

Amendments relevant to the Code of Conduct – framework and model

Local Government Act 1993 relevant amendments

No.	Clause within Amendment Bill	Section of Act	Proposed Change
1	6	28V	<p>To improve the evidence required for a complaint, it is proposed to require a complainant to provide a statutory declaration verifying the accuracy of the information contained in the complaint.</p> <p>In order to place the onus on parties to try to resolve an issue before formal escalation, a complainant will also need to provide, as part of their complaint, details of all reasonable efforts made by the complainant to resolve the issue that is the subject of the complaint.</p>
2	7	28X	<p>As per the review, it is proposed to restrict the amendment of a complaint once the code of conduct panel has commenced an investigation.</p>
3	8	28ZB	<p>In order to reduce the amount of time and resources spent dealing with obviously trivial complaints, it is proposed to broaden the basis that a chairperson of a code of conduct panel can dismiss a complaint at the initial assessment stage to include:</p> <ul style="list-style-type: none"> - that the complaint is “trivial” (in addition to vexatious and frivolous); or - that the complainant has not made a reasonable effort to resolve the issue prior to lodging the complaint.
4	9	28ZE	<p>To improve the evidence required for a complaint, it is proposed to insert a new subsection to specify that if a general manager, council employee or councillor provides any information in relation to a code of conduct panel request, the general manager, council employee or councillor is to verify the accuracy of that information by providing a statutory declaration.</p>

No.	Clause within Amendment Bill	Section of Act	Proposed Change
			This subsection is to correspond with the new requirement that complainants must accompany their complaint with a statutory declaration, attesting to the accuracy of the information provided.
5	10	28ZK	<p>It is proposed to amend the handling of a determination report by the general manager to improve transparency and consistency across the sector.</p> <p>The proposed amendments to section 28ZK specify that a determination report, without an addendum, is to be kept confidential until it is placed on the council's agenda.</p> <p>Additionally, to prevent misuse of information, an addendum to a determination report must be kept confidential by parties who receive it. It can only be disclosed to the councillors of the relevant council following the relevant council meeting.</p>
6	11	NEW 28ZNA	As per the review, it is proposed to make it clear that individual councillors do not bear the costs of training undertaken because of a determination. These costs are to be paid by the relevant council.
7	12	29ZP	It is proposed to make it clear that if a determination is appealed to the Magistrates Court (Administrative Appeals Division), the determination report is not to be dealt with in a meeting of the council until after the Court makes a decision.
8	20	72	The proposed amendment requires 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.
9	36	339	The proposed amendment makes it an offence for a person to make improper use of any information acquired by the person in relation to a code of conduct investigation.

Changes to the Model Code of Conduct

No.	Part of Model Code	Proposed Change
1	Part 1	No change is proposed.
2	Part 2	Change of Title of Part 2 to state “ <i>Conflict of interests that are not pecuniary</i> ” This change is to make it clear that a conflict of interest in this part only relates to a non-pecuniary interest.
3	Part 2	Item 6 (b) – introducing a “reasonable person” test (in place of the “materiality” test”) amending the wording to: “act in good faith and exercise reasonable judgement to determine whether <i>a reasonable person would consider that the conflict of interest requires the councillor to remove himself of herself from any decision on the matter by the Council.</i> ” The introduction of a ‘reasonable person’ test in Part 2 of the Code in relation to non-pecuniary conflicts of interest, in place of the ‘materiality’ test, is intended to bring this part in line with other parts of the Code and common law principles. This amendment would still allow councillors to have non-pecuniary interests and vote on a matter, so long as a ‘reasonable person’ would consider that the interest would not create bias.
4	Part 2	Item 7 – inserting the following item after item 6 in order to provide clarity about the Code’s application and to remove overlap between the Code and the Act: <i>This Part does not apply in relation to a pecuniary interest.</i>
5	Part 3	No change is proposed.
6	Part 4	Item 4 - removing Item 4 from Part 4 as it is considered that the test of perception in this Part is not appropriate.
7	Part 5	Item 1 – removing Part 5 Item 1 as section 338A of the Act relates to the disclosure of confidential information. This proposed removal will reduce the overlap between offences within the Act and the Model Code.
8	Part 5	Item 2 – Rewording Part 5 Item 2 to include <i>a councillor must only access “or use” Council information needed to perform his or her role...</i>

No.	Part of Model Code	Proposed Change
		<p>Subsequent to this proposed change is the proposed change to remove Item 3 of Part 5.</p> <p>These proposed changes should streamline this Part of the Model Code.</p> <p>The remainder of Part 5 of the Code will remain as these items do not overlap with section 339A of the Act and provide a protection over the access and use of council information that is not “confidential” information.</p>
9	Part 6	<p>There are substantial proposed changes to Part 6 as a result of recent changes to the Act and the General Regulations in relation to gifts and donations.</p> <p>Items 3, 4, 5, 6, 7 and 8 are proposed to be removed to prevent overlap with the new legislative changes.</p> <p>Item 1 – including the wording “and is not in contravention of any relevant legislation”.</p> <p>Item 2 - changing the test “in which the appearance may be created” to “in which a reasonable person would consider”.</p> <p>This proposed change is to provide a consistent test throughout the Code.</p>
10	Part 7	<p>It is proposed that Item 1(a) be amended to remove the words “with courtesy, fairness, dignity and respect” and substitute them with “fairly”.</p> <p>This will capture the essence of desired behaviour in that a councillor should treat all persons in a fair manner, and remove the more subjective tests of “courtesy and dignity”.</p>
11	Part 7	<p>Item 3 – removing Item 3 as it overlaps with the overriding provisions of section 339A of the Act (Misuse of office) and section 28(3)(a) which covers attempts to direct an employee of the council in relation to the discharge of the employees duties.</p>
12	Part 8	<p>Item 5 – amending to include the word “publicly” before the word “undermine”.</p> <p>This proposed change is to clarify that the Code is focused on an elected member’s public conduct, acting in their capacity as a councillor.</p>

