



City of  
**LAUNCESTON**

# **STRATEGIC PLANNING & POLICY COMMITTEE AGENDA**

**COMMITTEE MEETING  
MONDAY 17 JULY 2017**

**10.00am**

**COMMITTEE ROOM, TOWN HALL, ST JOHN STREET, LAUNCESTON**

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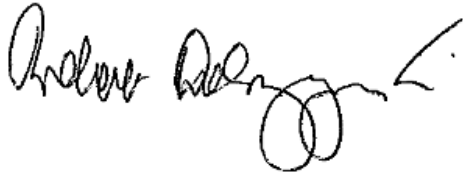
## Section 65 Certificate of Qualified Advice

### Background

Section 65 of the *Local Government Act 1993* requires the General Manager to certify that any advice, information or recommendation given to Council is provided by a person with appropriate qualifications or experience.

### Declaration

I certify that persons with appropriate qualifications and experience have provided the advice, information and recommendations to Council in the Agenda Items for this Meeting.



**Robert Dobrzynski**  
**General Manager**

The reports in this Agenda are provided to the Strategic Planning and Policy Committee in order to explain the intent of the process/proposal proposed. Whilst the reports are in Council Meeting format, no decision is being sought.

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**Venue:** Committee Room, Town Hall, St John Street, Launceston

**Time:** 10.00am

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## ORDER OF BUSINESS

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	No Closed Items have been identified for this Agenda	
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**1 OPENING OF MEETING - ATTENDANCE AND APOLOGIES**

**2 DECLARATION OF INTERESTS**

**3 CONFIRMATION OF MINUTES**

**DECISION STATEMENT:**

To resolve that the Minutes of the previous meeting are a true and correct record.

**RECOMMENDATION:**

That the Minutes of the Strategic Planning and Policy Committee Meeting held on 3 July 2017 be accepted as a true and correct record.

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## 4 AGENDA ITEMS

### 4.1 Deputation: Metal Minds Robotics Inc

**FILE NO:** SF0097

**AUTHOR:** Anthea Rooney (Committee Clerk)

**GENERAL MANAGER:** Robert Dobrzynski (General Manager)

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#### **DECISION STATEMENT:**

To receive a deputation at 10.00am from Mr Jonathan Heathcote (Lead Mentor), Mr Simon Wiggins (Mentor) and Mr Andrew Adams (Mentor - Metal Minds Robotics) initiated by the Mayor, Alderman A M van Zetten.

#### **RECOMMENDATION:**

That the Strategic Planning and Policy Committee receives a deputation from Metal Minds Robotics providing information on the organisation.

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#### **REPORT:**

Mr Jonathan Heathcote (Lead Mentor), Mr Simon Wiggins (Mentor) and Mr Andrew Adams (Mentor - Metal Mind Robotics) will present information regarding Metal Minds Robotics including that relating to the regional competition of the FIRST Lego League and the raising of the STEM profile through robotics.

#### **ECONOMIC IMPACT:**

Not considered relevant to this report.

#### **ENVIRONMENTAL IMPACT:**

Not considered relevant to this report.

#### **SOCIAL IMPACT:**

Not considered relevant to this report.

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## 4.1 Deputation: Metal Minds Robotics Inc ...(Cont'd)

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### STRATEGIC DOCUMENT REFERENCE:

City of Launceston Strategic Plan 2014-2024  
Priority Area 8 - A secure, accountable and responsive Organisation  
Ten-year goals - To communicate and engage consistently and effectively with our community and stakeholders  
Key Direction -  
1. To develop and consistently use community engagement processes

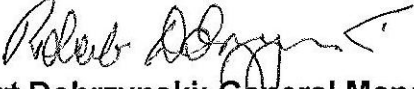
### BUDGET & FINANCIAL ASPECTS:

Not considered relevant to this report.

### DISCLOSURE OF INTERESTS:

The officer has no conflict of interest in this item.

I certify that I have reviewed and approved this advice and recommendation.

  
**Robert Dobrzynski: General Manager**

## 4.2 Local Government Association of Tasmania: Motions for the General Meeting and AGM on 26 July 2017

**FILE NO:** SF2217

**AUTHOR:** John Davis (Manager Corporate Strategy)

**DIRECTOR:** Michael Tidey (Director Corporate Services)

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### **DECISION STATEMENT:**

To provide voting direction to the Council delegate on the items listed for decision, noting and discussion at the Local Government Association of Tasmania General Meeting and Annual General Meeting scheduled for 26 July 2017.

### **RECOMMENDATION:**

That Council provides voting direction to the Council delegate on the items listed for decision, noting and discussion at the Local Government Association of Tasmania General Meeting and Annual General Meeting scheduled for 26 July 2017.

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### **REPORT:**

The Local Government Association of Tasmania's (LGAT) General Meeting and Annual General Meeting will be held in Hobart on 26 July 2017. The outline of each of the Meeting Agenda Items with recommendations (where applicable) for the consideration of Council are attached (refer to Attachment 1).

The full Meeting Agendas are provided at Attachments 2 - 6.

The purpose of this report is to provide Aldermen with the opportunity to comment on these items and provide direction to the Council representative for the LGAT Meeting on 20 July 2016.

### **ECONOMIC IMPACT:**

Not considered relevant to this report.

### **ENVIRONMENTAL IMPACT:**

Not considered relevant to this report.

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## 4.2 Local Government Association of Tasmania: Motions for the General Meeting and AGM on 26 July 2017 ...(Cont'd)

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### **SOCIAL IMPACT:**

Not considered relevant to this report.

### **STRATEGIC DOCUMENT REFERENCE:**

City of Launceston Strategic Plan 2014-2024  
Priority Area 8 - A secure, accountable and responsive Organisation

### **BUDGET & FINANCIAL ASPECTS:**

Not considered relevant to this report.

### **DISCLOSURE OF INTERESTS:**

The officer has no conflict of interest in this item.

I certify that I have reviewed and approved this advice and recommendation.

