

DISCUSSION PAPER

# Addressing councillor misconduct

March 2023

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## How to make a submission

Submissions on the options for reform presented in this paper are welcome from members of the community, stakeholders, councils, and elected representatives. Respondents are encouraged to review the principles, specific reform proposals, and context outlined in this paper to inform their feedback.

Submissions might consider the following prompts:

- Who should be able to initiate, and who should be able to determine, applications seeking the extended suspension or dismissal of councillors?
- On what basis should these decisions be made?
- Do the options presented reflect the principles outlined in this discussion paper?
- Do these options support public confidence and trust in local government?
- Do these options appropriately balance the role of local government as an independent, and democratically constituted, tier of government, with the need for intervention in limited circumstances to preserve the public interest?

Submissions by email to [lgconsultation@dpac.tas.gov.au](mailto:lgconsultation@dpac.tas.gov.au) are preferred. Alternatively, submissions may be provided by mail, addressed to:

Attention: Addressing councillor misconduct discussion paper  
Office of Local Government  
Department of Premier and Cabinet  
GPO Box 123  
HOBART TAS 7001

**Submissions must be received by midnight on 19 April 2023.**

In the absence of clear information that a submission is to be treated as confidential, submissions will be treated as public information and published on the Department of Premier and Cabinet's website. If you would like your submission to be treated as confidential, you must indicate in writing, at the time of providing your submission, the parts of your submission you wish to remain confidential and provide the reasons for this.

Please consult the Tasmanian Government's [Public Submission Policy](#) for further information.

Submissions will be published after consideration by Government.

## Context

### Background

The Tasmanian Government is committed to the supporting and strengthening Tasmania's local government sector and ensuring that our local councils are equipped to serve their communities.

The democratically elected councillors of each council make important decisions at the local level and give voice to the aspirations and needs of the communities they represent.

Individuals who hold public office at all levels of government should be held to high standards in terms of behaviour and accountability. Councillors are responsible for performing an important leadership role within their local communities and, therefore, have a responsibility to act in a way that reflects community expectations.

Our elected representatives generally conduct themselves with professionalism, integrity, and dedication to their community. However, in the last term of local government in Tasmania, we saw a small number of instances in which behaviour and conduct fell well short of these aspirations.

Conduct matters in Tasmania are primarily dealt with through the local government Code of Conduct Framework, which is established under the *Local Government Act 1993*. However, the existing framework has very few direct mechanisms or escalation options for addressing instances where the misconduct of a councillor is of such a serious nature that it calls into question their suitability for public office.

While the community chooses its representatives every four years, the length of these terms means that a mechanism to consider removal from office outside those democratic processes may be beneficial to the public interest, but only in extraordinary circumstances. Significant caution must be exercised in empowering any decision-maker in that way, be that a Minister, statutory officer, court, or administrative tribunal.

### This Discussion Paper

In drafting this discussion paper, Government is striking a balance between important and independent democratic function of our councillors, while acknowledging the imperative for intervention in limited circumstances.

This paper is intended to inform the community and seek feedback on two options under consideration by Government that would allow for stronger sanctions, including dismissal, to be imposed where the nature of a sitting councillor's misconduct warrants such action. It includes analysis of approaches to councillor misconduct in other jurisdictions; outlines the existing framework and remedies in Tasmania; and sets out the principles that have been applied in developing the two options presented, along with a range of possibilities considered but not developed further.

## Terminology, acronyms, and abbreviations

### Misconduct

The *Integrity Commission Act 2009* defines misconduct as—

- (a) *conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –*
  - (i) *a breach of a code of conduct applicable to the public officer; or*
  - (ii) *the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or*
  - (iii) *a misuse of information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or*
  - (iv) *a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or*
- (b) *conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –*

...

Serious misconduct is defined as—

- ... *misconduct by any public officer that could, if proved, be –*
  - (a) *a crime or an offence of a serious nature; or*
  - (b) *misconduct providing reasonable grounds for terminating the public officer's appointment*

These definitions should be taken as a useful guide to matters relevant to the mechanisms outlined in this paper, and may have some legislative application. In using this definition, care will be required to minimise the regulatory overlap between the Office of Local Government and the Integrity Commission.

