
Government Position Paper – Migration of the Local Government Code of Conduct Framework to the Tasmanian Civil and Administrative Tribunal (TASCAT)

Background

The statewide local government Code of Conduct framework for Tasmanian councillors was introduced in 2016. The framework sets the standards and expectations of conduct and behaviour for councillors, and provides a consistent, effective, and enforceable means to address instances of councillor misconduct.

In 2021, the Government released a discussion paper *Strengthening the Local Government Code of Conduct Framework*. One of the key reform areas in this paper was to "position the framework for the future". This included a commitment to undertake a feasibility study into transferring administrative responsibility for the code of conduct framework (or certain elements of the framework) to TASCAT.

The commitment to undertake a feasibility study at that time was influenced by three main factors.

1. TASCAT had only recently been established, and it was understood that following its establishment incorporating an initial set of tribunals and boards, there would be potential for other bodies to become part of TASCAT in the future. Because the Code of Conduct panel is a decision-making body, interest arose for exploring the feasibility of transferring the Panel's powers and functions to TASCAT as a way of leveraging the capability and potential efficiencies of a centralised administrative decision-making body of this kind.
2. Feedback on the Discussion Paper included a suggestion that councillors should have access to legal representation in Code of Conduct proceedings, and the rules of evidence should apply. Since TASCAT normally allows legal representation, it was considered appropriate to consider this matter under the feasibility study, rather than as part of amendments to the Code of Conduct provisions that were being prepared for the Parliament's consideration at that time;

3. During the development of the Code of Conduct Act, the need to strengthen measures to address instances of serious misconduct of councillors was identified. Around this time, TASCAT was identified as an appropriate option for addressing serious misconduct, drawing on perceived similarities to disciplinary hearings in place for other professions. Early consideration of this option gave rise to the idea that if TASCAT could consider code of conduct complaints of serious misconduct, then TASCAT may also be positioned to manage *all* code of conduct complaints through a complete transfer of the existing framework.

During 2023-2024 the Office of Local Government, in consultation with the Department of Justice, undertook an analysis and merit assessment, exploring two potential transfer options:

Option one would see all Code of Conduct matters being transferred to the occupational/disciplinary stream of TASCAT. The current Code of Conduct process would no longer operate under this option.

Option two would see the existing process continuing largely as it is, with the exception that the Director of Local Government would be empowered to refer instances of alleged serious misconduct to the occupational/disciplinary stream of TASCAT.

Government position

Having undertaken a feasibility analysis and merit assessment (including consultation with the Department of Justice and a review of arrangements in other jurisdictions) the Government has determined not to proceed with the full transfer of the Code of Conduct framework to TASCAT at this time.

The Government believes the existing Code of Conduct Panel process and framework is, overall, better suited to the investigation and determination of complaints about councillor misconduct in most instances. That is because it is designed to be as accessible, informal, non-adversarial, and non-legalistic as possible.

TASCAT, by its nature, is a more formal process providing for the legal representation of parties and typically requires a 'primary advocate' to bring a complaint. It is therefore more suited to dealing with matters where more serious sanctions may be applied. These aspects of the TASCAT framework also make it less accessible for complainants, particularly if those complainants are members of the general community, as is often the case in respect of Code of Conduct complaints.

A full transfer of all complaints to TASCAT would be complex and potentially costly - requiring substantial changes to how the current Code of Conduct process operates. Significant issues considered during the feasibility assessment include that:

- A new cost recovery model would be required, as well as an increase to the substantive funding of TASCAT. While indicative costings have been provided by TASCAT, the broader cost implications of a full transfer difficult to estimate, although it would be expected to cost councils more for TASCAT to administer an equivalent number of complaints; and
- There is no precedent or comparable model in any other Australian jurisdiction where all matters of alleged councillor misconduct are considered by the State's civil and administrative tribunal.

Also relevant to the Government's position to not pursue a full transfer are the recent reforms made to the Code of Conduct framework, which seek to increase the number of conduct matters (or potential conduct matters) which can be managed and resolved at the local level, and 'lift the bar' for complaints which are investigated by the Code of Conduct Panel via improved initial assessment processes.

