

The Hon. Melissa Horne MP  
Minister for Local Government  
Minister for Ports and Freight  
Minister for Roads and Road Safety  
Minister for Casino, Gaming and Liquor Regulation

24 February 2023

Dear Minister,

On behalf of Local Government Professionals Victoria (LGPro), I write to you with actionable next steps in addressing conduct and culture issues in Victoria's councils.

Extensive consultation with local government officers and between LGV and our counterparts across the sector has pinpointed the impacts of poor Councillor behaviour on the performance of local governments and Councillor groups, the communities they serve, and the wellbeing of their staff.

Beneficially, consultation and research has revealed the change required to fix these issues that we submit to you today.

Local government CEOs are tasked with maintaining safe workplaces for staff, but current legislation precludes them from influencing Councillor behaviour that negatively impacts staff in the same way they could for any other workplace misconduct issue involving staff members.

Poor behaviour in these extraordinary cases leads to expensive Workcover claims, the additional cost and reputational damage of instituting monitors on councils, dysfunction in the Councillor group, and the ultimate loss of the dedicated talent of local government professionals who leave the sector.

We believe there is a perception outside of this employee group that local government executives have more authority to act on Councillor misconduct than they do under law, resulting in the issue's longevity. This issue is a legal limitation, and thus we are providing an in-depth case for legislative change with amendments and guidelines that are ready to be acted upon. The included case for legislative reform addresses this legal limitation with key mechanisms for addressing poor behaviour and misconduct and ameliorating its heavy impacts.

As we identify in this paper, Councillor misbehaviour cannot be addressed through any single measure, and measures including education, training, mentoring and the promotion of a greater understanding of fundamental aspects of good governance are all important requirements.

There are key institutions that have been set up already to support the proper functioning of the sector but they are not resourced to succeed. LGPro asks for the sufficient resourcing – both financially and legislatively - of the Local Government Inspectorate so that it may be more responsive to complaints.

There are further actions on the part of LGV, the Victorian Government or other bodies that would complement the included case for legislative reform to address all remaining issues, noted in LGV's in-progress Local Government Sector Action Plan, and work is progressing here. LGPro is already providing training and support to council executives as noted in this plan, for example.

I repeat my commendation of you and your office's important examination of this issue. Work here is progressing quickly thanks to your dedication to seeing governance and accountability issues in the sector resolved.

LGPro too has committed to working closely with LGV and your office to realising the beneficial changes that can be made, and in this spirit I submit our recommendations with this letter.

Kind regards,

A handwritten signature in blue ink, appearing to read 'L Thompson', with a long horizontal stroke extending to the right.

**Liana Thompson**

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# Councillor Conduct

## The case for legislative reform

February 2023

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## 1. Introduction

- 1.1 Issues associated with Councillor conduct that are highlighted in the Local Government Culture Project's *Insights Report* require urgent resolution. If they are not resolved urgently there is a distinct risk that the loss of faith in the current system of regulation will become irreversible.

The issues cannot be addressed through any single measure. As the *Insights Report* makes plain, a range of measures – many of them relating to education, training, mentoring and the promotion of a greater awareness and knowledge of fundamental aspects of good governance – must be implemented.

The Government cannot legislate to create better Councillor conduct. LGPro does not, therefore, suggest that amendments to the *Local Government Act 2020 (the LGA)* will, without more, resolve all of the conduct-related issues that currently concern the sector.

Yet legislative reform is part of the answer. Without legislative reform some or all of the others measures requiring implementation may prove ineffective.

- 1.2 The focus of this Paper is on the legislative regime that currently regulates Councillor conduct, how that regime suffers from defects and what amendments to the LGA or the *Local Government (Governance and Integrity) Regulations 2020 (the Regulations)* should be introduced.

So, it is accepted that legislation relating to Councillor conduct must be considered as part of a broader policy framework aimed at encouraging good governance, with opportunities and mandates for Councillors to better understand what inappropriate conduct looks like and why it erodes the concept of good governance. Ensuring that the legislative regime is fit for purpose and responsive to challenging conduct is nonetheless important.

- 1.3 In describing, pointing to weaknesses in and suggesting reforms to the legislative regime LGPro acknowledges that any regulatory system concerned with Councillor conduct must:
- (a) produce timely outcomes, through cost-effective and transparent processes that are seen to be fair and reasonable;
  - (b) recognise that Councillors are democratically elected, and that, consistent with the principles of natural justice, a Councillor's reputation or interests should not be adversely affected without due process being followed;
  - (c) define inappropriate conduct sufficiently clearly to enable all sector participants to understand what is intended, and the standards against which conduct will be judged; and
  - (d) provide for a broad range of sanctions and penalties when inappropriate conduct has been established, as a means of vindicating the complainant, punishing the perpetrator and acting as a deterrent to others.

- 1.4 This Paper begins by describing the central features of the current legislative regime (see Part 2 'Current Legislative Regime Explained'). It then sets out weaknesses in that legislative regime (see Part 3 'Flaws in Legislative Regime Exposed') before proposing reforms that should be introduced (Part 4 'Reforms to Legislative Regime').

LGPro would be pleased to assist the Government in further considering any aspect of this Paper, and working with Government on the detail of the legislative reforms for which LGPro advocates.

## 2. Current Legislative Regime Explained

### *Misconduct*

- 2.1 Each Victorian council must develop and adopt a Councillor Code of Conduct.<sup>1</sup> A resolution to adopt a Councillor Code of Conduct must be carried by at least two thirds of the total number of Councillors elected to the council.<sup>2</sup>

The purpose of the Councillor Code of Conduct is expressed to:

include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.<sup>3</sup>

Inclusion of the Standards of Conduct is mandatory.<sup>4</sup> It is open to a council to include 'any other matters' which it considers 'appropriate'.<sup>5</sup>

- 2.2 The Standards of Conduct are prescribed by the Regulations.<sup>6</sup> The Standards of Conduct are reproduced as Appendix A to this Paper.
- 2.3 In this respect the Victorian legislative regime is consistent with the legislative frameworks that exist in other Australian States. Typically that legislative framework provides for a 'model' Code of Conduct, setting out behavioural standards which every Councillor is expected to observe.<sup>7</sup> Recent reforms in South Australia have led to the introduction of Behavioural Standards for Council Members that are universally applicable to elected members in that State.<sup>8</sup>

Although no model Councillor Code of Conduct exists in Victoria the Standards of Conduct are, as noted above, a necessary inclusion in each Councillor Code of Conduct. To this extent the Standards of Conduct operate in a manner not dissimilar from a model Councillor Code of Conduct.

