reasons for it; and

(ii) provide a copy of the complaint to the councillor.

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

(1) The Code of Conduct Panel may dismiss the code of conduct complaint, or part of it, if the Panel considers that the complaint or part –

(a) is frivolous or vexatious; or

(b) does not substantially relate to a contravention of the code of conduct of the relevant council.

(2) If the Code of Conduct Panel dismisses the code of conduct complaint or part of it on the basis that it is frivolous or vexatious, the Panel, in the notice provided under section 28ZA(3), may direct the complainant not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.
28ZC. Referral of code of conduct complaint on initial assessment

(1) The Code of Conduct Panel may refer the code of conduct complaint, or part of it, to any person or other authority the Panel considers appropriate if the Panel reasonably considers that –

(a) the complaint discloses that an offence may have been committed; or

(b) the complaint would be more appropriately dealt with by that other person or authority.

(2) Without limiting the persons or authorities to which the Code of Conduct Panel may refer the code of conduct complaint, the complaint may be referred to the Commissioner of Police, the Director and the Integrity Commission established under the Integrity Commission Act 2009.

(3) The person or authority to whom the code of conduct complaint is referred –

(a) may accept the referral or refuse the referral; and

(b) is to notify the Code of Conduct Panel of that acceptance or refusal within 28 days after receiving the referred complaint.
(4) If the person or authority to whom the code of conduct complaint is referred fails to notify the Code of Conduct Panel as required by subsection (3), the person or authority is taken to have accepted the referral.

(5) If the person or authority to whom the code of conduct complaint is referred accepts the referral, the complaint ceases to be a code of conduct complaint.

(6) If the person or authority to whom the code of conduct complaint is referred refuses the referral, the Code of Conduct Panel is to do another initial assessment under section 28ZA within 21 days after being notified of that refusal.

(7) On doing another initial assessment under section 28ZA as required by subsection (6), in addition to the notifications that the Code of Conduct Panel is to provide as to the result of the initial assessment under that section, the Panel is to notify the complainant of the result of the second initial assessment if on the first assessment the councillor against whom the code of conduct complaint is made had been notified that the Panel had determined to investigate part of the complaint.
28ZD. Time for investigating and determining code of conduct complaint

(1) In this section –

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

(2) The Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint –

(a) if the Panel has determined under section 28ZA to investigate and determine the whole complaint, within 90 days after that determination; or

(b) if the Panel has determined under section 28ZA to investigate and determine part of the complaint but to refer to a person or another authority another part of the complaint, within 120 days after that determination.

(3) If the Code of Conduct Panel is unable to investigate and determine a code of conduct complaint within the period specified in subsection (2), the Panel is to include the reasons for that in its determination report.
28ZE. **Conduct of investigations generally**

(1) In the investigation of a code of conduct complaint, the Code of Conduct Panel—

(a) is to conduct the investigation with as little formality and as expeditiously as is reasonably practicable in the particular circumstances; and

(b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate; and

(c) must observe the rules of natural justice; and

(d) may regulate its own procedure.

(2) In the investigation of a code of conduct complaint, the Code of Conduct Panel may—

(a) determine what evidence is required to enable it to determine the complaint; and

(b) subject to subsection (3), determine the manner in which it will accept evidence from the complainant, the councillor against whom the complaint is made and witnesses.
(3) In an investigation of a code of conduct complaint, the Code of Conduct Panel may accept evidence given verbally on oath or affirmation or by written submissions and documents provided in, or annexed to, a statutory declaration.

(4) At any time during an investigation of a code of conduct complaint, the Code of Conduct Panel may request the complainant, the councillor against whom the complaint is made, a witness or the relevant council, in writing, to provide information and documents, or further information and documents, that the Panel considers may be relevant to the determination of the complaint.

(5) A person who has been requested under subsection (4) to provide information and documents, or further information and documents, is to do so within –

(a) the period specified in the request; or

(b) such longer period as the Code of Conduct Panel, before the expiration of the period specified in the request, may allow.
28ZF. Investigation of multiple code of conduct complaints against multiple, different councillors

(1) If there are a number of code of conduct complaints against the same or different councillors of the same council and the complaints relate to the same contravention of the council’s Code of Conduct, the Code of Conduct Panel may determine to conduct a joint investigation into all the complaints.

(2) The Code of Conduct Panel may only make a determination to conduct a joint investigation after considering the wishes of all complainants and councillors against whom the code of conduct complaint is made.

(3) If the Code of Conduct Panel determines under subsection (1) to conduct a joint investigation and the total number of councillors involved in the investigation is half or more of all the councillors of the relevant council, the Panel is to refer the code of conduct complaints to the Director.