TASCAT – Tasmanian Civil and Administrative Tribunal

The Act – The *Local Government Act 1993*

### Previous consultation on sanctions for misconduct

The Tasmanian Government consulted in relation to appropriate sanctions for councillor misconduct through the Local Government Legislation Review. Government released a series of approved reforms in April 2020, one of which was to empower the Minister for Local Government to dismiss individual councillors upon investigation and recommendation by the Director of Local Government. This proposed legislative change has not been introduced at this stage and is considered further as part of the options in this paper.

## Options for reform

Two models for discussion are presented in this paper. These are not mutually exclusive, and the preferred outcome may be to legislate both pathways, which would be applicable to separate contexts. The options considered in this paper are:

1. Amendment to the Board of Inquiry provisions of the *Local Government Act 1993*, to enable a Board to be established to investigate misconduct of individual councillors;
2. Empowering the Director of Local Government to seek dismissal or extended suspension of a councillor under the Model Code of Conduct by application to the Code of Conduct Panel or, possibly in future, the Tasmanian Civil and Administrative Tribunal (TASCAT).

## Existing mechanisms in Tasmanian legislation for addressing councillor misconduct

### Code of Conduct

The *Local Government Act 1993* (the Act) is the principal legislation governing the roles and responsibilities of councillors.

Councillor conduct matters are regulated generally through the Model Code of Conduct made under the Act, as adopted by each council. Conduct complaints are heard and determined by the independent Code of Conduct Panel.

A range of sanctions may be imposed by the Panel, with the most severe of these being a suspension from the performance and exercise of a councillor's duties for a period not exceeding three months.

If a councillor is suspended from office three times within two consecutive terms of office, the Code of Conduct Panel is to notify the Minister for Local Government, and the Minister may remove a councillor from office.

It is acknowledged that the threshold of three periods of suspension from office is high, and that the Code of Conduct Panel has only ever suspended a councillor from office on three occasions, involving three separate councillors.

The Code of Conduct Framework was recently reviewed, and amendments have been introduced into State Parliament under the Local Government (Code of Conduct) Bill 2022. The Bill enhances requirements for local dispute resolution before matters can be considered by the Panel; and introduces a public interest test at the initial assessment stage. However, that review was not undertaken with a view towards the introduction of sanctions for misconduct of the kind presented in this paper.

### Investigations by the Director of Local Government

The Director of Local Government has authority to investigate (with or without a complaint) any concern that a Council, Councillor or General Manager has not complied with a requirement of the *Local Government Act 1993* or any other Act. This may include behaviour that could fit the definition of misconduct or serious misconduct.

There are a number of offences that could arise from an investigation by the Direction of Local Government, including participating with a pecuniary interest (s48), disclosure of information

(s338A), improper use of information (s339) and misuse of office (s339A). If a prosecution is successful, a Magistrate may impose a penalty dismissing a councillor and/or barring a councillor from nominating as a candidate for a period of up to 7 years. Any sitting Councillor that is barred from nominating as a candidate is automatically dismissed.

The Director of Local Government may also apply to a Magistrate for an order that a councillor is unable to perform or exercise adequately or competently the functions or powers of a councillor due to the physical or mental incapacity of the councillor (s28)). A person may also not nominate if removed from office due to incapacity

### Interventions by the Minister for Local Government

The Minister for Local Government may establish a Board of Inquiry to investigate a Council(s215)<sup>1</sup>.

After considering the report of Board Inquiry, the Minister may recommend that the Governor by order dismiss any councillor or all councillors in a Council (s226). In making the recommendation, the Minister must be of the opinion that:

- (a) the failure of the councillor or council to perform any function has seriously affected the operation of the council; or
- (b) the irregularity of the conduct of the councillor or council has seriously affected the operation of the council

### Automatic Vacancy

A Councillor is automatically vacated from office upon their imprisonment or where they have been sentenced for a crime.

### Insights from other jurisdictions

Different thresholds and mechanisms are adopted in other Australian jurisdictions to deal with serious councillor misconduct. Despite this inconsistency, it is nonetheless clear that Tasmania has fewer mechanisms for the suspension or removal of a councillor from office compared to all other jurisdictions.

The table below demonstrates high level similarities and differences in the local government legislation of Australian jurisdictions relevant to misconduct and dismissals. More detailed information is provided as an Appendix.

