
Consultation report - the Local Government (Code of Conduct) Amendment Regulations and new Code

On 15 June 2024, the Tasmanian Government released for public consultation draft amendments to the Local Government (General) Regulations 2015 and a new draft Local Government Code of Conduct Order. Consultation closed on 20 August 2024.

The changes support legislative amendments to the code of conduct framework approved by the Parliament in September 2023, and include:

include:

- A new single statewide Code of Conduct that automatically applies to all Tasmanian councillors
- Minimum prescribed requirements to be included in newly required council dispute resolution policies
- A specific requirement in the Code of that councillors are not to engage in 'prohibited conduct', as defined under the *Anti-Discrimination Act 1998*
- Ensuring the Code reflects gender neutral language.

Eight submissions were provided in response to consultation.

The overall response was supportive, including from the Local Government Association of Tasmania as peak body for the sector. Several submissions were in relation to matters out of scope of the consultation.

The key issues raised in submissions are summarised in the table below, along with the Government's response.

Submitter	Key comments or concerns	Government response
Tammy King	That councillors should be required to hold a Working with Vulnerable People card to be elected to or stay on council.	<p>The Government does not support the request to legislate the requirement for Councillor nominees to hold a Working with Vulnerable People (WWVP) registration at this time.</p> <p>The Registration to Work with Vulnerable People legislative framework is not intended or designed as an eligibility threshold or character test for councillors or any other democratically elected representatives.</p> <p>It is already the case that councillors who engage in relevant regulated activities captured by that framework while undertaking their role would be required to hold a registration under the <i>Registration to Work with Vulnerable People Act 2013</i>.</p>

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Glenorchy City Council	Supportive of the proposed reforms.	Noted
Local Government Association of Tasmania	<p>While any matter could foreseeably be contested between two people, the dispute resolution process is likely not equipped to assess technical matters. For example, the use of information (Part 5) or gifts and benefits (Part 6) under the Code of Conduct. In practice this may mean that a mediator attempts to resolve an issue yet cannot proceed due to the matter requiring specialised knowledge to consider. This may create frustration with the dispute resolution process, as these cases would conclude with no result, and generate unnecessary time and cost. The dispute resolution process should be focused on matters around behaviour and interpersonal relationships.</p> <p>One council raised concerns that annual reporting of complaints (Regulation 30B) carries a risk that this may be used as an indicator of council culture or performance. It is expected that there will be more cases of dispute compared with matters that become Code of Conduct complaints. This outcome should be framed as a positive process resolving issues and improving relationships in a cooperative way. To mitigate against this risk, we encourage the</p>	<p>It is understood that dispute resolution is not necessarily suitable for all breaches of the Code, and is primarily to support management of relationship-based disputes. The Government does not support an explicit limitation on the application of the dispute resolution to only certain parts of the Code and believes this issue can be more appropriately and flexibly managed through the administrative application of the Code, including advice for complainants, Councils, and the Code of Conduct Panel.</p> <p>The Government will also work closely with LGAT to ensure sectoral dispute resolution policies provide guidance on where it may not be appropriate or</p>

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	<p>State Government to actively and positively promote the dispute resolution process.</p> <p>A council noted that there does not appear to be an overall reporting requirement for Code of Conduct complaints dismissed at the legal review stage (Section 28ZA and 28ZB of the amended Local Government Act 1993) besides the notices provided under Section 28ZA(3). We would suggest that categorisation and reporting at an aggregate level of Code of Conduct complaints would, when linked to reporting of dispute resolutions, provide a fuller picture of Code of Conduct issues. This information could be considered in the broader review of local government performance reporting.</p>	<p>suitable to engage in local dispute resolution.</p> <p>The Government will work closely with the sector to look at renewing Council's reporting requirements as part of a broader review of sectoral performance reporting requirements.</p>
Central Coast Council	<p>Broadly supportive of the intent of the draft amendments.</p> <p>Councillors however expressed strong concern that the amendments were overly prescriptive and appeared punitive in nature.</p>	<p>It is noted that aside from the inclusion that a councillor may not engage in prohibited conduct in the Code of Conduct (which was included as it was prescribed in the <i>Local Government (Code of Conduct) Amendment Act 2023</i>, and which councillors are already subject to under the <i>anti-Discrimination Act</i></p>