(4) If the Code of Conduct Panel refers the code of conduct complaints to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the Panel of that determination within 28 days after receiving the referral.
(5) If the Director fails to notify the Code of Conduct Panel as required by subsection (3), the Director is taken to have accepted the referral of the code of conduct complaints.

(6) If the Director accepts the referral of the code of conduct complaints –

(a) the complaints are taken to be complaints made to the Director under section 339E and cease to be code of conduct complaints; and

(b) the Director may proceed under that section in relation to the complaints.

28ZG. When hearing is to be held

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

(2) The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that –

(a) neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the
circumstances not to hold a hearing; or

(b) a hearing would be impracticable because either the complainant or the councillor against whom the complaint is made is absent or otherwise unable, for an extended period, to attend a hearing; or

(c) a hearing would be inappropriate in the circumstances because of the possibility that the complainant, the councillor against whom the complaint is made or a witness may suffer intimidation or bribery; or

(d) a hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.

(3) If the Code of Conduct Panel determines not to hold a hearing, the members of the Panel may participate in a meeting of the Panel by telephone, television conference, written communication or any other means of communication approved by the Panel.

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

28ZH. Hearings

(1) Subject to this Act, the Code of Conduct Panel may regulate the procedure of its hearings.

(2) A hearing is to take the form of an inquiry by the Code of Conduct Panel into the matters raised in the code of conduct complaint that are in dispute and is not to be adversarial.

(3) Witnesses may be called by the complainant, the councillor against whom the complaint is made and the Code of Conduct Panel at the hearing of a code of conduct complaint.

(4) Evidence at a hearing is to be taken by the Code of Conduct Panel –

(a) on oath or affirmation; and

(b) subject to a requirement of the Code of Conduct Panel under subsection (5), may be given orally or in writing.

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

(7) A hearing is closed to the public.

28ZI. Determination of code of conduct complaint

(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –

(a) upholding the complaint; or

(b) dismissing the complaint; or

(c) upholding part of the complaint and dismissing the remainder of the complaint.

(2) The Code of Conduct Panel may only uphold the code of conduct complaint or part of the code of conduct complaint if the determination is unanimous.

(3) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on any councillor against whom the complaint is made:

(a) a caution;
(b) a reprimand;

(c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;

(d) a requirement to attend counselling or a training course;

(e) a suspension of the councillor from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding one month.

(4) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

28ZJ. Determination report

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

(a) a summary of the complaint; and
(b) the determination of the Code of Conduct Panel; and

(c) the Code of Conduct Panel’s reasons for the determination; and

(d) if the code of conduct complaint or part of it is upheld and the Code of Conduct Panel has imposed a sanction on a councillor, that sanction and a reasonable period within which the councillor is to comply with the sanction; and

(e) if the code of conduct complaint is dismissed and the Code of Conduct Panel determines that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint, a direction to the complainant to that effect.

28ZK. Notification of determination of code of conduct complaint

(1) In this section –

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

(2) Within 28 days after determining a code of conduct complaint, the Code of Conduct Panel is to provide a copy of its determination report to –

(a) each complainant; and

(b) each councillor against whom the complaint is made; and

(c) the Executive Officer; and

(d) the general manager of the relevant council; and

(e) the Director; and

(f) the Integrity Commission established under the Integrity Commission Act 2009.

(3) On receiving a determination report, a general manager is to ensure that a copy of it is tabled at the first ordinary meeting of the relevant council at which it is practicable to do so and which is open to the public.

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

(1) In this section –
**Local Government Amendment (Code of Conduct) Act 2014**

**Act No. of**

s. 6

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

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

Penalty: Fine not exceeding 50 penalty units.

(3) Within 7 days after a councillor has completely complied with a sanction referred to in subsection (2), the councillor is to notify the general manager that he or she has done so.

(4) If a councillor fails to comply with a sanction referred to in subsection (2) within the period specified in the determination report, the relevant general manager is to notify the Director, in writing, of that fact.

(5) On receipt of a notice provided under subsection (4), the Director is to deal with the notice as if it were a complaint under section 339E.
28ZM. Costs of parties relating to code of conduct complaint

The complainant and the councillor against whom a code of conduct complaint is made must bear his or her own costs relating to the investigation and determination of the complaint.

28ZN. Costs of Code of Conduct Panel and Executive Officer

(1) The fees and allowances payable under section 28O to a member of the Code of Conduct Panel in relation to a code of conduct complaint and its investigation and determination (including the provision of information under section 28Q) are payable by the relevant council.

(2) The fees and allowances payable under section 28O to an Executive Officer in relation to a code of conduct complaint and its investigation and determination (including the provision of information under section 28Q) are payable by the relevant council.