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<sup>1</sup> While an individual councillor or councillors may be dismissed through a process arising from a Board of Inquiry, the Minister for Local Government may only establish a Board to investigate "...a council... or any matter relating to the administration of this Act" if the Minister is satisfied the matter justifies its establishment.

	Tasmania	Queensland	Victoria	New South Wales	South Australia	Western Australia	Northern Territory
Minister's powers to dismiss/recommend dismissal of a councillor	Only on receipt of a Board of Inquiry report following review of whole council, and through a recommendation to the Governor	By recommendation to the Governor-in-Council	No, but may suspend a councillor on specified grounds while matters are heard and determined by conduct or administrative tribunals	No, but may suspend a councillor and recommend dismissal to the Governor upon receipt of a report of the Independent Commission Against Corruption	No	By recommendation to the Governor, on receipt of recommendation from Department CEO. Minister may suspend a councillor on various grounds	No
May a court dismiss or remove a councillor upon conviction for specific offences?	Yes, if convicted and penalised for offences relating to pecuniary interest, disclosure or improper use of information, misuse of office, or due to physical or mental incapacity	Yes	Yes	Yes	Yes	Yes	Yes
Administrative or conduct tribunal power to dismiss a councillor	Limited. The Minister for Local Government may remove a councillor from office, if that councillor was suspended by a Code of Conduct Panel on three occasions, within two consecutive terms of office.	Yes. Councillor Conduct Tribunal may recommend dismissal to the Minister	Yes, the Victorian Civil and Administrative Tribunal may disqualify a councillor from holding office upon a finding of gross misconduct for up to eight years; and a councillor is disqualified for four years upon two findings of serious misconduct by a Councillor Conduct Tribunal	Yes, the NSW Civil and Administrative Tribunal may disqualify a councillor from holding office for up to six years. Matters must be referred by the Chief Municipal Inspector	Yes. When referred to the South Australian Civil and Administrative Tribunal by specified persons following an investigation by the Ombudsman or ICAC.	Yes. The State Administrative Tribunal may disqualify a councillor from office, for up to five years, due to a finding of a serious or recurrent breach. The allegation must be made by the Department CEO	Yes. Any person may make an application to the Northern Territory Civil and Administrative Tribunal to determine whether a councillor, who has been convicted of an offence under the Local Government Act 2019 or another Act is fit to remain in office
Are persons ineligible if disqualified from managing a corporation under the Corporations Act 2001 (Cth)?	No	No	Yes	Yes	No	No	Yes



## Directions for reform

As noted, there is limited consistency in the pathways and mechanisms for the applications on severe sanctions between jurisdictions. However, commonalities are evident, including empowering civil and administrative tribunals or ministerial inquiries to make recommendations for suspension and especially dismissal; and providing for the suspension of councillors prior to and during such processes.

While ministers are provided mechanisms for intervention, the extent or limits of these vary significantly.

Based on the jurisdictional models in place in Australia, a number of principles are suggested to guide reform options:

- The status of local government as a separate, democratically represented, sphere of government requires that thresholds for intervention leading to disqualification or dismissal of a councillor be high;
- Maintaining public confidence and appropriate levels of transparency in the application of decision-making processes and sanctions for councillor misconduct is crucial;
- Any process undertaken to consider and determine councillor misconduct matters must facilitate appropriate levels of discretion to consider individual situations and circumstances.

Within that framework, there are numerous approaches and mechanisms which could be implemented in Tasmania. Key questions for consideration include:

- Who should be empowered to refer a matter into a process to consider the suspension or removal of a councillor?
- Who should undertake that process, and on what grounds should any recommendation be made?
- On whose authority should a councillor ultimately be dismissed?

### *How did we develop these options?*

In developing the two reform pathways presented in this paper, consideration was given to a broad range of possibilities. These included direct dismissal by the recommendation of the Minister of Local Government to the Governor; or for the Director of Local Government to provide a recommendation to the Minister enabling such an intervention. As noted, the latter proposition was supported by the Local Government Legislation Review.

Consideration was also given to the extension of section 28J of the Local Government Act, which presently provides for the Director of Local Government (as the prescribed person) to apply to a magistrate for an order that a councillor is unable to perform or exercise their functions or powers due to physical or mental incapacity. A councillor is removed from office (in effect, dismissed) upon the granting of an order by the magistrate.