- 2.4 If a Councillor breaches any of the Standards of Conduct they commit an act of 'misconduct'.<sup>9</sup> A finding of misconduct is only possible after an internal arbitration process has taken place.<sup>10</sup>

An internal arbitration process can only be initiated by:

- (a) a Councillor;
- (b) a group of Councillors; or
- (c) a council, following the making of a Resolution.<sup>11</sup>

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<sup>1</sup> LGA, section 139(1) and (4).

<sup>2</sup> LGA, section 139(5). An amendment to a Councillor Code of Conduct must also be effected through a formal Resolution carried by at least two thirds of the total number of a Councillors elected to the council (see LGA, section 140(2)).

<sup>3</sup> LGA, section 139(2).

<sup>4</sup> LGA, section 139(3)(a).

<sup>5</sup> LGA, section 139(3)(d).

<sup>6</sup> See Regulation 12 in Schedule 1.

<sup>7</sup> See *Local Government (General) Regulation 2005* (NSW) and section 440 of the *Local Government Act 1993* (NSW), *Local Government (Model Code of Conduct) Regulations 2021* (WA) and *Local Government Act 1995* (WA), *Code of Conduct for Councillors In Queensland* and section 150D of the *Local Government Act 2009* (Qld) and *Local Government (Model Code of Conduct) Order 2016* (Tas) and section 28R(1) of *Local Government Act 1993* (Tas).

<sup>8</sup> See the *Behavioural Standards for Council Members* published in the *South Australian Government Gazette* on 17 November 2022. See also section 75E of the *Local Government Act 1999* (SA).

<sup>9</sup> See the definition of 'misconduct' in the LGA, section 3(1).

<sup>10</sup> LGA, sections 141(1) and 147.

<sup>11</sup> LGA, section 143(2).

This involves the making of an application for an internal arbitration process.<sup>12</sup> An application must be made within three months of the alleged misconduct occurring.<sup>13</sup> Any application must be referred to the Principal Councillor Conduct Registrar. The latter must appoint an arbiter to determine the application (in effect to determine whether a Councillor has breached the Standards of Conduct and thereby committed an act of misconduct) if satisfied that:

- (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (b) there is sufficient evidence to support an allegation of a breach.<sup>14</sup>

2.5 The arbiter appointed is to be drawn from a list maintained by the Secretary of the Department of Government Services.<sup>15</sup> The arbiter must be an Australian lawyer who has been admitted to the legal profession for at least five years or a non-lawyer with such other experience as the Secretary considers relevant to the position.<sup>16</sup>

The arbiter must ensure that the parties involved in the internal arbitration process are given an opportunity to be heard.<sup>17</sup> The rules of natural justice apply.<sup>18</sup>

2.6 If, after completing the internal arbitration process, an arbiter finds that a Councillor has breached (or failed to comply with) the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor.<sup>19</sup> In that event, the arbiter may do any one or more of the following:

- (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
- (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.<sup>20</sup>

A written copy of the decision and statement of reasons must be given to the relevant council, the applicant (or applicants), the respondent and the Principal Councillor Conduct Registrar.<sup>21</sup> Further:

a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.<sup>22</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> LGA, section 143(3).

<sup>14</sup> LGA, section 144(1).

<sup>15</sup> LGA, section 142.

<sup>16</sup> LGA, section 142(3).

<sup>17</sup> LGA, section 141(2)(b).

<sup>18</sup> LGA, section 141(2)(e).

<sup>19</sup> LGA, section 147(1).

<sup>20</sup> LGA, section 147(2).

<sup>21</sup> LGA, section 147(3).

<sup>22</sup> LGA, section 147(4). Provision is made if any part of the decision or statement of reasons contains confidential information (see LGA, section 147(5)).

## Serious Misconduct

2.7 Beyond misconduct there is 'serious misconduct'. This is defined to mean any of the following:

- (a) the failure by a Councillor to comply with the Council's internal arbitration process;
- (b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- (c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- (d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- (e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);
- (f) bullying by a Councillor of another Councillor or a member of Council staff;
- (g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act...<sup>23</sup>

A Councillor Conduct Panel (as distinct from an arbiter) may hear an application that alleges serious misconduct by a Councillor.<sup>24</sup>

An application can only be made by:

- (a) a Councillor;
- (b) a group of Councillors;
- (c) a council, following the making of a Resolution; or
- (d) the Chief Municipal Inspector.<sup>25</sup>

An application must be made within 12 months of the alleged serious misconduct occurring.<sup>26</sup>

2.8 As with applications alleging misconduct, an application alleging serious misconduct must be given to the Principal Councillor Conduct Registrar.<sup>27</sup> An application must specify a number of things.<sup>28</sup>

Once more, if the Principal Councillor Conduct Registrar is satisfied that:

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<sup>23</sup> See the definition of 'serious misconduct' in the LGA, section 3(1).

<sup>24</sup> LGA, section 154(1).

<sup>25</sup> LGA, section 154(2).

<sup>26</sup> LGA, section 154(3).

<sup>27</sup> LGA, section 154(5).

<sup>28</sup> LGA, section 154(6).