  
**Michael Tidey: Director Corporate Services**

### **ATTACHMENTS:**

1. Items for Discussion and Decision at LGAT General Meeting and AGM 26 July 2017
  2. LGAT General Meeting Agenda - 26 July 2017 (distributed electronically)
  3. LGAT General Meeting Attachments - 26 July 2017 (distributed electronically)
  4. LGAT AGM Agenda - 26 July 2017 (distributed electronically)
  5. LGAT AGM Attachments - 26 July 2017 (distributed electronically)
  6. LGAT AGM Attachment to Item 6.1 - 26 July 2017 (distributed electronically)
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**Attachment 1 - Items for Discussion and Decision at LGAT General Meeting and AGM 26 July 2017**

**Items for Discussion/Decision at LGAT Annual General Meeting 26 July 2017**

Ag Item	Pg. No	Items for Noting	Submitting Council/s	City of Launceston comment
3	5	Financial Statements to 30 June 2016  That the Financial Statements for the period 1 July 2015 to 30 June 2016 be received and adopted.		Approve
4	6	Budget and Subscriptions 2017/2018  That the Meeting adopt the Budget and Subscriptions as presented.		Approve
5	7	President and Vice President Honorariums  That the President's and Vice President's allowance for the period 1 July 2017 to 30 July 2018 be adjusted in accordance with the movements in the Wages Price Index.		Approve
6.1	8	Subscription Modelling  That the Members note the report on the subscription modelling undertaken.  That Members agreed to the formula outlined as Option 21 namely, a flat fee of 40 per cent, and population and revenue fees of 30 per cent each; 8 revenue categories and 8 population categories; and a 10 per cent collar and cap.  That Members agree to the amendment of the Rules allowing application of the new formula from 2018/2019.		This matter was discussed in a workshop on 5 June 2017, with the recommendation that further options be examined which provided the most equitable way forward with the subscription allocations.  The 2016/2017 subscription was \$59,013.90. Under the proposed model this figure would be increased by 15.1% to \$67,907.97. It would be capped at 10% in 2018/2019 making the Launceston City Council subscription \$64,915.30, an increase of \$5,901.40.  Not Support.
6.2	11	Term of Office of President  That Members note the concerns relating to the Rules as they currently provide for vacation of the office of the President.  That Members agree to the amend the rules such that – and if the office of President becomes vacant more than six months before the next AGM where a President is due to take up office in accordance with Rule 27(a), a new President shall be elected in accordance with the procedures in Rule 26.		Support

7	14	Reports from Board Representatives  (a) That the reports from representatives on various bodies be received and noted.  (b) That Conference acknowledges the time and effort put in by all Association representatives on boards, working parties, advisory groups and committees etc.		Noted
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**Items for Discussion/Decision at LGAT General Meeting 26 July 2017**

Ag Item	Pg. No	Items for Noting	Submitting Council/s	City of Launceston comment
8.1	9	Ownership of Taswater  That members note that a verbal update will be provided on the day.	LGAT	Comments: Noted
8.2	9	Review of the Local Government Act  That members note the report.		Comments: Noted
8.3	10	Code of Conduct Update  That members note the progress of the Code of Conduct review.		Comments: Noted - A report will be brought to SPPC and Council regarding this matter.
8.4	11	Land Use Planning  That members note the progress of the planning reform and the key issues for the Local Government sector.  That members also note the progress of the Planning and Building Portal.		Comments (Leanne Hurst): Noted
8.5	13	Visitor Accommodation Changes  That the Meeting note the concerns raised by LGAT in relation to change to visitor accommodation approvals.		Comments (Leanne Hurst): Noted and support concerns raised by LGAT regarding lateness of notification to Councils of the process and fee limit.
8.6	15	Preventative Health  That members note the report.		Comments (Leanne Hurst): Noted
8.7	16	Strategic Plan and Annual Plan  That members note the new LGAT Strategic Plan 2017-2020 and the 2017/18 Annual Work Plan		Comments: Noted
8.8	17	National General Assembly of Local Government  That members note the report on the National General Assembly and the State of the Regions Report.		Comments: Noted
8.9	19	Policy Update  That members note the following report on current policy activity.		
9.1	27	Public Transport Services  That the State Government be urged to increase its per capita	City of Hobart	Comments (Shane Eberhardt): Support Council has supported the Greater Launceston Metropolitan Passenger Transport Plan and any additional funding to support delivery could

Ag Item	Pg. No	Items for Noting	Submitting Council/s	City of Launceston comment
		spending on the provision of public transport services within metropolitan and regional Tasmania.		have social and economic outcomes for our region.
10.1	28	Local Government Rates, Fees and Charges Regulator  That LGAT write to the Minister for Local Government seeking an investigation into the merits of introducing an independent body (similar to the prices regulator for power, water and sewerage) to be the regulator of Local Government rates, fees and charges and to oversee estimates of Capital works budgets.	Burnie City	Comments (Michael Tidey): Oppose the concept <ul style="list-style-type: none"> <li>• Councils are autonomous bodies accountable to their community</li> <li>• There are formulae that can be used for pricing utility services - these aren't applicable across the range of Council facilities and services</li> <li>• Councils are elected by the community to make policy decisions about services - a separate authority cannot second guess the community needs</li> </ul> Capping or similar may seem popular in the short term but not in the community's long term interest
11.1	31	Flood Mitigation Funding  That LGAT lobby the State Government to boost Tasmania's disaster resilience by providing a significant increase in funding and work with the Commonwealth Government to change the disaster resilience mitigation funding under the National Partnership Agreement back to 1/3 Commonwealth, 1/3 State and 1/3 Council contributions.	Kentish	Comments (Shane Eberhardt): Support City of Launceston has been very successful in obtaining State and Commonwealth funds for upgrading the Launceston Levee System. There doesn't appear to be any current grant funding programs available for this level of investment in flood mitigation.
11.2	33	Immunisation Programs  That the Local Government Association of Tasmania lobby the State Government to investigate the coordination of school immunisation programs being undertaken on a State wide basis, rather than being an individual council responsibility to coordinate.	Devonport City	Comments (Leanne Hurst): Support Acknowledge the difficulties raised by the motion and background comment, particularly in regions where there are challenges in engaging qualified personnel to deliver the immunisation programs. Support the LGAT comment that the issues could be addressed by negotiating with the DHHS Public Health Service for an approach that will assist those councils who find it difficult to deliver the service. The opportunity also exists for resource-sharing - for example COL has provided immunisation services to other local government areas under specific agreements with individual councils.:
12.1	35	Container Deposit Legislation  That the Local Government Association of Tasmania lobby the State Government to introduce container deposit legislation for the state.	City of Hobart & West Coast & Clarence City Council	Comments (Shane Eberhardt): Support Following a Notice of Motion presented at a Council meeting on 27 February, the Council resolved to write to the Premier's office expressing support for investigation into the delivery of a state-wide container deposit scheme.
12.2	37	Smoking at School Crossings	George Town	Comments (Leanne Hurst): Support Support the motion. This is consistent with the