Miscellaneous Amendments to the *Local Government Act 1993* – proposed amendments other than code of conduct related

No.	Clause	Section	Proposed change
1	4	16	Proposed amendment to give effect to the “minor boundary adjustment” amendments made in the <i>Local Government Amendment (Targeted Review) Act 2017</i> . This amendment clearly gives the Governor the power to make an order to give effect to a recommendation relating to a minor boundary adjustment under section 16(4A) of the Act.
2	5	28D	Makes it clear that a councillor can request documents relating to “the next” council meeting and not past council meetings.
3	13	Part 5	The proposed amendment changes the heading of “Part 5” to change “interests” to “Pecuniary Interests” to provide clarity.
4	14	52	The proposed amendment makes it clear that a councillor can only vote on a matter relating to the payment of allowances or expenses if that relates to all councillors at the council.
5	15	55	A general manager will be required to inform the council of any employee or general manager interest in a matter and to keep a register. This will now be an offence provision.
6	16	56A	The new subsection (1A) now provides that a candidate to a local government election is bound by similar gifts and donation disclosure requirements as councillors.
7	17	56B	The details of any gifts and donations received by a candidate are now to be included on the council’s relevant gift and donations register. The register is also now to be permanently available at the relevant council’s office, on the council’s website and updated at least monthly.
8	18	64	The general manager will be required to keep a register of any delegation that the general manager has made to an employee of the council and make the register available for inspection at a public office.

No.	Clause	Section	Proposed change
9	19	New 70G	This proposed amendment requires council to publish all plans, strategies or policies under Part 7 of the Act and that such documents remain on the website until they are repealed or replaced.
10	21	85	The proposed amendment makes it clear that an audit panel is not a special committee of a council.
11	22	178	This is a council proposed amendment to provide consistency between the treatment of council land and public land.
12	23	186	Minor amendment to provide consistency of terminology throughout the Act in relation to boundary adjustments.
13	24	188	Minor amendment to provide consistency of terminology throughout the Act in relation to boundary adjustments.
14	25	210	This amendment reflects the formal name change of the Local Government Professionals Australia (Tasmania).
15	26	214E	Minor amendment to provide consistency throughout the Act in relation to boundary adjustments.
16	27	222	Minor clarification amendment to provide consistency.
17	28	New 224A	The proposed amendment provides that, once a Board of Inquiry is completed, the Director will be the record keeper of all documents and evidence. Currently, there is no provision for the appropriate record keeping of these documents.
18	29	226	This amendment provides a clearer power for the Governor to dismiss a councillor or all councillors, following the recommendation by the Minister.
19	30	228	As a result of the proposed new section 224A, the Director will be keeper of any documents or records arising out of a Board of Inquiry.

No.	Clause	Section	Proposed change
			This amendment clarifies that the current exemption of these records and documents to the provisions of the <i>Right to Information Act 2009</i> will still apply, unless the Director makes use of a document for the purposes of an investigation under section 339E or 339EA.
20	31	270	A person is not eligible to nominate as councillor if they have been barred by a court under section 223A of the Act.
21	32	308	If a councillor is suspended, or resigns from office while serving that suspension, a by-election will not be triggered.
22	33	New 310A	The proposed amendment prevents the casual vacancy provisions within Part 15 of the Act applying if all councillors are dismissed from a council.
23	34	338	The proposed amendment strengthens the current requirement for a council to provide information and makes it an offence to not furnish any required information, documents or records.
24	34	NEW 338AA	The proposed amendment provides the Director with overt powers to require any person to provide or give access to information, documents or records that may be relevant to an investigation under section 339E or 339EA.
25	35	388A	This proposed amendment makes it clear when confidentiality of documents applies.
26	36	339	This proposed amendment expands the current improper use of information to protect the release of confidential council information by a former councillor, member, member of an audit panel or employee. These reflect the restrictions of releasing confidential information within the <i>Corporations Law 2001</i> by former directors.
27	37	339EA	The proposed amendment provides the Director with the power to obtain information from the Board of Inquiry if required during an investigation under section 339EA.

No.	Clause	Section	Proposed change
28	38	339F	This proposal is a sector-requested proposal to review the customer service charter 12 months after a council election, and not every two years.
29	39	340A	Minor amendment to specify that a councillor will not be entitled to allowances if they are suspended because of a Performance Improvement Direction. This is to provide consistency with the current provisions relating to entitlement to allowances in section 340A.
30	40	Schedule 5	That 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.