- (a) the application is not frivolous, vexatious, misconceived or lacking in substance;
- (b) there is sufficient evidence to support the allegation of serious misconduct; and
- (c) the relevant council has taken 'sufficient or appropriate steps' to resolve the matter (or has not taken any steps but the Principal Councillor Conduct Registrar is satisfied as to why no steps have been taken)

a Councillor Conduct Panel must be formed.<sup>29</sup>

2.9 The members of a Councillor Conduct Panel must be drawn from a list maintained by the Minister for Local Government.<sup>30</sup> To be eligible to be a member of a Councillor Conduct Panel a person must:

- (a) be an Australian Lawyer who has been admitted to the legal profession for at least five years; or
- (b) have such experience as the Minister for Local Government considers relevant.<sup>31</sup>

2.10 Proceedings of a Councillor Conduct Panel must be conducted with as little formality and technicality as the requirements of the Act, and the proper consideration of the matter, permit.<sup>32</sup> The Councillor Conduct Panel is not bound by the rules of evidence but is bound by the rules of natural justice.<sup>33</sup> The Councillor against whom the allegation is made must therefore be provided with an opportunity to be heard.<sup>34</sup>

2.11 A Councillor Conduct Panel may:

- (a) make a finding of serious misconduct against a Councillor; or
- (b) if it is satisfied that a Councillor has breached one or more of the standards of conduct and the application for a finding of serious misconduct was made to the Councillor Conduct Panel within the period of 3 months after the breach occurred, make a finding of misconduct against a Councillor; or
- (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or
- (d) dismiss the application.<sup>35</sup>

A finding of misconduct results in the relevant Councillor becoming ineligible to hold the office of Mayor or Deputy Mayor for the remainder of their term.<sup>36</sup> At least this is so unless the Councillor Conduct Panel directs otherwise.<sup>37</sup>

A finding of serious misconduct also enables the Councillor Conduct Panel to do any one or more of the following:

- (a) reprimand the Councillor;
- (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
- (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;

<sup>29</sup> LGA, section 155(1).

<sup>30</sup> LGA, section 153.

<sup>31</sup> LGA, section 153(3).

<sup>32</sup> LGA, section 163(2)(a).

<sup>33</sup> LGA, section 163(2)(e) and (f).

<sup>34</sup> LGA, section 163(3).

<sup>35</sup> LGA, section 167(1).

<sup>36</sup> LGA, section 167(2).

<sup>37</sup> Ibid.

- (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.<sup>38</sup>

If, instead of serious misconduct, misconduct is found and the application for the establishment of the Councillor Conduct Panel was made within three months of a breach of the Standards of Conduct occurring, the Councillor Conduct Panel can impose sanctions similar to those capable of being imposed by an arbiter.<sup>39</sup>

2.12 A determination of a Councillor Conduct Panel must be given to:

- (a) the relevant council;
- (b) the parties to the matter;
- (c) the Minister for Local Government; and
- (d) the Principal Councillor Conduct Registrar.<sup>40</sup>

The decision must be tabled at the next meeting of the relevant council, and recorded in the minutes of that meeting.<sup>41</sup>

2.13 A person who is affected by a decision of a Councillor Conduct Panel may apply for a review of the decision by VCAT.<sup>42</sup> An application for review must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons for its decision.<sup>43</sup>

#### *Gross Misconduct*

2.14 Finally the legislative framework makes provision for 'gross misconduct' to be alleged against a Councillor. Only the Chief Municipal Inspector can make an application alleging gross misconduct.<sup>44</sup> The application is to be heard by VCAT.<sup>45</sup>

Gross misconduct is behaviour on a Councillor's part that demonstrates that the Councillor:

- (a) is not of good character; or
- (b) is otherwise not a fit and proper person to hold the office of Councillor.<sup>46</sup>

Such conduct includes sexual harassment of an 'egregious nature'.<sup>47</sup>

2.15 If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, it may order that:

- (a) the Councillor be disqualified from office for a period specified by VCAT but which does not exceed eight years; and
- (b) the office of the Councillor be vacated.<sup>48</sup>

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<sup>38</sup> LGA, section 167(3).

<sup>39</sup> LGA, section 167(4).

<sup>40</sup> LGA, section 168.

<sup>41</sup> LGA, section 168(2). Provision is made if any part of the decision or statement of reasons contains confidential information (see LGA, section 169).

<sup>42</sup> LGA, section 170(1).

<sup>43</sup> LGA, section 170(3). A written statement of reasons for a decision must be given within 28 days of a determination being made (see LGA, section 168(3)).

<sup>44</sup> LGA, section 171(1).

<sup>45</sup> Ibid.

<sup>46</sup> See the definition of 'gross misconduct' in the LGA, section 3(1).

<sup>47</sup> Ibid.

<sup>48</sup> LGA, section 172.

### 3. Flaws In Legislative Regime Exposed

#### *Introduction*

- 3.1 The Standards of Conduct are the primary source for the regulation of Councillor Conduct. It is unsurprising, therefore, that, since the enactment of the LGA, Councillors complaining about another Councillor's conduct have tended to bring misconduct (as distinct from serious misconduct) applications. That is, internal arbitration processes have been pursued rather than Councillor Conduct Panel proceedings.

The relative dearth of Councillor Conduct Panel proceedings<sup>49</sup> can be explained by the higher threshold that needs to be satisfied. To make out 'bullying' (and, in turn, serious misconduct) a Councillor must show that another Councillor has 'repeatedly' behaved unreasonably towards them or a member of Council staff, and that such behaviour creates the risk to their health and safety or the health or safety of the member of Council staff.<sup>50</sup> A single act of unreasonable behaviour creating a risk to health and safety is insufficient.

Similarly it is not enough for a Councillor pursuing a serious misconduct application to allege that another Councillor has engaged in continued or repeated acts of misconduct. The relevant definition of 'serious misconduct' is only engaged if the continued or repeated misconduct comes after a finding of misconduct has been made in an earlier proceeding.<sup>51</sup>

- 3.2 The anecdotal evidence is that aspects of the internal arbitration process have proven wholly unsatisfactory. Far from being user-friendly and effective, it has proven to be frustrating and unrewarding. Councillors wishing to call out another Councillor for a breach of the Standards of Conduct find themselves deterred from embarking, rather than encouraged to embark, upon a misconduct application.

- 3.3 Those Councillors who have initiated misconduct applications have typically been heard to complain about:

- (a) the clunky nature of the process, with many months often elapsing before the application is heard and determined by an arbiter;
- (b) the manifestly inadequate penalties that are capable of being imposed; and
- (c) the difficulties experienced in the period between the application being made and the arbiter's determination being published, with the applicant Councillor often being subjected to the same (or at least similar) conduct to that which is alleged in the misconduct application.

Beyond this members of staff of the council often find themselves without remedy when a Councillor acts inappropriately towards them. This is because, as noted previously, misconduct applications can only be brought by a Councillor, a group of Councillors or a council by resolution.