While a magistrate would be able to provide impartiality and fairmindedness, and confidence in an apolitical process, it was considered that a more deliberative or bespoke framework, able to take the unique context of local government and the office of councillor into account, would be preferred. It was considered that, at the margin, a magistrate may themselves be placed in a

difficult position if compelled to consider the removal of a councillor in circumstances which were highly politicised or about which the community was divided.

#### What about Registration to Work with Vulnerable People cards?

It is acknowledged that several councils and community members have advocated for Registration to Work with Vulnerable People (RWVP) to be a requirement to hold the office of councillor.

Government is of the view that uniformly requiring RWVP would apply that tool for a purpose it was not designed to address, and would represent a different standard than is maintained in legislation for the office of councillor. It would further place the regulating entity for RWVP, Consumer, Building, and Occupational Services (known as CBOS), in the position of deciding on the suitability of elected officials to hold office. This is not supported.

While RWVP is not supported as a general requirement, Government is committed to developing guidance to clarify for councils where RWVP may already be required for specific activities undertaken by councillors under the *Registration to Work with Vulnerable People Act 2013*.

The reform pathways presented are a translation of approaches used in other jurisdictions into the existing Tasmanian local government legislative frameworks. They are considered to provide a superior framework to either of those possibilities with respect to the principles outlined above; particularly in ensuring administrative or political decision-makers are furnished with clear and apolitical recommendations, reached through a deliberative process.

### Legislative options

In consideration of the above principles and questions, two reform pathways are presented for consultation. These correspond to mechanisms in other jurisdictions' frameworks as outlined, with closer reference to provisions of New South Wales and Victoria.

As noted, Tasmania has limited existing mechanisms to consider the extended suspension or dismissal of councillors, and these options are formulated to address that gap. These mechanisms, if legislated, are not expected to be exercised frequently, and enhanced sanction options may further have a deterrent effect.

## Option: Enable a Board of Inquiry to be established by the Minister for Local Government to consider the conduct of a single councillor or specified councillors

The Minister for Local Government may appoint a Board of Inquiry to investigate a council, single authority or joint authority or any matter relating to the administration of this Act under section 215 of the Local Government Act. A Board is one or more persons appointed by the Minister.

Under the Act, the Minister for Local Government can issue a direction upon receipt of the Board's report or recommendations requiring a council or a councillor to undertake actions within a specified period; or may recommend to the Governor an order dismissing any or all councillors.

The Minister may suspend a councillor from office for the period of the Board's activity, up until the Minister makes a direction as a result of the Board's recommendations, or dismisses the councillor from office.

A Board established under the Act enjoys information gathering powers and may compel persons to attend proceedings, and give evidence on oath or affirmation. A Board may conduct hearings, and must provide opportunities for a council, councillors, and persons directly impacted by an inquiry to make submissions.

A Board must observe the rules of natural justice; is not bound by the rules of evidence; and must conduct its inquiry with as little formality as the matter permits. It may permit the legal representation of a person summoned before it.

This framework may be appropriate for the consideration of matters relating to serious misconduct of a single councillor or councillors. The Act presently requires, in effect, a Board to be established to investigate the actions of a council. These provisions could be extended to enable the appointment of a Board to investigate a single councillor or councillors.

The Minister may impose a Performance Improvement Direction on a council or councillor. Consideration of dismissal on the basis of an individual councillor's failure to comply with a Performance Improvement Direction may be an appropriate function of a Board, noting its establishment by the Minister.

The Act presently constrains a Minister's recommendation for dismissal to circumstances where:

- The failure of the councillor to perform any function has seriously affected the conduct of the council;
- The irregularity of the conduct of the councillor has seriously affected the operation of the council; or
- The councillor has failed to comply with a direction issued by the Minister as a result of a Board of Inquiry.

These standards are considered appropriate to the Minister's consideration of the dismissal of a single councillor, or councillors, as a result of an investigation into the conduct of that councillor's or the councillors' conduct. However, this could be extended to include a ground that the Board had identified serious misconduct (with potential reference to the *Integrity*

*Commission Act 2009*) of a nature to demonstrate the councillor is not a fit and proper person to hold that office.