Ag Item	Pg. No	Items for Noting	Submitting Council/s	City of Launceston comment
		That LGAT lobby the State Government to amend the Public Health Act 1997 to declare all school road crossings a smoke free area under section 67B.		work the COL has done to reduce the effects of secondary smoke by extending smoke-free areas within the CBD.
12.3	38	<p>Fluoridation Act 1968</p> <p>That LGAT requests the State Government repeal section 13 of the Fluoridation Act 1968 (amended) which states that '<i>a Council must not hold an elector poll under Part 6 of the Local Government Act 1993 in relation to the addition of fluoride to a public water supply</i>'.</p> <p>Repealing section 13 will enable the people of Tasmania to participate in information-sharing and debate and to state their informed position regarding the routine addition of fluoride to their drinking water, through a referendum</p>	Kentish	<p>Comments (Leanne Hurst): Oppose The power to require the water authority to fluoridate a public water supply resides with the Minister under s.10 of the <i>Fluoridation Act</i>. The motion seeks to remove the legislative barrier to councils holding an elector poll on the subject. The rationale given for the motion is that s.13 of the <i>Fluoridation Act</i> prevents people from participation in information-sharing and debate on this subject. Given the broad range of opportunities available to councils and local communities to debate issues of local interest, it is incorrect to say that s.13 prevents discussion of the issue of fluoridation.</p> <p>Recommendation: that Council not support the motion</p>
13.1	40	<p>Recognition of Australia Day</p> <p>That the Local Government Association of Tasmania be requested to lobby Tasmania's 29 councils to consider efforts they could take to lobby the Federal Government to change the date of recognition of Australia Day.</p>	City of Hobart	Council decision on this matter on 26/06/2017.

## 4.3 Review of Code of Conduct Provisions - *Local Government Act 1993*

**FILE NO:** SF2213

**AUTHOR:** John Davis (Manager Corporate Strategy)

**DIRECTOR:** Michael Tidey (Director Corporate Services)

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### **DECISION STATEMENT:**

To consider providing comment and feedback to the review of the Code of Conduct provisions in the *Local Government Act 1993* being undertaken by the Local Government Association of Tasmania

### **RECOMMENDATION:**

That the Strategic Planning and Policy Committee considers providing comment and feedback to the review of the Code of Conduct provisions in the *Local Government Act 1993* being undertaken by the Local Government Association of Tasmania.

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### **REPORT:**

A review of the Code of Conduct provisions in the *Local Government Act 1993* (Attachment 1) is being undertaken by the Local Government Association of Tasmania (LGAT) and a paper has been circulated for comment and feedback (Attachment 2). The paper raises some of the concerns that have been expressed since the legislation has been in place, in particular:

- The legality of the Model Code;
  - The extent (or lack of) to which Chairs are determining at an early stage not to proceed based on a complaint being frivolous and vexatious;
  - The weight given to unsubstantiated claims;
  - The application and nature of training sanctions, the lack of interaction with Council or LGAT with regard to training requirements, the application of training sanctions to a whole council when the complaint is against individuals;
  - The lack of interaction/advice from General Managers in relation to complaints being determined;
  - The experience/consistency (or lack of) of the panellists and/or executive officer;
  - The application of procedural fairness and natural justice processes;
  - The appropriateness of code of conducts panels for matters which have other avenues for appeal (eg. planning decisions);
  - The cost of determining a complaint;
  - The role of the Local Government Division; and
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## 4.3 Review of Code of Conduct Provisions - *Local Government Act 1993* ...(Cont'd)

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- Communication with councillors by the general manager following the referral of a complaint to the Executive Officer.

The discussion paper fleshes out these concerns and seeks the following advice from Councils:

For all Councils

- Are the concerns that have been noted above justified? If so, how could they be addressed?
- What general concerns do you have in relation to the Code of Conduct processes outlined in the *Local Government Act 1993*?
- What changes would you recommend? Please focus in particular on the Model Code, Sanctions and Determination Processes.
- Are there any specific elements of the new framework that are working well and should remain unchanged?

For Councils/Councillors who have been subject to a complaint under the new provisions:

- Were you satisfied with the process of determining the complaint? What could have been improved?
- Was the outcome, including sanctions, appropriate? If not, why?
- If applicable, how did the current process compare to that undertaken under the previous legislation (LGAT Standards Panel)? What was improved, what was less effective?
- Can you provide a case study outlining the complaint and experience?

Of particular concern in this Council's experience has been the inability of Council officers to communicate with the affected Alderman when the complaint was submitted. It was contended that the lapse in time between when the complaint was made and the Alderman was contacted has the potential to cause significant distress.

There was also the suggestion that the legislation include a section to require the complainant to keep the complaint confidential until the final outcome of the matter has been determined by the Code of Conduct Panel.

Feedback is required by 11 August 2017.

### **ECONOMIC IMPACT:**

Not considered relevant to this report.

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**4.3 Review of Code of Conduct Provisions - *Local Government Act 1993*  
...(Cont'd)**

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**ENVIRONMENTAL IMPACT:**

Not considered relevant to this report.