- 3.4 The focus of this Part is on flaws in legislative provisions concerned with the internal arbitration process. They are provisions relating to the content of the Standards of Conduct, the standing to bring an application and the sanctions that are available to an arbiter.

None of this should detract from the extra-legal measures that need to be addressed as part of an overhaul of the treatment of Councillor conduct. For example delays in misconduct application progressing to a hearing and determination do not necessarily require a legislative solution. Better resourcing the Principal Councillor Conduct Registrar, encouraging arbiters to be efficient and promoting effective case management measures may go a long way towards achieving a more satisfactory experience for participants, and towards prompting a greater readiness to call out unacceptable conduct.

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<sup>49</sup> As at the date of this Paper only four Councillor Conduct Panel proceedings have been determined.

<sup>50</sup> See the definition of 'bullying' in the LGA, section 3(1).

<sup>51</sup> See the definition of 'serious misconduct' in the LGA, section 3(1). The prior finding of misconduct could have been made by an arbiter or a Councillor Conduct Panel.

### *Definition of Standards of Conduct*

- 3.5 The Standards of Conduct are expressed at a high level of generality, and give limited insight into the conduct expected of Councillors. The lack of specificity makes it difficult for a Councillor to know precisely when the line between acceptable and unacceptable conduct has been transgressed.

While the first of the Standards of Conduct is relatively straight-forward – a Councillor must treat others with ‘dignity, fairness, objectivity, courtesy and respect’ – the remaining Standards of Conduct are too generic. So:

- (a) whether a Councillor has done ‘everything reasonably necessary to ensure that they perform the role of a Councillor ‘effectively and responsibly’;
- (b) a Councillor has ‘diligently and properly’ complied with the instruments specified in the third Standard of Conduct; and
- (c) behaviour on the part of the Councillor has brought ‘discredit’ upon the relevant council

will, of necessity, often invite contested positions. This is to be contrasted with more specific obligations set out in equivalent instruments in other jurisdictions (but more particularly the Behavioural Standards for Council Members that exist in South Australia).<sup>52</sup>

- 3.6 It is also to be noted that the Standards of Conduct lack appropriate context. While they make it clear that nothing is intended to limit, restrict or detract from ‘robust public debate’ there is no positive statement of intention about the importance or nature of the conduct expected of Councillors.
- 3.7 Doubtless some of the difficulties associated with the Standards of Conduct arise from the often disparate approaches of arbiters. For instance, *no* breach of the Standards of Conduct was found when:
- (a) a Councillor threw a copy of the Governance Rules on the floor of the Council Chamber and stated ‘this is crap’;<sup>53</sup>
  - (b) a Councillor used ‘colourful’ and ‘inappropriate’ language to a member of the community;<sup>54</sup> and
  - (c) one Councillor called another Councillor a ‘bloody moron’.<sup>55</sup>

Indeed it has even been suggested that a lack of courtesy or the presence of aggression does not result in ‘robust public debate’ becoming a breach of one or more Standards of Conduct.<sup>56</sup>

While some (or perhaps all) of these decisions are explicable by reference to their individual factual circumstances, the content of many of the Standards of Conduct is not easy to comprehend. There is a case for a preface, more specific obligations and the development of Ministerial Guidelines to aid arbiters.<sup>57</sup>

### *Staff Left Aggrieved*

- 3.8 Councillors are not the only ones impacted by another Councillor’s breach of the Standards of Conduct. A member of a council’s staff may be a victim of a Councillor’s public or private

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<sup>52</sup> This is developed in Part 4 of this Paper.

<sup>53</sup> *Rank and Others v Wilson* [IAP 2020] at [14] and [34].

<sup>54</sup> *Hegedich v Maynard* [IAP 2021] at [9-25].

<sup>55</sup> *Szatkowski v Gilligan* [IAP 2021] at [18].

<sup>56</sup> *Healy v Lew* [CCP 2022] at [46] and [17].

<sup>57</sup> Ministerial Guidelines should also be capable of being used by Councillor Conduct Panels when they are called upon to consider whether misconduct has occurred.

outburst, derogatory email, unduly critical social media post or lack of compliance with a Councillor-staff interaction protocol developed under section 46 of the LGA.

Yet staff find themselves unable to press a misconduct complaint. They can complain to the Chief Executive Officer (assuming that it is not the Chief Executive Officer who themselves is the victim of the Standards of Conduct being breached). The Chief Executive Officer can take up the matter with the Councillor or, perhaps, the Mayor. This is, however, as far as the complaint can progress. Unless another Councillor is willing to initiate a misconduct application, the breach of the Standards of Conduct will never be addressed.

- 3.9 It almost goes without saying that staff (and, in particular, Chief Executive Officers) find themselves in an invidious position when unacceptable Councillor conduct has been experienced or has come to their notice. On the one hand there is an importance in making the Councillor accountable for their actions, and following the only process prescribed in the LGA for the pursuit of disciplinary proceedings. On the other hand there is the disincentive to pursue any formal process on account of a perceived power imbalance and/or the practical challenges of finding a Councillor who is willing to initiate and see through a misconduct application.
- 3.10 Members of a council staff should not be left to feel aggrieved or let down by a system that denies them a point of entry. A way must be found to enable them to expose a Councillor's breach of the Standards of Conduct. And Chief Executive Officers should feel able to fulfil (or at least partially fulfil) their occupational health and safety obligations by facilitating independent scrutiny of a Councillor's conduct.

#### *Inadequate Penalties*

- 3.11 An arbiter who has made a finding of misconduct is limited in the sanctions that can be imposed.<sup>58</sup> The most severe of sanctions is suspension for a period not exceeding one month.<sup>59</sup>

Suspension for one month has occurred in only one matter since the relevant provisions in the LGA commenced operation.<sup>60</sup> Generally Councillors who have been found to have breached the Standards of Conduct have been directed to make an apology or undergo training.

- 3.12 Frequently the sanctions imposed are disproportionately light. Anecdotally there is evidence that Councillors have been dissuaded from bringing misconduct applications because they see that there will be no more than a 'slap over the wrist' if misconduct is found. It is an uncharacteristically patient Councillor who is willing to see through a misconduct application, and then pounce on any further or repeated acts of misconduct in order to found a serious misconduct application. Even then that Councillor might be disappointed by the sanction that a Councillor Conduct Panel is able or willing to impose.