The Act presently constrains the suspension of a councillor or councillors until the time the Minister issues a direction after receiving the Board's report. It is considered appropriate that this be modified to provide for the extension of a suspension by the Minister, at the time a direction is made, until the actions contained in the direction have been undertaken.

Advantages of this option include:

- Power for the Minister for Local Government to initiate an investigation in the interests of the community;
- Its operation as an extension to prospective and existing regulatory frameworks, including robust evidence gathering powers, and a requirement, in effect, that the process be conducted with less formality than court proceedings;
- That the Board's costs are recoverable from a council.

Disadvantages include:

- The perceived or actual risk of politicised decision-making by a Minister for Local Government;
- Perceived or actual risk associated with the significant discretion in the appointment of persons to a Board.

#### Option: Empowering the Director of Local Government to seek the dismissal or longer suspension of a councillor under the Model Code of Conduct by application to the Tasmanian Civil and Administrative Tribunal or Code of Conduct Panel

This Option would empower the Director of Local Government, if satisfied matters are of sufficient severity, to refer alleged serious councillor misconduct to the Tasmanian Civil and Administrative Tribunal (TASCAT) or Code of Conduct Panel, if retained, for determination.

The Tasmanian Government is considering the transfer of the Code of Conduct Panel's functions, or elements of these, to TASCAT. This process is to canvass related issues, legal representation in Code of Conduct matters and appeal rights and pathways. Consultation opportunities on the potential transfer of the Framework will be made available at a later stage. It is considered that a formalised tribunal framework decreases the risk associated with the introduction of very severe sanctions into the regulatory framework, as contemplated in this paper.

The precise legislative proposal to deliver this option would only be formulated once the feasibility of the transfer of Code of Conduct matters to TASCAT is resolved. Were instead a separate Panel retained, significant change to its operation would be required to accommodate matters of this scope. For instance, legal representation is not permitted within the existing Code of Conduct Panel system to preserve the informal nature of proceedings. That restriction may be inappropriate to proceedings where a sanction up to dismissal may be applied.

It is not considered desirable to contemplate very severe sanctions for Code of Conduct complaints brought by councillors or members of the community, due to the acknowledged risk of the 'weaponisation' of the framework and process. Restricting the potential application of enhanced sanctions to matters brought by the Director, as a statutory officer, mitigates the risk

of vexatious or unsubstantiated applications from councillors or members of the community seeking dismissal. It is noted that the Director of Local Government is provided extensive information gathering powers under the Local Government Act, but cannot themselves suspend or dismiss a councillor.

In considering an application from the Director, TASCAT or the Code of Conduct Panel would have available to it all sanctions available to it under the Code of Conduct framework, but would additionally, be able to consider the imposition of suspension from the office of councillor of up to six months, or dismiss the councillor from office. Presently, a Code of Conduct Panel may only impose a sanction of a suspension of up to three months.

The Director could make an application on the basis of:

- The outcome of a Director's investigation into a councillor or council, including indications of misconduct within the meaning of the *Integrity Commission Act 2009*;
- A report received by referral of the Integrity Commission or an Integrity Tribunal;
- The findings of a Code of Conduct complaint;
- The conviction of a councillor for an offence against the Local Government Act or any other act;
- Other circumstances where the Director is satisfied the impact of the councillor or councillors' actions on the operations of the council warrants consideration as serious misconduct.

The Tribunal or Code of Conduct Panel, in making its determination, would be required to have regard to the councillor or councillors' conduct with reference to the Model Code of Conduct. It is not proposed to establish a separate set of conduct standards for this process.

It is proposed that the Minister for Local Government would be empowered to immediately suspend a councillor or councillors from undertaking the functions of councillor until the application had been resolved (including allowances).

This option adopts elements of the regulatory frameworks of both Victoria and New South Wales.

It is proposed that TASCAT or the Code of Conduct Panel, in dismissing a councillor, may also make an order preventing that councillor from contesting any local government election for a period of up to seven years.

Advantages of this option may include:

- Its generally non-political nature;
- Its operation as an extension to prospective and existing regulatory frameworks; and
- Inaccessibility to vexatious complainants.

