

Discussion Paper - Local Government Code of Conduct Framework

July 2021



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Publisher
Local Government Division

ISBN 978-1-925906-24-0
Date July 2021

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Contents

Contents	3
How to Make a Submission	4
Local Government Code of Conduct Framework.....	5
Background.....	5
Recent scrutiny of the framework.....	5
Immediate policy response – Initial Assessment Guidelines.....	5
Further proposed reforms.....	6
Targeted changes to the legislation	6
Council Dispute Resolution Policies.....	8
Your feedback.....	9



How to Make a Submission

The Discussion Paper includes information to help you provide feedback on potential targeted legislative changes to the Code of Conduct Framework. Comment is welcome on any aspect relating to this paper, but you are encouraged to review the considerations and principles in the Your Feedback section to inform your feedback.

Please provide your name and contact details with your submission which will be published on the Department of Premier and Cabinet's Local Government Division's website.

Exceptions to publication only exist when it is not in the public interest to release the information: for example, to protect personal and other sensitive information (including that of a commercial nature) or where the submitter has requested that the submission be treated as confidential. If your submission is being provided confidentially, please clearly state this in your submission.

Any offensive or defamatory material will not be published.

Submissions close at midnight on 9 August 2021

1. Download the submission form at this link
https://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/code_of_conduct_framework_review
 - If you need help accessing the submission form please call the Local Government Division on 6232 7022
2. Email your completed submission form to: LGAReview@dpac.tas.gov.au with the email subject heading as Code of Conduct Framework feedback
or
Post your completed submission form to:
Attention: Code of Conduct Framework feedback
Local Government Division
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

If you have any questions about how to lodge a submission please contact the Local Government Division by phone on 6232 7022 or by email at LGAReview@dpac.tas.gov.au.



Local Government Code of Conduct Framework

Background

Tasmanians need to be confident that the councillors they elect to represent them will uphold and abide by certain standards of conduct and behaviour. The local government Code of Conduct Framework (the framework) plays an important role in supporting this outcome.

Following requests from the sector a statewide framework applying to all elected councillors first commenced on 13 April 2016. The framework was established through changes to the *Local Government Act 1993* (the Act) and replaced a patchwork of previous code of conduct arrangements that were in place at the individual council level.

The framework was developed through extensive consultation with the local government sector and the Integrity Commission, and provides for greater uniformity and enforceability than pre-2016 arrangements, which were widely seen as lacking consistency and credibility.

In early 2017, the then Government agreed to a request by the sector for a review of the framework. A number of changes were made to improve its operation in late 2018 and early 2019 following substantial consultation with the local government sector.

Recent scrutiny of the framework

Since October 2019, there has been significant public interest and commentary surrounding the Code of Conduct process, decisions and determinations.

Recent concerns include the types of complaints that have proceeded to investigation, the costs involved and whether some complaints could have been resolved between the parties, preventing the need for a Code of Conduct investigation.

As a result, the then Minister tasked the Local Government Division (the Division) with conducting further analysis and providing advice on potential administrative and legislative changes. In further understanding a number of the key issues, the Division led four regional forums with councils in October 2020. The forums aimed to update the sector on further policy measures which could support the framework, foreshadow potential targeted legislative changes, discuss options for council dispute resolution policies and better understand the concerns of councillors.

Immediate policy response – Initial Assessment Guidelines

In October 2020 the Code of Conduct Panel members accepted revised Initial Assessment Guidelines (the Guidelines) for the review of complaints. The endorsement of the Guidelines is representative of the ongoing commitment of Panel members to be responsive to feedback and provide a framework that is fair, measured and consistently applied.

The purpose of the Guidelines is to:

1. provide additional clarity and support to the Panel Chairperson during initial assessments of complaints;
2. ensure the consistent and appropriate use of provisions in the Act that limit instances when a complaint will proceed to investigation, such as limiting trivial, vexatious and frivolous complaints; and
3. empower the Panel Chairperson to liaise with the Solicitor-General's Office at their discretion if there is a question at law which requires clarification.