A more realistic range of sanctions is needed. In particular the power to suspend for a longer period needs to be considered.

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<sup>58</sup> This is also true of a Councillor Conduct Panel that has made a finding of misconduct.

<sup>59</sup> LGA, section 147(2)(b).

<sup>60</sup> *Bolam v Hughes* [IPA 2021].

## 4. Reforms to Legislative Regime

### *Introduction*

- 4.1 Part 3 of this Paper has highlighted flaws in the current legislative regime. Specifically:
- (a) the content of the Standards of Conduct is imprecise and stops short of concentrating on particular aspects of Councillor conduct;
  - (b) members of a council staff have no recourse to the internal arbitration process; and
  - (c) the penalties or sanctions available to an arbiter (and, for that matter, a Councillor Conduct Panel) are insubstantial, and do not operate as a deterrent to misconduct (or, for that matter, serious misconduct).

Legislative reform is necessary to address these flaws.

- 4.2 The reforms being advocated do not involve a ‘root and branch’ overhaul of the legislative regime. It is accepted that, unsatisfactory as some aspects of the regime have proven to be, the internal arbitration and Councillor Conduct Panel processes appropriately balance competing interests and are, in any event, not that different from the disciplinary processes that operate in other jurisdictions throughout Australia.

Amendments to the LGA are nonetheless necessary. The amendments are not a panacea. They will, if made, materially improve the legislative regime but much other work needs to be done to address the problems identified in the Culture Project Insights Report.

### *Definition of Standards of Conduct*

- 4.3 Three reforms should be made to the Standards of Conduct. The first involves the insertion of a Preface, Statement of Intent or Contextual Statement to introduce the Standards of Conduct.

Frequently the Standards of Conduct are reproduced in Councillor Codes of Conduct without any kind of introduction. They are simply copied over from the Regulations. The reader (and, in particular, a Councillor reading that part of the Councillor Code of Conduct in which the Standards of Conduct appears) is given no guidance as to what the Standards of Conduct seek to achieve or why they are important.

Contrast this with the Statement of Intent and other passages that appear in South Australia’s *Behavioural Standards for Council Members*. The full text of the latter appears as Appendix B.

Those Behavioural Standards include the following Statement of Intent:

Upon election, council members in South Australia undertake to faithfully and impartially fulfill the duties of office in the public interest, to the best of their judgment and abilities and in accordance with the Act. Council members are required to act with integrity, serve the overall public interest and provide community leadership and guidance.

*The community expects council members to put personal differences aside, to focus on the work of the council and to engage with each other and council employees in a mature and professional manner.*<sup>61</sup>

They go on to say that what subsequently appears sets out ‘minimum standards of behaviour that are expected of all council members’ and that they are ‘mandatory rules, with which Council members must comply’. Adherence to the Behavioural Standards is said to be ‘essential to upholding the principles of good governance in councils’.

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<sup>61</sup> Emphasis added.

It would be helpful for similar sentiments to introduce the Standards of Conduct (so that if they are reproduced in a Councillor Code of Conduct the context and importance are emphasised). A similar point was made in the New South Wales review of Councillor Conduct that occurred last year. The *Focus On Civic Responsibility Report (NSW Report)* said:

The Councillors' code of conduct needs to be comprehensive in prescribing the expectations of councillor conduct *in alignment with the fundamental principles applicable to their holding of public office.*<sup>62</sup>

- 4.4 The second reform that should be considered is a change to the content of the Standards of Conduct themselves. The point has already been made that the text is excessively generic, and there will often be little connection between what is said and an act that would colloquially be accepted as an act of misconduct.

Again the *Behavioural Standards for Council Members* operating in South Australia can be cited as an example of an instrument that imposes more specific obligations (see Appendix B). Particular note should be taken of the following obligations, which either have no Victorian counterpart or which appear to be expressed in language that is clearer and more practical in application:

- ...
- 1.5 When making public comments, involving comments to the media, on Council decisions and Council matters, show respect for others and clearly indicate their views are personal and not those of the Council
- ...
- 2.2 Take all reasonable steps to provide accurate information to the community and the Council.
- 2.3 Take all reasonable steps to ensure that the community and the Council are not knowingly misled.
- 2.4 Take all reasonable and appropriate steps to correct the public record in circumstances where the member becomes aware that they have unintentionally misled the community or the Council.
- ...
- 3.1 Establish and maintain relationships of respect, trust, collaboration and cooperation with all Council members.
- ...
- 4.1 Establish and maintain relationships of respect, trust, collaboration and cooperation with all Council employees.

Requiring a Councillor to take all 'reasonable steps' to provide information, ensure that others are not misled or correct the public record is to be preferred to provisions that do no more than prohibit intentionally misleading Council or others. Creating a positive obligation to establish and maintain certain relationships is to be preferred to an exclusive reliance upon an obligation to treat others with respect and courtesy. There could, for example, be a positive obligation to contribute to a harmonious, safe and productive workplace.

The Western Australian Model Code of Conduct also contains obligations that are expressed specifically, and not generally (see Division 3 of Schedule 1 to the *Local Government (Model Code of Conduct) Regulations 2021* (WA)). These are to be found in Appendix C.

The specific obligations on Western Australian Councillors include obligations not to:

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<sup>62</sup> NSW Report at [3.4]. Emphasis added.

disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties

and not to:

impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.<sup>63</sup>

It is not being suggested that there is no room for generality in the articulation of the Standards of Conduct. Some general standards are desirable, if only because of the difficulty of foreseeing every specific conduct in which a Councillor might engage. Rather the emphasis should be on specific and easily comprehended obligations of the type found in the South Australian and Western Australian instruments, perhaps complemented by obligations expressed with a little more generality.

- 4.5 Provision for the publication of Ministerial Guidelines would also be useful. These Guidelines – made by the Minister for Local Government – would be aimed at giving general guidance to the Principal Councillor Conduct Registrar, arbiters and Councillor Conduct Panels.

