

# Amendments to *Local Government Act 1993* and *Local Government (Model Code of Conduct) Order 2016*

## INFORMATION SHEET

This information sheet provides a summary of the changes made to the *Local Government Act 1993* and the *Local Government (Model Code of Conduct) Order 2016* in December 2018

### Code of Conduct Changes

Following a review of the model code of conduct framework, there have been changes made to both the *Local Government Act 1993* (the Act) and the *Local Government (Model Code of Conduct) Order 2016* (the Code). Together, these changes will improve the overall efficiency and effectiveness of the complaints handling process.

Amendments to the Act apply as of 10 December 2018 include:

- **section 28V(3)(fb)** - a new requirement that a complainant provide details of reasonable efforts made to resolve the issue that is the subject of the complaint, when lodging a complaint;
- **section 28ZE(5A)** - a new requirement that a complainant (along with councillors or employees of the council) are to provide a statutory declaration verifying the accuracy of the information they provide in respect of a complaint;
- **section 28ZB(1)(a) and (ab)** - a new provision to allow the chairperson of a Code of Conduct Panel to dismiss complaints on the basis of 'triviality', as well as on the basis that the complainant has not made a reasonable

effort to resolve the issue prior to lodgement of the complaint;

- **section 72(1)(ba)** - a new provision requiring councils to include in their annual report the number of code of conduct complaints that were received in total, as well as the number that were upheld either wholly or in part;
- **section 339** - a new offence provision to explicitly prevent any person from misusing information acquired in relation to a code of conduct investigation; and
- a small number of minor amendments focused on improving the overall procedural fairness, confidentiality and transparency of the complaints handling process.

Amendments to the model code were approved by the Minister for Local Government on 7 December 2018 and came into effect upon Gazettal on 26 December 2018. However, these changes will not apply until the amended model code is adopted by the relevant council.

Amendments include:

- **part 2 – clause 7** - changes to make it clear that the model code does not apply to pecuniary interests or to the

disclosure of confidential information, as these are dealt with as offence provisions under the Act; and

- **Part 2 – clause 6** - the introduction of a 'reasonable person' test in relation to non-pecuniary conflicts of interest. This replaces the 'materiality' test, and is intended to provide consistency within the Code and with common law principles. Further guidance will be issued about what is the 'reasonable person'.

## Miscellaneous Changes

Miscellaneous amendments to the Act were also made in order to address a number of minor drafting and administrative matters. Relevant changes include:

### **Pecuniary interests - section 52(1)(d)**

The Act was amended to clarify that a councillor can only vote on a matter relating to the payment of allowances or expenses if that matter relates to all councillors of the council.

### **Gifts and donations register - section 56B(3)**

The register of gifts and donations for elected members is required to be made permanently available at the relevant council's office, on the council's website and updated at least monthly.

### **Improper use of information - section 339(1), (2) and (2A)**

Existing provisions have been extended to capture former councillors, members, members of an audit panel or employees, similar to the restrictions that apply under the *Corporations Act 2001* to former directors with respect to the misuse of information.

### **Vacation of office - Schedule 5 - clause 3(1)**

The office of a councillor, who is elected to any Parliament in Australia, is vacated on the day on which they begin to hold office in that Parliament. This will prevent members elected to Tasmanian or Australian Parliament continuing to also serve as councillors.

### **Customer service charter - section 339F(4)**

A review of a council's charter needs to be undertaken within 12 months of a council election, rather than every two years.

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