**SOCIAL IMPACT:**

Not considered relevant to this report.

**STRATEGIC DOCUMENT REFERENCE:**

City of Launceston Strategic Plan 2014-2024  
Priority Area 8 - A secure, accountable and responsive Organisation

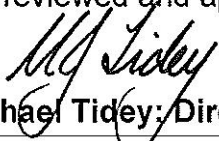
**BUDGET & FINANCIAL ASPECTS:**

Not considered relevant to this report.

**DISCLOSURE OF INTERESTS:**

The officer has no conflict of interest in this item.

I certify that I have reviewed and approved this advice and recommendation.

  
**Michael Tidey; Director Corporate Services**

**ATTACHMENTS:**

1. Extract from the *Local Government Act 1993*
  2. LGAT discussion paper on the Code of Conduct
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**Attachment 1 - Extract from the Local Government Act 1993****Extract from the Local Government Act*****Division 3A - Code of conduct, complaints and complaint resolution******Subdivision 1 - Code of Conduct Panel and Executive Officer*****28K. Code of Conduct Panel**

- (1) The Code of Conduct Panel is established.
- (2) The Minister is to appoint as members of the Code of Conduct Panel as many of the following persons as the Minister considers appropriate:
  - (a) Australian lawyers;
  - (b) persons who have experience in local government but who are not councillors or employees of any council and have not been such councillors or employees within the immediately preceding 2 years.
- (3) Before appointing persons to be members of the Code of Conduct Panel, the Minister may give notice, in any manner he or she considers appropriate, that persons interested in being members may provide written expressions of interest to the Minister.
- (4) Schedule 2A applies in relation to the members of the Code of Conduct Panel.
- (5) The instrument of appointment of a member of the Code of Conduct Panel may include conditions of appointment that are not inconsistent with Schedule 2A.

**28L. Constitution of Code of Conduct Panel**

- (1) In the investigation and determination of a code of conduct complaint against a councillor, the Code of Conduct Panel is to be constituted by 3 members selected by the Executive Officer of whom –
  - (a) one is to be an Australian lawyer; and
  - (b) 2 are to be persons who have experience in local government.
- (2) The chairperson of the Code of Conduct Panel is a person referred to in subsection (1)(b) who is appointed as chairperson by the Executive Officer.

**28M. Executive Officer**

- (1) The Secretary of the Department, on behalf of the Crown, is to appoint a person as Executive Officer in relation to the Code of Conduct Panel.
- (2) If the Secretary of the Department appoints a State Service officer or a State Service employee as Executive Officer, the following provisions apply:
  - (a) that officer or employee may hold a position or office under the State Service Act 2000 in conjunction with the office of Executive Officer;
  - (b) the State Service Act 2000 does not apply in relation to the office of Executive Officer;

(c) that officer or employee is not entitled to receive any remuneration as Executive Officer.

(3) The Executive Officer is appointed for the term, and on the conditions, specified in his or her instrument of appointment.

#### **28N. Functions of Executive Officer**

The Executive Officer has the following functions:

(a) administrative functions in relation to the Code of Conduct Panel;

(b) the functions specified in his or her instrument of appointment;

(c) other functions prescribed by this Act;

(d) other functions determined by the Minister.

#### **28O. Payment of remuneration and allowances to members of Code of Conduct Panel and Executive Officer**

(1) In this section –

*State-employed Executive Officer* means an Executive Officer who is also a State Service officer or State Service employee.

(2) A member of the Code of Conduct Panel is entitled to receive the remuneration and allowances determined by the Minister from time to time.

(3) The remuneration and allowances payable under [subsection \(2\)](#) to a member of the Code of Conduct Panel in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.

(4) An Executive Officer –

(a) who is not a State-employed Executive Officer is entitled to receive the remuneration and allowances determined by the Minister from time to time; or

(b) who is a State-employed Executive Officer is entitled to receive only the allowances determined by the Minister from time to time.

(5) The remuneration and allowances payable under [subsection \(4\)](#) to an Executive Officer in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.

(6) In the case of a State-employed Executive Officer, the remuneration that would be payable to an Executive Officer in relation to a code of conduct complaint were he or she not a State-employed Executive Officer is payable –

(a) to the government department in or for which the State-employed Executive Officer is employed in his or her capacity as a State Service officer or State Service employee; and

(b) by the relevant council.

#### **28P. Requesting provision of information**

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(1) Each of the following persons may request, in writing, the Code of Conduct Panel or Executive Officer to provide information and documents relating to the performance of its or his or her functions as specified in the request:

- (a) the Minister;
- (b) the Secretary of the Department;
- (c) the Director;
- (d) the Board.

(2) The Code of Conduct Panel or Executive Officer is to comply with a request made under subsection (1)

#### **28Q. Providing information to Code of Conduct Panel**

If a person is required to, or may, provide a document to the Code of Conduct Panel or the chairperson of the Code of Conduct Panel, the person may provide it to either the Panel or the Executive Officer.

#### *Subdivision 2 - Code of conduct*

#### **28R. Model code of conduct**

- (1) The Minister, by order, is to make a model code of conduct relating to the conduct of councillors.
- (2) The Minister, by order, may amend or revoke and substitute the model code of conduct.
- (3) The Minister is to make a copy of the model code of conduct available to each council as soon as practicable after the model code of conduct is made, amended or revoked and substituted.

#### **28S. Contents of model code of conduct**

- (1) The model code of conduct as made, amended or substituted under section 28R must be consistent with this Act and is to provide for the following matters:
    - (a) what constitutes a conflict of interest for a councillor and the procedure to be followed if a councillor has a conflict of interest;
    - (b) the proper and improper use by a councillor of his or her office with the council;
    - (c) the proper and improper use by a councillor of council resources;
    - (d) the proper and improper use by a councillor of information obtained in his or her office with the council;
    - (e) the right of a councillor to receive gifts and benefits and the procedure to be followed by a councillor when receiving gifts and benefits in the situations specified in the model code of conduct;
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(f) the appropriate or inappropriate behaviour of a councillor in his or her relationships with the community, other councillors and council employees;

(g) the proper and improper manner in which a councillor represents himself or herself as a councillor, and represents the council, to the community;

(h) any prescribed matter.