The Ministerial Guidelines could, for instance, say something about forms of application and what can and should be communicated to whom (and when), as well saying something about expectations as to the time within which Directions Hearings are to be convened.

To the extent to which the Standards of Conduct continue to include language of a generic kind, examples could be given of what is generally considered to be a breach of a given standard. In this way arbiters (and, where relevant, Councillor Conduct Panels considering an issue of misconduct), as well as Councillors and members of a council's staff, can better understand when certain Standards of Conduct are likely to be breached.

The Ministerial Guidelines could also play a role in relation to penalties. That is, they could provide guidance to arbiters (and Councillor Conduct Panels) about the scale of penalties in relation to particular types of misconduct (or, in the case of Councillor Conduct Panels, serious misconduct).

Of course, the Ministerial Guidelines would not be binding or supplant anything in the Standards of Conduct. They could, however, prove beneficial by making it clearer to all participants in the disciplinary process what is expected by way of conduct and what is likely by way of consequence if misconduct (or serious misconduct) occurs.

All of this would be consistent with the approach recommended in the NSW Report. It recommended that conduct-related instruments should be expressed in 'unambiguous and clear language' and that 'examples and explanatory notes' should appear.<sup>64</sup>

### *Staff Left Aggrieved*

- 4.6 Opening up the internal arbitration process (or the serious misconduct process) to any complainant is problematic. To some extent opening up the process to a member of council's staff is also problematic, given that staff members are likely to be reluctant to be directly engaged with a Councillor in a process that could lead to adverse consequences for the latter.

Yet providing members of staff with a remedy, and some input into the disciplinary process, is highly desirable. The best course might be to enable staff (or staff via their Chief Executive Officer) to complain to the Chief Municipal Inspector and request that the Chief Municipal Inspector consider bringing a misconduct application against a Councillor whose conduct is in issue. The Chief Municipal Inspector could, after making preliminary enquiries, decide whether, in their opinion, sufficient evidence exists to justify bringing an application. If

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<sup>63</sup> Ibid.

<sup>64</sup> NSW Report at [3.6].



an application is brought it would be processed in the same way as a misconduct application brought by a Councillor, a group of Councillors or a council by Resolution.

- 4.7 It is true that, ultimately, the staff member is making an allegation against a Councillor and participating in proceedings that could have adverse consequences for the Councillor. It is just that Chief Municipal Inspector is interposed, and given responsibility for the conduct of the application. In this way some 'distance' is put between the member of staff and Councillor who is the subject of a misconduct application.

It remains the case that, even with the involvement of the Chief Municipal Inspector, Chief Executive Officers or other members of a council's staff may still be disinclined to call a Councillor to account. At the very least they would, under the reform proposed, have a choice. At the moment they have no choice other than to have the matter raised with the Mayor or other Councillors and hope that one of them feels strongly enough about the matter to initiate misconduct or serious misconduct application.

### *Penalties*

- 4.8 In its response to the Culture Project Discussion Paper, LGPro said that the current penalties capable of being imposed by arbiters and Councillor Conduct Panels were 'inadequate', that penalties needed to 'scalable' and that consideration should be given to fines and the possibility of the Councillor no longer being eligible to remain in office.<sup>65</sup> All of this reflected a frustration among LGPro members, doubtless shared by some Councillors, that the limits on what an arbiter or Councillor Conduct Panel could order meant that many Councillors were prepared to engage in misconduct (or even serious misconduct) because the only sanction would be a 'slap over the wrist'.

- 4.9 Arbiters should be empowered to suspend a Councillor from office for up three months in the event of misconduct.<sup>66</sup> Ministerial Guidelines could assist arbiters in deciding when such a penalty was appropriate.

Councillor Conduct Panels should be empowered to suspend Councillors for up to three years. In cases where a serious misconduct has arisen from continued or repeated misconduct – where multiple acts of misconduct have occurred over a period – a Councillor Conduct Panel should be empowered to determine that the Councillor is ineligible to remain in office for the balance of the Council term.<sup>67</sup>

Legislative amendments of this kind will send a very clear signal that misconduct or serious misconduct is treated seriously, and that there are very real consequences for those who engage in unacceptable conduct. This needs to be reinforced by appropriate (but proportionate) sanctions being meted out by arbiters and Councillor Conduct Panels.

- 4.10 Consideration should also be given to civil penalties (in the form of fines) as a possible sanction. These could be expressed by reference to a quantum of a Councillor's Allowance. For example, an arbiter could, upon making a finding a misconduct, decide (whether in conjunction with or in lieu of a suspension from office, or some other order) to require the Councillor to pay a proportion of their Councillor Allowance back to council. The prospect of foregoing part of the Councillor Allowance might, for some at least, act as a sufficient deterrent to engage in any misconduct.
- 4.11 A range of other possible penalties – a direction that the Councillor admit error, reimburse the relevant council the cost of an arbitration or Councillor Conduct Panel hearing or the issue of a reprimand – would also be worthwhile. They give arbiters (and, where appropriate, Councillor Conduct Panels) a greater element of discretion.

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<sup>65</sup> See *Organisational Culture In Victorian Councils, LGPro Response to Discussion Paper (2022)* at pp 11 and 12.

<sup>66</sup> This also applies to Councillor Conduct Panels that have made a finding of misconduct.

<sup>67</sup> If the balance of the Council term is less than three years, the Councillor Conduct Panel should have a discretion to determine that the Councillor is not only suspended for the balance of the Council term but ineligible to become a Councillor before a date that falls in the next Council term.

The critical feature of any legislative reform, though, must be the introduction of more serious penalties. Without this occurring the loss of faith in the current legislative regime will only continue.

- 4.12 An anomaly in the current legislative regime should also be addressed. It appears that if a Councillor has been suspended by an arbiter or a Councillor Conduct Panel the Councillor 'ceases to be a Councillor for the term of the suspension'<sup>68</sup> but ultimately they continue to 'hold of the office of Councillor'.<sup>69</sup> There is an offence of acting as a Councillor after ceasing to hold the office of Councillor<sup>70</sup> but is inapplicable to the Councillor who has merely been suspended.

The gap in regulation means that a suspended Councillor is not subject to any penalty for continuing to act as a Councillor while suspended. While their council may prevent their entry to a meeting they seemingly remain free to perform a representational role and do all other things that a Councillor can lawfully do.