Further proposed reforms

The framework is important to promote public confidence in councillors as respected leaders in their local community. Equally however, it is important that complaints be made in good faith, and only where there are genuine and serious concerns about a councillor's behaviour.

Some people in the sector have been asking for a wholesale review of the framework. The Government's view is that the intent of the framework is sound and that most of the concerns being raised by the sector can be addressed in a progressive manner.

On this basis, and in considering feedback from the sector collected during forums, there is a clear benefit in:

1. the consideration of changes to the legislation; and
2. the sector developing alternative dispute resolution policies.

Changes to the legislation

The then Government committed to working with the sector to identify areas where the framework could be improved through legislative changes.

While a variety of issues have been raised by individual councillors from time to time, councillors have consistently raised issues with the nature of certain complaints that have proceeded to investigation, the absence of any awareness that their conduct had raised concerns with the complainant, that the complaints process may be inappropriately used against person/s involved in the complaint (or 'weaponised') and that the costs of an investigation are a significant expense for councils to incur.

It is proposed that the following legislative amendments will address these concerns and reinforce the administrative and policy improvements that have already been implemented through the Guidelines:

- I. Further strengthening and clarifying the grounds for the Panel to dismiss complaints at the initial assessment stage.**
 - The current provisions within the Act provide a relatively rigid framework for the dismissal of complaints on initial assessment, including the following:
 - the complaint is frivolous, vexatious or trivial;

- the complainant has not made reasonable effort to resolve the issue; and
- the complaint does not substantially relate to a breach of the Code of Conduct.
- It is proposed that a broader public interest test be included in the Act as part of the initial assessment process, to empower the Chairperson to consider a variety of other relevant factors and allow for a more holistic consideration of the impact of the alleged conduct and the subsequent complaint.
- A public interest test would provide the Chairperson with greater flexibility in their assessment of the merits of a complaint and the impact of the alleged conduct on the functions and effectiveness of a council and its relationship with the community.
- In addition to the introduction of a public interest test, it is also proposed that consideration be given to strengthening the requirement for the complainants to utilise the council administered dispute resolution processes, including mediations, before submitting a complaint.

2. Removing a perceived conflict of interest and empowering a legal member of the Panel to undertake the initial assessment process.

- The Government recognises that the Code of Conduct Panel members undertake their functions with a high degree of integrity. However, the current framework exposes the member conducting the initial assessment to a perception of a conflict of interest in the investigation process – the Chairperson conducting an initial assessment of a complaint will financially benefit from their decision to proceed to a full investigation of the complaint (if the person who undertakes the initial assessment subsequently becomes the Chairperson of the Panel conducting the investigation process).
- For each complaint, it is proposed that a member of the Code of Conduct Panel be appointed to undertake the initial assessment. Should that member determine to proceed to investigation, a panel will be convened to investigate, that will not include the person who undertook the initial assessment.
- Currently, initial assessments are undertaken by a member of the Code of Conduct Panel, who is required to be a person experienced in matters of local government. Initial assessments may include the consideration of a range of legal and procedural matters. For this reason, and in keeping with the introduction of a new public interest test, it is also proposed that a legal member will undertake the initial assessment process.

3. Wherever practicable, improve confidentiality requirements in relation to the complaints process.

- While there are existing requirements under the Act to maintain the confidentiality of determination reports before they are tabled at council meetings, there have been multiple instances of draft reports (or findings) being disclosed to third parties before they have been tabled.
- It is proposed that additional legislative provisions be made to minimise the ability for people to inappropriately disclose information of this nature prior to it being made public.

Council dispute resolution policies

In the context of considering any targeted legislative changes, it is important to reiterate that the current framework provides that complaints should only proceed to investigation where there have first been reasonable efforts to resolve the issue that is the subject of the complaint.