(2) The model code of conduct may provide for any other matter relating to the conduct of councillors that the Minister considers appropriate and is consistent with this Act.

### **28T. Code of conduct**

(1) Within 3 months after the day on which an order under [section 28R\(1\)](#) takes effect, each council must adopt the model code of conduct, either with or without any variations permitted under [subsection \(3\)](#) as its code of conduct relating to the conduct of its councillors.

(2) Within 3 months after the Minister makes available to councils an amendment to the model code of conduct or a substitute model code of conduct, a council must adopt the amendment, or revoke its code of conduct and adopt the substitute model code of conduct as its code of conduct, either with or without variations permitted under [subsection \(3\)](#).

(3) In adopting the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct, a council may vary the model code of conduct, amendment or substitute model code of conduct in any manner that is allowed by the model code of conduct, amendment or substitute model code of conduct, is approved by the Minister or is prescribed.

(4) A variation of the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct is to be set out in a schedule to the model code of conduct, the model code of conduct as amended or the substitute model code of conduct.

(5) Within 14 days after adopting the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct, a council is to provide a copy of it to the Director.

(6) The general manager is to make a copy of the council's code of conduct available –

(a) for public inspection, free of charge, at the public office of the council during ordinary office hours and on its website; and

(b) for purchase at a reasonable charge.

(7) A council is to review its code of conduct within 3 months after each ordinary election.

### **28U. Compliance with code of conduct**

In performing the functions and exercising the powers of his or her office with a council, a councillor is to comply with the provisions of the council's code of conduct.

### *Subdivision 3 - Complaints against councillors*

### **28V. Making code of conduct complaint against councillor**

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- (1) A person may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's code of conduct.
- (2) A person may make a complaint against more than one councillor in relation to the contravention by the councillors of the relevant council's code of conduct if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged contravention of the code of conduct.
- (3) A complaint is to –
- (a) be in writing; and
  - (b) state the name and address of the complainant; and
  - (c) state the name of each councillor against whom the complaint is made; and
  - (d) state the provision of the relevant code of conduct that the councillor has allegedly contravened; and
  - (e) contain details of the behaviour of each councillor that constitutes the alleged contravention; and
  - (f) be lodged with the general manager of the relevant council within 6 months after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and
  - (g) be accompanied by any prescribed fee.
- (4) If the subject matter of a complaint by its nature consists of a series of separate incidents that, taken together, form the subject matter, the period referred to in subsection (3)(f) runs from the most recent of the incidents mentioned in the complaint.
- (5) A complaint may not be made by more than 2 complainants jointly.

#### **28W. Withdrawal of or from code of conduct complaint**

- (1) All complainants in a code of conduct complaint, jointly, may withdraw the complaint, at any time before the complaint has been determined by the Code of Conduct Panel, by notice in writing provided to the general manager or the Code of Conduct Panel.
- (2) If a code of conduct complaint is made by 2 complainants, one of those complainants may withdraw from the complaint, at any time before the complaint has been determined by the Code of Conduct Panel, by notice in writing provided to the general manager or the Code of Conduct Panel.
- (3) If a notice withdrawing a code of conduct complaint, or withdrawing from a code of conduct complaint, is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the withdrawal.
- (4) On becoming aware of a notice withdrawing a code of conduct complaint or a notice withdrawing from a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the withdrawal:

- (a) the general manager, unless the notice was originally provided to him or her under subsection (3),

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(b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

**28X. Amendment of code of conduct complaint**

(1) A complainant, in writing provided to the general manager or the Code of Conduct Panel, may amend a code of conduct complaint at any time before the Code of Conduct Panel commences an investigation into the complaint.

(2) If the Code of Conduct Panel has commenced its investigation into a code of conduct complaint, a complainant may amend the complaint with the consent of the Code of Conduct Panel.

(3) If a notice amending a code of conduct complaint is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the amendment.

(4) On becoming aware of an amendment to a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the amendment:

(a) the general manager, unless the complainant provided the amendment to the general manager;

(b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

**28Y. Initial assessment of complaint by general manager**

(1) On receiving a code of conduct complaint, a general manager is to assess the complaint to determine whether it meets the requirements of [section 28V](#)

(2) [Subsection \(1\)](#) does not apply if the general manager is the complainant.

(3) If the general manager determines that the code of conduct complaint does not meet the requirements of [section 28V](#) he or she is to return the complaint to the complainant and notify the complainant, in writing –

(a) that the complaint does not meet the requirements of [section 28V](#) for the reasons set out in the notice; and

(b) that the complainant may lodge an amended or substituted complaint without payment of a further fee under [section 28V\(3\)\(g\)](#) –

(i) within the period specified in [section 28V](#) for lodging a code of conduct complaint; or

(ii) if the complaint is returned to the complainant after the end of that period or less than 14 days before the end of that period, within 14 days after receiving the returned complaint.

**28Z. Referral of code of conduct complaint by general manager**

(1) On receiving a code of conduct complaint and after determining, if required to do so, that the complaint meets the requirements of [section 28V](#) the general manager –

(a) if the complaint is against less than half of all the councillors of the council, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer; and

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(b) if the complaint is against one half or more of all the councillors of the council, is to refer the complaint to the Director.

(2) If a code of conduct complaint is referred to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the general manager of that determination within 28 days after receiving the referral.

(3) If the Director fails to notify the general manager as required by [subsection \(2\)](#), the Director is taken to have accepted the referral of the code of conduct complaint.

(4) If the Director accepts the referral of the code of conduct complaint –

(a) the complaint is taken to be a complaint made to the Director under [section 339E](#) and ceases to be a code of conduct complaint; and

(b) the Director is to proceed under that section in relation to the complaint.

(5) If the Director refuses to accept the referral of the code of conduct complaint, the general manager, as soon as practicable, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer.