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<sup>68</sup> LGA, section 37(a).

<sup>69</sup> See section 35(1) of the LGA.

<sup>70</sup> LGA, section 38(1).

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# Appendix A

Local Government (Governance and Integrity) Regulations 2020

S.R. No. 116/2020

Schedule 1—Standards of conduct

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## Schedule 1—Standards of conduct

Regulation 12

### 1 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the **Equal Opportunity Act 2010**; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

### 2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

### **3 Compliance with good governance measures**

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

**4 Councillor must not discredit or mislead Council or public**

- (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

**5 Standards do not limit robust political debate**

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

## LOCAL GOVERNMENT ACT 1999

## SECTION 75E OF THE LOCAL GOVERNMENT ACT 1999

*Behavioural Standards for Council Members*

The Behavioural Standards for Council Members (Behavioural Standards) are established by the Minister for Local Government pursuant to section 75E of the *Local Government Act 1999* (the Act). These Behavioural Standards form part of the conduct management framework for council members under the Act.

**Statement of Intent**

Upon election, council members in South Australia undertake to faithfully and impartially fulfil the duties of office in the public interest, to the best of their judgment and abilities and in accordance with the Act. Council members are required to act with integrity, serve the overall public interest and provide community leadership and guidance.

The community expects council members to put personal differences aside, to focus on the work of the council and to engage with each other and council employees in a mature and professional manner.

**Behavioural Standards**

These Behavioural Standards set out minimum standards of behaviour that are expected of all council members in the performance of their official functions and duties. The Behavioural Standards are mandatory rules, with which council members must comply.

Adherence to the Behavioural Standards is essential to upholding the principles of good governance in councils.

Councils may adopt Behavioural Support Policies which, amongst other things, may include additional matters relating to behaviour that must be observed by council members. A breach of these Behavioural Standards or a council's Behavioural Support Policy:

- will be dealt with in accordance with the council's Behavioural Management Policy; and
- may be referred to the Behavioural Standards Panel in accordance with section 262Q of the Act.

Council members must comply with the provisions of these Behavioural Standards in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, these Standards at all times.

These Behavioural Standards are in addition to, and do not derogate from, other standards of conduct and behaviour that are expected of council members under the Act, or other legislative requirements. Conduct that constitutes, or is likely to constitute, a breach of the integrity provisions contained in the Act, maladministration, or which is criminal in nature, is dealt with through alternative mechanisms.

These Behavioural Standards are designed to ensure council members act in a manner consistent with community expectations and form the basis of behaviour management for council members.

Constructive and effective relationships between council members, council employees and the community are essential to building and maintaining community trust and successful governance in the local government sector.

**Council members must:****1. General behaviour**

- 1.1 Show commitment and discharge duties conscientiously.
- 1.2 Act in a way that generates community trust and confidence in the Council.
- 1.3 Act in a manner that is consistent with the Council's role as a representative, informed and responsible decision maker, in the interests of its community.
- 1.4 Act in a reasonable, just, respectful and non-discriminatory way.
- 1.5 When making public comments, including comments to the media, on Council decisions and Council matters, show respect for others and clearly indicate their views are personal and are not those of the Council.

**2. Responsibilities as a member of Council**

- 2.1 Comply with all applicable Council policies, codes, procedures, guidelines and resolutions.
- 2.2 Take all reasonable steps to provide accurate information to the community and the Council.
- 2.3 Take all reasonable steps to ensure that the community and the Council are not knowingly misled.
- 2.4 Take all reasonable and appropriate steps to correct the public record in circumstances where the Member becomes aware that they have unintentionally misled the community or the Council.
- 2.5 Act in a manner consistent with their roles, as defined in section 59 of the Act.
- 2.6 In the case of the Principal Member of a Council, act in a manner consistent with their additional roles, as defined in section 58 of the Act.
- 2.7 Use the processes and resources of Council appropriately and in the public interest.

**3. Relationship with fellow Council Members**

- 3.1 Establish and maintain relationships of respect, trust, collaboration, and cooperation with all Council members.
- 3.2 Not bully other Council members.
- 3.3 Not sexually harass other Council members.

**4. Relationship with Council employees**

- 4.1 Establish and maintain relationships of respect, trust, collaboration, and cooperation with all Council employees.
- 4.2 Not bully Council employees.
- 4.3 Not sexually harass Council employees.

**Definitions**

For the purposes of these Behavioural Standards, a Council's Behavioural Support Policy (if adopted) and a Council's Behavioural Management Policy, the following definitions apply:

An elected member will be considered to **bully** other Council members or Council employees if:  
the Council member either, as an individual Council member or as a member of a group:

- a) repeatedly behaves unreasonably towards another Council member, or employee; and
- b) the behaviour could reasonably be considered to be distressing, victimising, threatening or humiliating.

**Note -**

If this behaviour adversely affects the health and safety of another council member or council employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.

An elected member will be considered to *sexually harass* other Council members or Council employees if:

the Council member either, as an individual Council member or as a member of a group:

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another Council member, or employee (the person harassed); or
- b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated, or intimidated.

**Note -**

If this behaviour adversely affects the health and safety of another council member or council employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.

**Conduct of a sexual nature** includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

**Council employees** include volunteers, persons gaining work experience and contractors.

The following behaviour **does not** constitute a breach of these Standards:

- robust debate carried out in a **respectful** manner between Council Members; or
- A reasonable direction given by the Presiding Member at a council meeting, council committee meeting or other council-related meeting (such as a working group or an information or briefing session); or
- A reasonable direction carried out by the Council CEO/responsible person pursuant to section 75G of the Act in relation to the behaviour of a Council Member that poses a risk to the health or safety of a council employee.

**Requirement applying to behavioural management policies of councils**

Behavioural management policies of councils must provide for a Behavioural Standards Panel contact officer. Councils must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. The contact officer is responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

**Commencement**

The Behavioural Standards come into operation on the day on which it is published in the Gazette.