The combined effect of these reforms should be to ensure the Code of Conduct Panel only deals with those matters which legitimately warrant its investigation and determination and improve the capability of councils in resolving relatively minor (especially relationship-based) disputes and conflicts. These changes may result in the less frequent utilisation of the formal code of conduct complaints process.

Once dispute resolution policies have been implemented for an extended period, analysis will be undertaken to understand the impact on the volume and nature of complaints being lodged under the Code of Conduct. This may identify further need for reform of the Code of Conduct Framework, but it will likely take some time for these effects to become evident.

Given these factors, the Government has not seen clear evidence of sufficient benefits to justify the more serious consideration of full transfer, at least in the short to medium term.

Referral of 'Serious Misconduct' to TASCAT

While the Government does not support a full transfer of the Code of Conduct framework to TASCAT at the present time, it does consider there to be significant merit in the further development of a 'referral model', as part of its commitment to pursuing reforms to address serious council misconduct more effectively.

The referral model received broad sectoral and community support when the Government consulted in 2023 on potential legislative reforms around serious misconduct. The Government's Discussion Paper outlining the referral model can be

found here -

https://www.dpac.tas.gov.au/data/assets/pdf_file/0021/285204/Discussion-paper-Addressing-councillor-misconduct.pdf

Under this model, the Director of Local Government would be empowered, if satisfied matters are of sufficient severity, to refer alleged serious councillor misconduct to TASCAT. Upon referral from the Director, TASCAT would be empowered to apply a range of sanctions if a finding of serious misconduct is upheld. This would include – for example - the existing suite of sanctions applicable through the Code of Conduct framework, as well as removal of a councillor from office, a longer-term suspension (upwards of six months) and disqualification from running for office for a period of up to seven years.

While requiring further analysis and consultation, examples of circumstances where the Director might make an application include:

- The outcome or findings 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 or the referral of a complaint in appropriately defined circumstances during the initial assessment phase;
- 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.

Restricting the potential application of enhanced sanctions to conduct-related 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.

TASCAT, in making its determination, may also be required to have regard to the councillor or councillors' conduct with reference to the prevailing statewide Code of Conduct; it is not currently proposed to establish a separate set of conduct standards for this process. Subject to further consultation, it may also be appropriate for the Minister for Local Government could also be empowered to immediately suspend a councillor or councillors from undertaking the functions of councillor until the application had been resolved.

The proposed referral model could establish an appropriate mechanism for responding to instances of serious councillor misconduct while making sure the Minister for Local Government remains (appropriately) at arm's length from any decisions to dismiss a councillor.

This approach exists in several other jurisdictions, and the referral model described above adopts elements of the regulatory frameworks of Victoria, New South Wales, and South Australia.

Transfer to TASCAT - Code of Conduct Determination Appeals

In the more immediate term, the Government is progressing – via the TASCAT (Additional Jurisdictions) Bill 2024 – transferring the appellate jurisdiction for Code of Conduct determinations from the Magistrates Court to TASCAT.

The transfer will enhance the administrative review process for appeals against Code of Conduct determinations. As it stands, the grounds of review under section 28ZP are very narrow (being limited to a failure on the part of the Code of Conduct Panel to comply with the rules of natural justice). Arguably, TASCAT is better equipped and positioned to review administrative determinations than the Administrative Appeals Division of the Magistrates Court, and migration should result in more responsive, efficient and consistent reviews of Code of Conduct matters.

Next Steps

The Government has recently implemented a number of important reforms to the Code of Conduct framework and will continue to monitor their roll-out to ensure these changes deliver their intended outcomes. Mandated local-level dispute resolution policies and improved initial code of complaints assessment should deliver better outcomes for councils and their communities without the need to escalate minor issues to the code of conduct process.

In parallel, the Tasmanian Government is committed to progressing its *Local Government Priority Reform Program 2024-26* ahead of the 2026 local government elections.

The Program has a clear focus on *lifting standards of professionalism, conduct, and integrity* across the sector, including legislative and regulatory reforms targeting serious and repeated misconduct.

The Government will be introducing legislation in 2025 to support its reform program – with a clear early priority on addressing serious misconduct - and will be further developing the details TASCAT referral model as part of this process, in close consultation with the sector and the community.