(6) If a code of conduct complaint is referred to the Code of Conduct Panel, the Executive Officer is to –

(a) keep the original complaint or a copy of it; and

(b) in accordance with [section 28L](#) constitute the Code of Conduct Panel to investigate the complaint and appoint the chairperson of the Panel; and

(c) provide a copy of the complaint to the chairperson.

#### **28ZA. Initial assessment of code of conduct complaint by chairperson of Code of Conduct Panel**

(1) On receiving a code of conduct complaint, the chairperson of the Code of Conduct Panel is to do an initial assessment of the complaint to determine whether to do one or more of the following:

(a) dismiss the whole complaint;

(b) dismiss part of the complaint;

(c) refer the whole complaint to another person or authority;

(d) refer part of the complaint to another person or authority;

(e) determine that the whole complaint is to be investigated and determined by the Code of Conduct Panel;

(f) determine that part of the complaint is to be investigated and determined by the Code of Conduct Panel.

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(2) The initial assessment is to be completed within such period as will enable the chairperson of the Code of Conduct Panel to comply with [subsection \(3\)](#)

(3) Within 28 days after receiving the code of conduct complaint, the chairperson of the Code of Conduct Panel –

(a) is to notify the complainant and the general manager, in writing, of the result of the initial assessment and the reasons for it; and

(b) if the chairperson has determined that the whole or part of the complaint is to be investigated and determined by the Code of Conduct Panel, is to –

(i) notify the councillor against whom the complaint is made, in writing, of the result of the initial assessment and the reasons for it; and

(ii) provide a copy of the complaint to that councillor; and

(iii) provide a copy of the complaint to the other members of the Code of Conduct Panel.

#### **28ZB. Dismissal of code of conduct complaint on initial assessment**

(1) The chairperson of the Code of Conduct Panel, on an initial assessment, may dismiss the code of conduct complaint, or part of it, if he or she considers that –

(a) the complaint or part is frivolous or vexatious; or

(b) the complaint or part does not substantially relate to a contravention of the code of conduct of the relevant council; or

(c) the complainant has made the complaint or part in contravention of –

(i) a determination of the chairperson made under [subsection \(2\)](#), or

(ii) a determination of the Code of Conduct Panel made under [section 28ZI\(3\)](#)

(2) If the chairperson of the Code of Conduct Panel dismisses the code of conduct complaint or part of it on the basis that it is frivolous or vexatious, the chairperson, in the notice provided under [section 28ZA\(3\)](#), may direct the complainant not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

#### **28ZC. Referral of code of conduct complaint on initial assessment**

(1) The chairperson of the Code of Conduct Panel, on an initial assessment, may refer the code of conduct complaint, or part of it, to any person or other authority that the chairperson considers appropriate if the chairperson reasonably considers that –

(a) the complaint discloses that an offence may have been committed; or

(b) the complaint would be more appropriately dealt with by that other person or authority.

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(2) The person or other authority to which the code of conduct complaint is referred –

(a) may accept the referral or refuse to accept the referral; and

(b) is to notify the chairperson of the Code of Conduct Panel of that acceptance or refusal within 28 days after receiving the referral.

(3) If the person or other authority to whom the code of conduct complaint is referred fails to notify the chairperson of the Code of Conduct Panel as required by subsection (2), the person or authority is taken to have accepted the referral of the code of conduct complaint.

(4) If the person or other authority to whom the code of conduct complaint is referred accepts the referral, the code of conduct complaint ceases to be a code of conduct complaint.

(5) If the person or other authority to which the code of conduct complaint is referred refuses to accept the referral, the chairperson of the Code of Conduct Panel is to do a further initial assessment under section 28ZA within 21 days after being notified of that refusal.

(6) On doing a further initial assessment under section 28ZA as required by subsection (5) –

(a) the chairperson is to comply with section 28ZA as if doing a first initial assessment; and

(b) if the chairperson determined on the original initial assessment to investigate a part of the code of conduct complaint and had notified the councillor against whom the complaint was made of that determination, the chairperson is to notify the councillor of the result of the further initial assessment in addition to any other notice the chairperson is required to provide under section 28ZA

**28ZD. Time for investigating and determining code of conduct complaint**

(1) The Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint –

(a) if the chairperson of the Panel has determined under section 28ZA to investigate and determine the whole complaint, within 90 days after that determination; or

(b) if the chairperson of the Panel has determined under section 28ZA to investigate and determine part of the complaint but to refer to a person or other authority another part of the complaint, within 120 days after that determination.

(2) If the Code of Conduct Panel is unable to investigate and determine a code of conduct complaint, or part of a code of conduct complaint, within the period specified in subsection (1), the Panel is to include the reasons for that in its written determination made in accordance with section 28ZJ

**28ZE. Conduct of investigations generally**

(1) In the investigation of a code of conduct complaint, the Code of Conduct Panel –

(a) is to conduct the investigation with as little formality, and as expeditiously, as is reasonably practicable in the particular circumstances; and

(b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate; and

(c) must observe the rules of natural justice; and

(d) may regulate its own procedure.

(2) In the investigation of a code of conduct complaint, the Code of Conduct Panel may –

(a) determine what evidence is required to enable it to determine the complaint; and

(b) subject to [subsection \(3\)](#) determine the manner in which it will accept evidence from the complainant, the councillor against whom the complaint is made and any witnesses.

(3) In an investigation of a code of conduct complaint, the Code of Conduct Panel may accept evidence given orally on oath or affirmation or by written submissions and documents provided in, or annexed to, a statutory declaration.

(4) At any time during an investigation of a code of conduct complaint, the Code of Conduct Panel, in writing, may request the complainant, the councillor against whom the complaint is made, a witness or the relevant council to provide information and documents, or further information and documents (including information, and documents containing information, of a kind referred to in [section 338A](#)), that the Panel considers may be relevant to the determination of the complaint.

(5) A person who has been requested under [subsection \(4\)](#) to provide information and documents, or further information and documents, is to do so within –

(a) the period specified in the request; or

(b) such longer period as the Code of Conduct Panel, before the expiration of the period specified in the request, may allow.