28ZO. Costs of State-employed Executive Officer in relation to code of conduct complaint

(1) In this section –
State-employed Executive Officer
means an Executive Officer who is also a State Service officer or State Service employee.

(2) In the case of a State-employed Executive Officer, the fees that would be payable to an Executive Officer were he or she not a State-employed Executive Officer are payable to the government department in or for which the State-employed Executive Officer is employed in his or her capacity as a State Service officer or State Service employee.

(3) The fees payable under subsection (2) to a government department in relation to the performance of the functions of an Executive Officer by a State-employed Executive Officer in relation to a code of conduct complaint and its investigation and determination (including the provision of information under section 28Q) are payable by the relevant council.

28ZP. Refund of fee accompanying lodgement of code of conduct complaint

(1) A council must refund to each complainant who has lodged a code of conduct complaint, in equal shares, any fee paid with the lodgement in accordance with section 28V(2)(g) in any of the following circumstances:
(a) the complaint is referred to the Director by the general manager under section 28Z(1)(b) and accepted by the Director;

(b) the complaint is dismissed by the Code of Conduct Panel on initial assessment under section 28ZA(1)(a);

(c) the whole complaint is referred to a person or other authority by the Code of Conduct Panel on initial assessment under section 28ZA(1)(c) and is accepted by that person or authority;

(d) the complaint or part of the complaint is upheld on determination by the Code of Conduct Panel;

(e) the whole complaint is withdrawn at any time before –

   (i) it is referred by the general manager to the Code of Conduct Panel or the Director under section 28Z(1); or

   (ii) if it has been referred to the Code of Conduct Panel by the general manager, it is initially
assessed by the Panel under section 28ZA;

(f) all councillors against whom the complaint is made resign or lose the office of councillor before the complaint is dealt with as specified in paragraph (a), (b), (c), (d) or (e), as the case requires.

(2) A council must refund to the estate of each complainant who has lodged a code of conduct complaint, in equal shares, any fee paid with the lodgement in accordance with section 28V(2)(g) in any of the following circumstances:

(a) all complainants die before the complaint is dealt with as specified in subsection (1);

(b) all councillors against whom the complaint is made die before the complaint is dealt with as specified in subsection (1).

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

Section 72 of the Principal Act is amended as follows:

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

(bb) the total costs met by the council during the preceding financial year in respect of all code of conduct complaints dealt with under Division 3A of Part 3 during the preceding financial year;

(b) by omitting paragraph (d) from subsection (2) and substituting the following paragraph:

(d) advertise the availability of the report, along with an invitation to electors to lodge with the council submissions on the report, in a daily newspaper circulating in the municipal area.

(c) by omitting subsection (3) and substituting the following subsection:

(3) Submissions received by the council on its report are to be considered—

(a) if the council holds an Annual General Meeting, at the Annual General Meeting; or
8. Section 72B amended (Annual General Meeting)

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

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

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

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

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

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

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

(b) by inserting in subsection (3) “at an Annual General Meeting” after “present”;

(c) by omitting from subsection (3)(b) “or other prescribed newspaper”.

9. Section 270 amended (Eligibility for nomination as councillor)

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

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

10. Section 278 amended (Electoral advertising)

Section 278 of the Principal Act is amended as follows:

(a) by omitting from subsection (4) “television.” and substituting “television or on the internet.”;

(b) by omitting from subsection (7) “television.” and substituting “television or on the internet.”.
11. **Section 315 amended (False or misleading statements)**

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

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

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

(6) The Director may dismiss a complaint before making a determination under subsection (5) if he or she considers that the complaint is frivolous or vexatious.

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

Section 340A(5) of the Principal Act is amended by inserting “section 28ZI(3)(e) or” after “under”.

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

Section 341 of the Principal Act is amended as follows:

(a) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:
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(c) a member of the Code of Conduct
Panel or an audit panel; or

(b) by omitting from subsection (2) “a Code
of Conduct panel,”;

(c) by omitting subsection (3).

15. Section 349A inserted

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

349A. Savings and transitional provisions
consequent on Local Government
Amendment (Code of Conduct) Act 2014

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

16. Schedule 2A inserted

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

SCHEDULE 2A – MEMBERSHIP OF CODE OF
CONDUCT PANEL

Section 28K(4)

1. Interpretation

In this Schedule –

member means a member of the Code
of Conduct Panel.
2. **Term of office**

   A member is to be appointed for a period of not more than 4 years that is specified in the member’s instrument of appointment.

3. **Holding other office**

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

   (a) holding that office and also the office of a member; or

   (b) accepting any remuneration payable to an appointed member unless the holder’s office is the office of a State Service officer or a State Service employee.