The framework does not limit a council's ability to implement dispute resolution policies which provide an alternative method to resolve complaints. At this stage, the majority of councils have not implemented a dispute resolution process to provide any aggrieved person with an opportunity to resolve a dispute in advance of submitting a Code of Conduct complaint.

Following the regional forums conducted with the sector in October 2020, the Local Government Association of Tasmania (LGAT) confirmed that it is supportive of further work to develop relatively standardised dispute resolution policies that provide for the informal resolution of complaints lodged by any complainant. As the vast majority of Code of Conduct complaints are submitted by non-councillors, it is important that such policies are accessible to all complainants, including members of the public.

The Government's position is that the effectiveness of legislative changes will be strengthened by council dispute resolution policies. This will require changes driven by the sector. To maintain the confidence of all relevant parties, it is expected that the sector will ultimately design and implement an appropriately independent dispute resolution framework capable of resolving a broad range of conduct related disputes.

While dispute resolution will not be appropriate for every complaint, alternative dispute resolution would provide councils with a more economical, less adversarial and enduring resolution process for certain types of complaints.



Your Feedback

The Government wants to hear from members of the public, the local government sector and the broader community on the proposed legislative reforms. Your feedback will help the Government to refine the targeted legislative changes. In preparing a submission, you are encouraged to review the considerations below that outline some of the specific matters the Government wants to hear feedback on.

Public comment is welcome on any aspect relating to this reform proposal, but respondents are encouraged to review the following considerations and principles to inform their feedback.

Consideration 1 - Further strengthening and clarifying the grounds for the Initial Assessor to dismiss complaints at the initial assessment stage

- The Initial Assessor can dismiss complaints if they believe the complaint was not made in good faith or if the complaint is vexatious or trivial.
- Use of a public interest test would provide the Initial Assessor with a tool to assess if a complaint should or should not continue to an investigation based on a more holistic analysis of a variety of matters relevant to the circumstances of each complaint.
- A public interest test may include assessing complaints for seriousness, the availability of evidence, the level of public concern, demonstrated actions taken to deal with the matter, and whether the matter may be a sign of more widespread or systemic problems.
- Ensuring that the legislation clearly establishes an expectation that complainants must utilise council dispute resolution processes.

Consideration 2 - Removing a perceived conflict of interest for the Code of Conduct Panel Chairperson and providing consistency in relation to the initial assessment process

- Code of Conduct Panel members, including the Chairperson get paid for the time they spend on each complaint. It could be considered a conflict of interest if the Chairperson deciding that a complaint should be investigated remains on the Panel for that investigation. The conflict arises because the Chairperson receives a financial benefit if they choose to investigate the complaint.
- Removing potential perceived conflicts of interest for the Panel Chairperson will promote consistency in decisions made during the initial assessment of the complaint and promote confidence in the decision-making process.

Consideration 3 - Wherever practicable, improve confidentiality requirements in relation to the Code of Conduct complaints process

- The Code of Conduct Panel's final determination report is confidential however, there have been multiple instances of draft reports (or findings) being disclosed to third parties before they have been tabled at a council meeting.
- Providing clarification about when information from Code of Conduct complaints must be kept confidential will help protect all parties involved in a complaint.

Consideration 4 – Implementation of council dispute resolution policies

- While the Government's view is that the implementation and design of council dispute resolution policies should be a matter for LGAT and councils to administer, it is considered essential for complainants to have alternative means to resolve conduct related grievances, before submitting a Code of Conduct complaint.
- A dispute resolution policy may not always be appropriate for every grievance. However, a failure to attempt to resolve a grievance by utilising such policies (where appropriate) may be considered in the context of identifying vexatious complainants.
- In many circumstances, an opportunity to resolve grievances in a less adversarial environment may provide an avenue for a more genuine, lasting and cost effective resolution and further, improve long-term community relations for councillors.



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