(6) If a council or a councillor in response to a request under [subsection \(4\)](#) provides to the Code of Conduct Panel information, or a document containing information, of a kind referred to in [section 338A](#) a member of the Code of Conduct Panel must not disclose that information or document to any person except as otherwise allowed by [sections 28ZJ](#) and [28ZK](#)

**28ZF. Investigation of multiple code of conduct complaints against same councillor or multiple councillors**

(1) If there are a number of code of conduct complaints against the same councillor or different councillors of the same council and the complaints relate to the same contravention of the council's code of conduct, the Code of Conduct Panel may determine to conduct a joint investigation into all the complaints.

(2) The Code of Conduct Panel may only make a determination to conduct a joint investigation after considering the wishes of all complainants and councillors against whom the complaints are made.

(3) If the Code of Conduct Panel determines under [subsection \(1\)](#) to conduct a joint investigation and the total number of councillors involved in the investigation is half or more of all the councillors of the relevant council, the Panel is to refer the complaints to the Director.

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- (4) If the Code of Conduct Panel refers the code of conduct complaints to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the Panel of that determination within 28 days after receiving the referral.
- (5) If the Director fails to notify the Code of Conduct Panel as required by subsection (4) the Director is taken to have accepted the referral of the code of conduct complaints.
- (6) If the Director accepts the referral of the code of conduct complaints –
- (a) the complaints are taken to be complaints made to the Director under section 339E and cease to be code of conduct complaints; and
- (b) the Director is to proceed under that section in relation to the complaints.

**28ZG. When hearing is to be held**

- (1) Except as provided by subsection (2) the Code of Conduct Panel is to conduct the investigation of a code of conduct complaint by means of a hearing.
- (2) The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that –
- (a) neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or
- (b) a hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.
- (3) If the Code of Conduct Panel determines not to hold a hearing, the members of the Panel may participate in a meeting of the Panel by telephone, television conference, written communication or any other means of communication approved by the Panel.
- (4) At any time after the Code of Conduct Panel has determined not to hold a hearing, the Panel may determine to hold a hearing in relation to the code of conduct complaint as a whole or to part of the code of conduct complaint.

**28ZH. Hearings**

- (1) Subject to this Act, the Code of Conduct Panel may regulate the procedure of its hearings.
- (2) A hearing –
- (a) is to take the form of an inquiry by the Code of Conduct Panel into the matters raised in the code of conduct complaint that are in dispute; and
- (b) is not to be adversarial.
- (3) At a hearing, witnesses may be called by the complainant, the councillor against whom the complaint is made and the Code of Conduct Panel.
- (4) Evidence at a hearing is to be taken by the Code of Conduct Panel –
- (a) on oath or affirmation; and

(b) subject to a requirement of the Code of Conduct Panel under subsection (5) may be given orally or in writing.

(5) The Code of Conduct Panel may require a person, by written notice, to attend a hearing and give evidence in person or provide documents, or both.

(6) If the Code of Conduct Panel consents, a complainant or councillor against whom the code of conduct complaint is made may be represented at a hearing by an advocate who is not an Australian lawyer.

(7) A hearing is closed to the public.

#### **28ZI. Determination of code of conduct complaint**

(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –

(a) upholding the complaint; or

(b) dismissing the complaint; or

(c) upholding part of the complaint and dismissing the remainder of the complaint.

(2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:

(a) a caution;

(b) a reprimand;

(c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;

(d) a requirement to attend counselling or a training course;

(e) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.

(3) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

#### **28ZJ. Determination report**

(1) The determination of a code of conduct complaint by the Code of Conduct Panel under section 28ZI is to be in writing and is to contain –

(a) a summary of the complaint; and

(b) the determination of the Code of Conduct Panel; and

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- (c) the Code of Conduct Panel's reasons for the determination; and
  - (d) if the code of conduct complaint or part of it is upheld and the Code of Conduct Panel has imposed a sanction on a councillor, that sanction and a reasonable period within which the councillor is to comply with the sanction; and
  - (e) if the code of conduct complaint or part of it is dismissed and the Code of Conduct Panel determines under [section 28ZI\(3\)](#) that the complainant may not make a further complaint in relation to the same matter, a direction to the complainant to that effect; and
  - (f) a statement that a person aggrieved by the determination of the Code of Conduct Panel is entitled, under [section 28ZP](#) to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Panel has failed to comply with the rules of natural justice.
- (2) The determination of a code of conduct complaint must not contain any information of a kind referred to in [section 338A](#) but, if the Code of Conduct Panel considers that any such information is relevant to the report and should be included, it is to include that information in an addendum to the report.

**28ZK. Notification of determination of code of conduct complaint**

- (1) In this section –  
*addendum* means an addendum to a determination report referred to in [section 28ZJ\(2\)](#);  
*determination report* means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by [section 28ZJ](#) without any addendum.
- (2) Within 28 days after determining a code of conduct complaint, the Code of Conduct Panel is to provide a copy of its determination report to –
- (a) each complainant; and
  - (b) each councillor against whom the complaint is made; and
  - (c) the general manager of the relevant council; and
  - (d) the Director.
- (3) If the Code of Conduct Panel has produced an addendum, it is to provide a copy of it to –
- (a) if the complainant is a councillor, that complainant; and
  - (b) each councillor against whom the complaint is made; and
  - (c) the general manager of the relevant council; and
  - (d) the Director.
- (4) If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.
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(5) If the general manager receives a determination report and also an addendum, the general manager is to ensure –

(a) that a copy of the determination report without the addendum is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public; and

(b) that a copy of the determination report with the addendum is tabled at the first meeting of the relevant council at which it is practicable to do so and which is closed to the public.

### **28ZL. Effect of third suspension**

(1) In this section –

*prescribed period*, in relation to a councillor, means –

(a) the councillor's current term of office; or

(b) if the councillor is serving the second of 2 consecutive terms of office as a councillor (whether both those terms are with the same council or with different councils), the period consisting of both those terms of office;

*third suspension* means the third, or a subsequent, suspension of a councillor imposed by the Code of Conduct Panel under [section 28Z1\(2\)\(e\)](#) in relation to code of conduct complaints (whether in relation to a contravention of the same provision or different provisions of a code of conduct, or of the same or a different code of conduct) during the prescribed period.