Dated: 3 November 2022

HON GEOFF BROCK MP  
Minister for Local Government

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## Appendix C

### *Local Government (Model Code of Conduct) Regulations 2021*

Model code of conduct      **Schedule 1**

Preliminary provisions      **Division 1**

**cl. 1**

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## Schedule 1 — Model code of conduct

[r. 3]

### Division 1 — Preliminary provisions

#### 1. Citation

This is the *[insert name of local government] Code of Conduct for Council Members, Committee Members and Candidates*.

#### 2. Terms used

(1) In this code —

*Act* means the *Local Government Act 1995*;

*candidate* means a candidate for election as a council member;

*complaint* means a complaint made under clause 11(1);

*publish* includes to publish on a social media platform.

(2) Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

### Division 2 — General principles

#### 3. Overview of Division

This Division sets out general principles to guide the behaviour of council members, committee members and candidates.

#### 4. Personal integrity

(1) A council member, committee member or candidate should —

(a) act with reasonable care and diligence; and

(b) act with honesty and integrity; and

(c) act lawfully; and

(d) identify and appropriately manage any conflict of interest; and

(e) avoid damage to the reputation of the local government.



**Local Government (Model Code of Conduct) Regulations 2021**

**Schedule 1** Model code of conduct

**Division 2** General principles

**cl. 5**

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- (2) A council member or committee member should —
- (a) act in accordance with the trust placed in council members and committee members; and
  - (b) participate in decision-making in an honest, fair, impartial and timely manner; and
  - (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
  - (d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

**5. Relationship with others**

- (1) A council member, committee member or candidate should —
- (a) treat others with respect, courtesy and fairness; and
  - (b) respect and value diversity in the community.
- (2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.

**6. Accountability**

- A council member or committee member should —
- (a) base decisions on relevant and factually correct information; and
  - (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
  - (c) read all agenda papers given to them in relation to council or committee meetings; and
  - (d) be open and accountable to, and represent, the community in the district.

### **Division 3 — Behaviour**

#### **7. Overview of Division**

This Division sets out —

- (a) requirements relating to the behaviour of council members, committee members and candidates; and
- (b) the mechanism for dealing with alleged breaches of those requirements.

#### **8. Personal integrity**

(1) A council member, committee member or candidate —

- (a) must ensure that their use of social media and other forms of communication complies with this code; and
- (b) must only publish material that is factually correct.

(2) A council member or committee member —

- (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
- (b) must comply with all policies, procedures and resolutions of the local government.

#### **9. Relationship with others**

A council member, committee member or candidate —

- (a) must not bully or harass another person in any way; and
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and
- (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and
- (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local

government employee in connection with the performance of their official duties.

**10. Council or committee meetings**

When attending a council or committee meeting, a council member, committee member or candidate —

- (a) must not act in an abusive or threatening manner towards another person; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and
- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and
- (e) must comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

**11. Complaint about alleged breach**

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made —
  - (a) in writing in the form approved by the local government; and
  - (b) to a person authorised under subclause (3); and
  - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

**12. Dealing with complaint**

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is

withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.

- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- (4) If the local government makes a finding that the alleged breach has occurred, the local government may —
  - (a) take no further action; or
  - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
  - (a) engage in mediation;
  - (b) undertake counselling;
  - (c) undertake training;
  - (d) take other action the local government considers appropriate.
- (7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of —
  - (a) its finding and the reasons for its finding; and
  - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

**13. Dismissal of complaint**

- (1) The local government must dismiss a complaint if it is satisfied that —
  - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
  - (b) either —
    - (i) the behaviour was dealt with by the person presiding at the meeting; or
    - (ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

**14. Withdrawal of complaint**

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be —
  - (a) in writing; and
  - (b) given to a person authorised under clause 11(3).

**15. Other provisions about complaints**

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as a council member.
- (2) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

**Division 4 — Rules of conduct**

Notes for this Division:

1. Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct. This

extends to the contravention of a rule of conduct that occurred when the council member was a candidate.

2. A minor breach is dealt with by a standards panel under section 5.110 of the Act.

## **16. Overview of Division**

- (1) This Division sets out rules of conduct for council members and candidates.
- (2) A reference in this Division to a council member includes a council member when acting as a committee member.

## **17. Misuse of local government resources**

- (1) In this clause —  
*electoral purpose* means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*;  
*resources of a local government* includes —
  - (a) local government property; and
  - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

## **18. Securing personal advantage or disadvantaging others**

- (1) A council member must not make improper use of their office —
  - (a) to gain, directly or indirectly, an advantage for the council member or any other person; or
  - (b) to cause detriment to the local government or any other person.
- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

**19. Prohibition against involvement in administration**

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

**20. Relationship with local government employees**

- (1) In this clause —  
*local government employee* means a person —
  - (a) employed by a local government under section 5.36(1) of the Act; or
  - (b) engaged by a local government under a contract for services.
- (2) A council member or candidate must not —
  - (a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or
  - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or
  - (c) act in an abusive or threatening manner towards a local government employee.
- (3) Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (4) If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means —
  - (a) make a statement that a local government employee is incompetent or dishonest; or
  - (b) use an offensive or objectionable expression when referring to a local government employee.

- (5) Subclause (4)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

**21. Disclosure of information**

- (1) In this clause —

*closed meeting* means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;

*confidential document* means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;

*document* includes a part of a document;

*non-confidential document* means a document that is not a confidential document.

- (2) A council member must not disclose information that the council member —
- (a) derived from a confidential document; or
  - (b) acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subclause (2) does not prevent a council member from disclosing information —
- (a) at a closed meeting; or
  - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
  - (c) that is already in the public domain; or
  - (d) to an officer of the Department; or
  - (e) to the Minister; or
  - (f) to a legal practitioner for the purpose of obtaining legal advice; or
  - (g) if the disclosure is required or permitted by law.



**22. Disclosure of interests**

- (1) In this clause —  
*interest* —
  - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
  - (b) includes an interest arising from kinship, friendship or membership of an association.
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must disclose the nature of the interest —
  - (a) in a written notice given to the CEO before the meeting; or
  - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know —
  - (a) that they had an interest in the matter; or
  - (b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then —
  - (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
  - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.
- (6) Subclause (7) applies in relation to an interest if —
  - (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or

- (b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
- (7) The nature of the interest must be recorded in the minutes of the meeting.

**23. Compliance with plan requirement**

If a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6), the council member must comply with the requirement.