Disadvantages may include:

- Reliance upon the judgement of a government statutory officer and tribunal;
- Risk of the adverse public perception or politicisation of a government statutory officer and tribunal;
- Limited role of the Minister for Local Government; and
- Prospects of judicial or administrative review leading to delayed outcomes.

## Appendix: Jurisdictional approaches to councillor misconduct and dismissals

This summary is intended to assist readers to understand the varied requirements imposed in benchmark Australian jurisdictions. It does not provide an analysis of the merits of these approaches nor the extent of their use, which is considered beyond scope for this discussion.

### Queensland

Queensland's *Local Government Act 2009* provides that its Minister for Local Government may recommend the suspension or dismissal of a councillor to the Governor-in-Council, on receipt of a recommendation of the Councillor Conduct Tribunal that a councillor be suspended or dismissed.

The Minister may separately recommend to the Governor-in-Council that a councillor be suspended or dismissed where the Minister believes:

- a councillor has seriously or continuously breached the local government principles; or
- the councillor is incapable of performing their responsibilities; or
- that it is otherwise in the public interest for the councillor to be suspended or dismissed.

These provisions were introduced in 2018.

A person is ineligible to serve as a councillor if imprisoned on under a suspended sentence.

The Queensland Act also establishes periods of ineligibility following conviction for:

- A treason offence—permanent, unless pardoned;
- A disqualifying electoral offence (meaning a conviction under the *Electoral Act 1992* where the penalty included a period of imprisonment, other than for a failure to pay a fine) —10 years;
- A serious integrity offence—7 years; or
- An integrity offence—4 years.

### Victoria

Victoria's *Local Government Act 2020* empowers the Chief Municipal Inspector, a government statutory officer, to make an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct. Only the Inspector may make such an application.

Gross misconduct is behaviour that demonstrates that a councillor is not of good character, or is not a fit and proper person to hold the office of councillor (including sexual harassment of an egregious nature).

Upon a finding of gross misconduct, the Tribunal may disqualify a councillor from continuing to be a councillor for a period of up to eight years.

Separately, a councillor subject to two findings of serious misconduct by separate Councillors Conduct Panels within a period of eight years is disqualified from holding the office of councillor for a period of four years.

The Minister for Local Government, through recommendation to the Governor-in-Council and upon receipt of a report of the Chief Municipal Inspector, may suspend a councillor while an application for serious or gross misconduct is heard. The Minister must be satisfied the councillor is creating a risk to the health and safety of the council staff or councillors; other persons, in their capacity as a councillor or is preventing the council from performing its functions.

Councillors convicted of offences against the Local Government Act with a maximum penalty of 120 penalty units or a period of imprisonment of at least 12 months are disqualified from holding office for a period of eight years; or who have been convicted of the offence of failing to lodge a campaign donation disclosure, for the current term of the council.

Persons convicted of any offence in the preceding eight years, when over 18 years of age, punishable on first conviction of a period of imprisonment of two years or more are ineligible to hold the office of councillor.

Persons disqualified from managing corporations under the *Corporations Act 2001* (Cth) cannot hold the office of councillor.

## New South Wales

The New South Wales *Local Government Act 1993* provides for the Department Chief Executive to refer councillor misconduct matters to the NSW Civil and Administrative Tribunal (NCAT) before, during or after an investigation by the Chief Executive.

Separately, the Minister for Local Government may request the Chief Executive refer a matter to the Tribunal due to a failure of a councillor to undertake actions required by a performance improvement order issued by the Minister for the council. This may be instead of, during, or after the issue of a compliance order by the Minister for the councillor in respect of that failure, which includes the suspension from the functions of a councillor (which are not required to meet the terms of the compliance order), and from receiving allowances and payment for expenses.

The Tribunal, on receipt of a referral from the Chief Executive, may determine whether to conduct proceedings.

If it proceeds and find the behaviour of the councillor warrants action, the Tribunal may impose sanctions up to a suspension of the councillor from civic office for a period of up to six months, or the disqualification of the councillor from holding civic office for a period of up to five years.

Separately, the Minister may suspend a councillor and recommend to the Governor the dismissal of the councillor upon a report of the Independent Commission Against Corruption (ICAC) recommending that consideration be given to the suspension of a councillor from office, with a view to their dismissal for serious corrupt conduct. The Minister must be satisfied that the dismissal of the councillor is necessary in order to protect the public standing of the council and the proper exercise of its functions.