4. **State Service Act**

   (1) A person may hold the office of a member in conjunction with the office of a State Service officer or a State Service employee.

   (2) The *State Service Act 2000* does not apply to a person referred to in subclause (1) in his or her capacity as a member.
5. **Vacation of office**

(1) A member may resign from office by written notice provided to the Minister.

(2) A member vacates office if he or she –

   (a) dies; or

   (b) resigns; or

   (c) is removed from office under subclause (3).

(3) The Minister may remove a member from office if –

   (a) the Minister is satisfied that the member is no longer qualified to be a member of the Code of Conduct Panel; or

   (b) the Minister is satisfied that the member is unable, because of absence, illness or any other reason, to perform adequately or completely the duties of the office of a member; or

   (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member’s creditors or makes an assignment of the member’s remuneration or estate for their benefit; or
(d) the member has been convicted, in Tasmania of any offence punishable by imprisonment for a term of 12 months or longer or elsewhere of any offence which if committed in Tasmania would be punishable by imprisonment for a term of 12 months or longer; or

(e) the Minister is satisfied that the member is no longer a fit and proper person to be a member of the Code of Conduct Panel.

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

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

(1A) The office of a councillor also becomes vacant if a general manager receives notice from the Code of Conduct Panel that the councillor has had upheld against him or her a code of conduct complaint and that is the third separate code of conduct complaint against the councillor upheld, wholly or in part, by the Code of Conduct Panel during the councillor’s current term of office.

18. **Schedule 8A inserted**

After Schedule 8 to the Principal Act, the following Schedule is inserted:
SCHEDULE 8A – TRANSITIONAL PROVISIONS
CONSEQUENT ON LOCAL GOVERNMENT
AMENDMENT (CODE OF CONDUCT) ACT 2014
Section 349A

1. Interpretation

In this Schedule –

*commencement day* means the day on which the *Local Government Amendment (Code of Conduct) Act 2014* commences;

*new Act* means this Act as in force on and after the commencement of the *Local Government Amendment (Code of Conduct) Act 2014*;

*previous Act* means this Act as in force immediately before the commencement of the *Local Government Amendment (Code of Conduct) Act 2014*;

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

*previous Regulations* means the *Local Government (General) Regulations 2005* as in force immediately before the commencement of the *Local
2. **Code of conduct**

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

3. **Complaints under previous Act**

(1) If—

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; but

(b) immediately before the commencement day, the mayor or deputy mayor has not, under regulation 22D of the previous Regulations, notified councillor against whom the complaint is made of the complaint—
the complaint is to be dealt with, investigated and determined as a code of conduct complaint under the new Act.

(2) If –

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

(b) the 7 day period within which, under regulation 22C of the previous Regulations, the councillor may lodge an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel has not expired –

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

(3) If –

(a) before the commencement day, a complaint against a councillor is
made under section 28F of the previous Act; and

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

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

(4) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and

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

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

(5) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and

(b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has not lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel; and

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

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

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

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

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

(3) If, on or after the commencement day, a previous Code of Conduct Panel is required, by reason of clause 3, to deal with, hear and determine a complaint made under section 28F of the previous Act and it is necessary to appoint a new member to the Panel, the previous Act continues to apply –
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(a) so as to allow the appointment of the new member to the Code of Conduct Panel; and

(b) the appointment of the new member until the appointment is terminated under subclause (1).

(4) A member of the previous Code of Conduct Panel is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member under subclause (1).

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

(1) At any time on or after the commencement day, the Local Government Association of Tasmania is to terminate the appointments of the members of its Standards Panel once that Association is satisfied that the Panel will not be required, by reason of clause 3, to deal with, hear and determine –

(a) a complaint made under section 28F of the previous Act; or

(b) an appeal against the determination of such a complaint by a previous Code of Conduct Panel.
(2) On and from the commencement day until the appointment of a member of a Standards Panel that was in force immediately before the commencement day is terminated under subclause (1), that appointment continues and for that purpose the previous Act applies to that appointment.

(3) If, on or after the commencement day, a Standards Panel is required, by reason of clause 3, to deal with, hear and determine a complaint under section 28F of the previous Act or an appeal against the determination of such a complaint by a previous Code of Conduct Panel and it is necessary to convene the Standards Panel or appoint new members to the Standards Panel, the previous Act continues to apply—

(a) so as to allow the convening of the Standards Panel and the appointments of members, or new members, to the Standards Panel; and

(b) the appointment of each of those members and new members until the appointment is terminated under subclause (1).

(4) A member of a Standards Panel is not entitled to receive any benefit in respect of the termination of his or her
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appointment as such a member under subclause (1).

19. **Repeal of Act**

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