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	<p>The Council also noted that a values-based framework could provide a less prescriptive, but nonetheless effectual framework, based on the shared values of all Tasmanians.</p>	<p>1998), the amendments to the statutory instruments were purely administrative. This suggests the council missed the intent of the engagement.</p> <p>The Code of Conduct sets out a framework for guiding councillor behaviours in a respectful and ethical manner. It is contested that the Code sets a benchmark for councillors to conduct themselves in a manner consistent with the values of all Tasmanians.</p>
Kingborough Council	<p>Supportive of the mandatory adoption of the Code of Conduct.</p> <p>Provided specific minor feedback to specific content within the Code of Conduct.</p>	<p>Part 1, Point 3</p> <p>The Code of Conduct sets principles for how councillor conduct themselves and fulfill their public duty. Considering this, it is suitable that the</p>

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	Part 1 Point 3	A councillor, in making decisions, must give genuine and impartial consideration to all relevant information known to the councillor, of which the councillor should be reasonably aware.	Recommend removing words 'genuine and'. This is subjective and impossible to quantify whether it has occurred.	<p>Code encourage 'genuine' consideration of information.</p> <p>Part 2, Point 5</p> <p>The Government is currently developing a more clear, consistent framework to support councillors in managing interests. The impacts this framework will have on legislation, including the Code of Conduct, will be considered as the framework continues to be developed.</p> <p>Part 7, Point 2(b)</p> <p>The intent of this change is supported, however has not been raised more broadly. The Government is seeking at this stage to bring existing model code provisions across to the new</p>
	Part 2 Point 5	A councillor must avoid, and withdraw from, positions of conflict of interest as far as reasonably possible.	<p>Recommend removing this clause. This is not always likely to be a practicable option for councillors and will likely create some inconsistency in practice especially as it relates to perceived conflicts.</p> <p>For example a Councillor may be a member of a sports club and therefore may have a conflict of interest as it relates to decisions around that club. However it is not reasonable to expect them to withdraw their membership, while it is possible.</p>	
	Part 7 Point 2 (b)	A councillor - endeavour to ensure that issues, not personalities, are the focus of debate.	Recommend removing the words 'endeavour to'. This creates subjectivity unnecessarily and could be remove to greater affect.	

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		statewide code with as little change as possible. This point will be considered when a more fulsome review of the Code is undertaken.
City of Launceston	Supportive of the proposed reforms.	Noted
West Tamar Council	<p>The Council does not support a legislated Code of Conduct that applies to all Councils.</p> <p>Council does not agree with the inclusion of Prohibited Conduct into the Model Code as it feels this is a step too far.</p> <p>Council feels that the Model Code of Conduct further restricts Councillors ability to have and express their personal views publicly.</p> <p>Council believes that this is an overreach and something that will further restrict people who will want to stand for Local Government office.</p>	Noted

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	<p>Council does not believe that it is appropriate for it to take on additional costs by having to engage independent mediators as part of the dispute resolution process and that it should receive additional funding from the State Government.</p>	
<p>Local Government Professionals Tasmania</p>	<p>LG Pro's members do not believe that the changes go far enough by not providing for higher penalties.</p> <p>The behaviour of Councillors cannot be separated from organisational cultural considerations, and therefore, it would be appreciated if there was a level of flexibility for Council to develop their own behavioural policies that align with organisational cultural values.</p> <p>Workplaces are increasingly focused on individuals' health and well-being. There is a growing emphasis on holistic employee well-being, including mental health and psychological safety. Councils as an employer are responding to this and creating supportive and inclusive work environments for their workforces.</p>	<p>Comments are noted. The Government is considering potential reforms to address a number of key issues identified, including:</p> <ul style="list-style-type: none"> defining behaviours that constitute 'serious misconduct' by councillors and establish new offences with stronger sanctions for dealing with it. clarifying the respective obligations, duties, and powers of council, the mayor and other elected members, and senior council staff with respect to work health and safety legislation. <p>The development of the Model Dispute Resolution Policy is giving</p>

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	<p>The Mayor's role plays a significant leadership role in managing and promoting a respectful work environment, but, in practice, the Mayor has limited tools and powers to assist in that role.</p> <p>This Dispute Resolution Policy is proposed to resolve any disputes internally with Code of Conduct complaints being against Elected Members of the Council, there is potential that this internal mediation process could create division between the elected member and the General Manager who appears to become responsible for an internal dispute resolution process.</p> <p>The General Manager should not regulate or mediate Councillor behaviour. This is not only an effective use of this role's focus and time but also of the industry's resources. The General Manager's role could and will be compromised, given Councillors are their employers. The dispute resolution process should be independent of the General Manager as is the case in some other states.</p>	<p>active consideration to the process of dispute resolution, including responsible officers for administering dispute resolution, and importantly, the use of external mediators.</p>