Councillors are ineligible to hold office if:

- Serving a sentence, including a sentence of an intensive correction order, other than a sentence for failing to pay a fine;

- In the preceding two years, they were convicted of electoral offences created under regulation, which correspond to those in the state's *Electoral Act 2017*;
- In the preceding two years, they were convicted of an offence under the *Election Funding, Expenditure and Disclosures Act 1981* or the *Electoral Funding Act 2018*; or
- In the preceding seven years, they were convicted of any offence punishable by imprisonment for five years or more.

Persons disqualified from managing corporations under the *Corporations Act 2001* (Cth) cannot hold the office of councillor.

Persons are disqualified from holding the office of councillor for five years if they have been suspended for misconduct by the Departmental Chief Executive or NCAT on three occasions.

### South Australia

South Australia's *Local Government Act 1999* provides for a councillor to be disqualified from office as a result of a complaint to the South Australian Civil and Administrative Tribunal (SACAT). SACAT may also disqualify a person may also be disqualified from becoming a councillor for a period not exceeding five years.

The complaint to SACAT may only be lodged by a council's chief executive officer, or another person authorised by the relevant minister or the council. It may only be lodged after the matter in question has been investigated by either the Ombudsman or the Independent Commission Against Corruption (ICAC).

A court may further impose the same penalties upon conviction for offences related to confidential information and misuse of office broadly corresponding to the Tasmanian Local Government Act.

A councillor is automatically vacated from office if convicted of an indictable offence punishable by imprisonment.

### Western Australia

Western Australia's *Local Government Act 1995* (the WA Act) provides for the relevant minister to recommend to the Governor that a councillor be dismissed. The minister must make this decision on the basis of advice from the Department CEO that a councillor is impeding the ability of the council to perform its functions and duties under the WA Act; or that it is in the best interests of the council that the councillor be dismissed, and that the minister is satisfied that the seriousness of the situation for the council requires the intervention. A councillor is provided an opportunity to show cause before any order by the minister is made.

Separately, the WA Act provides for the relevant minister to suspend a councillor or to require remedial action in a range of circumstances, including upon the councillor's charge for a disqualification offence; after the Department CEO has made an allegation of a serious breach to the State Administrative Tribunal; or once the Department CEO has made a recommendation to the minister for suspension or remedial action on specified grounds.



A councillor may also be dismissed upon recommendation by the Minister to the Governor if an Inquiry Panel, of one or three persons appointed by the minister, has made that recommendation.

The State Administrative Tribunal, in determining an allegation of a serious or recurrent breach (which can be made only by the Department CEO), may disqualify a councillor from holding office for a period of not more than five years.

A person is disqualified from the office of councillor if convicted of a crime and is imprisoned under sentence for that crime; has been convicted in the preceding five years of a serious local government offence; or has been convicted of an offence for which the indictable penalty included imprisonment for more than five years (or imprisonment for life). A serious local government offence is an offence against the WA Act which is punishable by a sentence over a prescribed duration, or of a fine above a prescribed amount.

A court may also make an order disqualifying a councillor for misapplication of funds or property.

### Northern Territory

A councillor may be determined to be unfit to hold that office by the Northern Territory Civil and Administrative Tribunal. This application may be made by any person residing and registered to vote in that local government area, and may only be made after that councillor is convicted of an offence under the *Local Government Act 2019* or another Act, demonstrating the councillor is unfit to remain in office. The Tribunal must consider whether the nature and details of the office makes the member unfit to remain in office; the councillor's role as a community representative; the councillor's position of influence and trust; and the councillor's responsibility for managing public funds, in determining whether to dismiss a councillor from office.

A councillor is disqualified from holding the office of councillor if serving, or sentenced to during a term of office, a term of imprisonment of 12 months or more.

A person convicted of the offences of undue influence or bribery, in the *Criminal Code Act 1983*, committed in respect of a local government election is vacated from office and barred from holding office for two years.

A person is disqualified from the office of councillor if disqualified from managing a corporation under the Corporations Act 2001 (Cth) or Corporations (Aboriginal or Torres Strait Islander) Act 2006 (Cth).