

Draft Local Government Amendment (Code of Conduct) Bill 2022 and related matters

Information Sheet

The Tasmanian Government is committed to providing open and transparent public consultation processes. We are seeking your input on the draft Local Government Amendment (Code of Conduct) Bill 2022 (the draft Bill) and related matters.

Background

Following prior public consultation about [potential targeted legislative changes to the Local Government Code of Conduct Framework](#) (the Framework) between July and August 2021, the Tasmanian Government committed to [reform across six key areas](#) in December 2021. The draft Bill progresses some of these reforms by amending the *Local Government Act 1993* (the Act).

What changes are being made to the Framework?

The main changes proposed in the draft Bill are a standard code of conduct for councils, voluntary adoption of a behaviour standard policy for councillors, mandatory local dispute resolution policy in councils, an improved process for the initial assessment of complaints, and the disclosure and management of interests by Panel members.

How will the improved initial assessment process operate?

The initial assessment of complaints will be undertaken by a legal member of the Code of Conduct Panel, who will be precluded from sitting as part of a Panel in relation to any subsequent investigation.

The initial assessor will be given greater flexibility to dismiss complaints where, in their view:

- the complainant has not made a reasonable attempt in the

circumstances to address the matter through other avenues (including the council's own dispute resolution process); or

- they believe it is not in the public interest to proceed to an investigation.

What should a council's behaviour standard policy contain?

A behaviour standard policy is to specify the acceptable, or unacceptable, standards of behaviour for councillors in their relationships with the community, other councillors and council employees.

The policy is in addition to the requirements of the code of conduct and may relate to conduct outside the scope of the code of conduct.

What should a council's dispute resolution policy contain?

A dispute resolution policy is to contain the prescribed information and include the processes to be followed in respect of prescribed matters.

In anticipation of the commencement of the amendments, the Government has prepared a draft of the prescribed information to be included in every council's dispute resolution policy (the draft prescribed information) and is seeking public feedback on this as well. The feedback will inform concurrent amendments to the *Local Government (General) Regulations 2015* (the Regulations).

The Office of Local Government will assist the Local Government Association of Tasmania in developing a model dispute resolution policy for councils.

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Will use of a council's dispute resolution process be mandatory?

All complainants will be required to participate in a council's dispute resolution process in the first instance. If the dispute remains unresolved, a code of conduct complaint may be lodged.

A code of conduct complaint will only be considered if the complainant has participated satisfactorily in the dispute resolution process of the council in relation to the complaint.

When do councils have to adopt a dispute resolution policy?

Councils will be required to adopt a dispute resolution policy within 12 months after the commencement of the amendments.

When will the Bill be passed?

The Government intends to introduce a final Bill to Parliament in the spring session of 2022.

When will the Regulations be amended?

As noted, this process includes consultation on proposed prescribed information for council dispute resolution policies. The Government will consider feedback received and then prepare amended Regulations for approval by the Executive Council at the time the legislation is passed.

When will you review the Model Code of Conduct?

The Model Code of Conduct will be reviewed as part of the agreed reforms to the Framework.

A standard Code of Conduct for councils will be introduced after the review is complete. This should simplify and streamline the interpretation of the code by

councillors, councils, the community and the Code of Conduct Panel.

The standard Code of Conduct will be delivered by Ministerial Order and does not require legislative amendment.

What are the cost implications to councils for the proposed changes?

Changes associated with the local dispute resolution processes and reclassifying the Executive Officer position to reflect increased responsibility for compliance monitoring might result in increased costs to councils. However, these costs will likely be offset by the reduction in the net overall costs to councils of the formal Code of Conduct Panel process.

Will there be additional sanctions that allows for councillors to be suspended or removed from office for breaches of the Act or the code of conduct?

The draft Bill progresses the six key reform areas contained in the Government's response to the Code of Conduct Framework review.

These six key reform areas were developed based on the reforms proposed in the Discussion Paper released for public consultation in July 2021 and the broad range of feedback received in response to those proposed reforms.

The Government recognises that, since this time, concern in the community has arisen regarding the appropriateness of existing sanctions and mechanisms.

Acknowledging the complexity of these issues, there will be separate consultation with the sector and the community on potential reforms at a later time.

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As noted in the Government's response to the Code of Conduct Framework Review, consideration of the Framework's transfer to the Tasmanian Civil and Administrative Tribunal (TASCAT) will include matters including enhanced sanctions.

Will the Framework be transferred to TASCAT?

The Government has commenced an assessment of the feasibility of transferring the Code of Conduct Framework, or elements of it, to TASCAT. This includes a consideration of matters relating to legal representation, appeal rights and extra sanctions for serious or repeated breaches.

The Government will provide an opportunity for the sector to consult on the outcome of the feasibility study. This will determine whether the Framework, or elements of it is transferred to TASCAT.

Will councillors be required to hold working with vulnerable people registration?

Reviewing the eligibility criteria for council candidates is beyond the scope of the current targeted review.

As noted, Government acknowledges recent community concern regarding serious instances of poor councillor conduct and the suitability of current mechanisms to deal with such events.

How do the proposed changes relate to the Review of Tasmania's Local Government Legislation Framework and the Future of Local Government Review?

Following extensive consultation in 2018 and 2019, the Government released the [Approved Reforms for the Local Government Legislative Framework Review](#) in 2020.

Government, on the advice of the Premier's Economic and Social Recovery Advisory Council, subsequently commissioned [a comprehensive review into the Future of Local Government in Tasmania by the Local Government Board](#). The Review is to make recommendations on the future role, function and design of local government in Tasmania.

In view of this ambitious program of reform, Government is not proceeding with a new local government legislative framework now. Instead, the intention is to proceed with a new Local Government Bill once the reform pathway from the Future of Local Government Review has been received and considered by Government.

The Government will also consider implementing the legislative improvements developed through the Local Government Legislation Review at that time.

The present draft Bill and the draft prescribed information progress the six key reform areas contained in the Government's response to the Code of Conduct Framework review.

Have your say

Go to https://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/code_of_conduct_framework_review to find out more about making a submission. Consultation closes on 5 September 2022.