(2) If the Code of Conduct Panel imposes a third suspension on a councillor, the Panel is to notify the Minister of –

(a) that suspension; and

(b) the details of each suspension of the councillor during the prescribed period, including details of the provisions of the code of conduct contravened and a summary of the behaviour constituting each of those contraventions.

(3) On receipt of a notice provided under [subsection \(2\)](#), the Minister may remove the councillor from office.

### **28ZM. Councillor to comply with sanction imposed for contravention of code of conduct**

(1) In this section –

*determination report* means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by [section 28ZJ](#)

(2) If, when determining a code of conduct complaint, the Code of Conduct Panel imposes a sanction on a councillor that requires the councillor to apologise to a person or to attend counselling or a training course, the councillor must comply with that sanction within the period specified in the determination report.

Penalty:

Fine not exceeding 50 penalty units.

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- (3) Within 7 days after a councillor has fully complied with a sanction referred to in subsection (2), the councillor is to notify the general manager that he or she has done so.
- (4) If a councillor fails to comply with a sanction referred to in subsection (2) within the period specified in the determination report, the relevant general manager is to notify the Director, in writing, of that fact.
- (5) On receipt of a notice provided under subsection (4), the Director is to deal with the notice as if it were a complaint under section 339E.

**28ZN. Costs of parties relating to code of conduct complaint**

The complainant in a code of conduct complaint and the councillor against whom the complaint is made are to bear their own costs relating to the investigation and determination of the complaint.

**28ZO. Refund of fee accompanying lodgement of code of conduct complaint**

A council must refund to each complainant who has lodged a code of conduct complaint, in equal shares, any fee paid with the lodgement in accordance with section 28V(3)(g) in any of the following circumstances:

- (a) the complaint is referred to the Director by the general manager under section 28Z(1)(b) and is accepted by the Director;
- (b) the whole complaint is referred to a person or other authority by the chairperson of the Code of Conduct Panel on initial assessment under section 28ZA(1)(c) and is accepted by that person or authority;
- (c) the whole complaint is withdrawn at any time before it is referred by the general manager to the Code of Conduct Panel under section 28Z(1) ;
- (d) the complaint or part of the complaint is upheld on determination by the Code of Conduct Panel;
- (e) all councillors against whom the complaint is made resign or lose the office of councillor before the complaint is dealt with as specified in paragraph (a), (b), (c) or (d) as the case requires.

*Subdivision 4 - Reviews of Code of Conduct Panel decisions*

**28ZP. Review of Code of Conduct Panel decision**

If a person is aggrieved by the determination of a code of conduct complaint by the Code of Conduct Panel on the ground that the Panel failed to comply with the rules of natural justice –

- (a) the person may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on that ground; and
- (b) that determination is a reviewable decision for the purposes of the Magistrates Court (Administrative Appeals Division) Act 2001

*Attachment 2 - LGAT Discussion Paper on the Code of Conduct*



## Review

### Code of Conduct provisions and processes

June 2017

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*Review of the Code of Conduct: Provisions and Processes***1. Introduction**

At the February 2017 General Meeting, Members were provided background on the Code of Conduct legislation, received a report from the Director of Local Government on the Code of Conduct and noted that the Minister, through the Premier's Local Government Council, had committed to a 12-month review of the Code of Conduct legislation.

On the 1 May, the Minister wrote to all Mayors advising that he has requested LGAT take carriage of the review process for Local Government.

The timeframes agreed are as follows:

- end June: Release of discussion paper
- Parallel consultation by the Local Government Division with Code of Conduct Panel Members and State Government stakeholders.
- 11 August: Feedback from councils closes.
- 30 August: Draft Report and Recommendations developed in collaboration with the LGD.
- 15 September: Provision of draft report to councils for review and feedback
- October: Workshop dependent on sector interest
- 1 November: Endorsement of final recommendations at General Meeting.
- 10 November: Provision of final report to Government.

The Local Government Division will be seeking feedback from Code of Conduct Chairs and Panel Members and the Executive Officer. The advice from LGAT Members, Panels and the Division will be jointly considered in developing recommendations for the Minister.

Given that LGAT is being asked to form recommendations for the Minister, it is important that councils have sufficient time to develop positions and that recommendations are endorsed through a General Meeting process. As such, a longer timeframe has been agreed.

**2. Background**

As presented at the General Meeting in February 2017, concerns have been raised about the code of conduct provisions in the *Local Government Act 1993* (the Act) which commenced in April 2016. With the significant change of elected members at the October 2014 elections, some of the history on sector led advocacy has been lost. Many of the current provisions relate directly to requests from our sector.

The new code of conduct framework and the subsequent model code of conduct order, is the outcome of significant consideration and consultation with Local Government. This included discussion papers issued by LGAT in June and November 2010, a Working Group Paper issued by LGAT in September 2013, an outline of recommendations to the State Government to the December 2013

*Review of the Code of Conduct: Provisions and Processes*

General Meeting, a discussion paper on the Amendment Bill issued by the State Government in October 2014, and a draft Bill for consultation in early 2015.

A joint State Government and Local Government working group developed the new framework. The model code of conduct was developed in close consultation with Local Government and the Integrity Commission.

At the July 2015 General Meeting, the following motions were carried in relation to LGAT's advocacy on the Code of Conduct Bill.

- That the Meeting agree that Mayors will write to MLCs in support of the Local Government (Code of Conduct) Bill, noting the significant consultation that has occurred with councils since 2010.
- That the single Code of Conduct Panel be able to investigate, hear and determine code of conduct complaints.
- Provide for some flexibility for councils to expand upon core elements in the Regulated (Model) Code of Conduct.
- That there continue to be a requirement to pay a fee to lodge a complaint, noting that the fee is reimbursed if the complaint is upheld.
- That there remains an ability to withdraw a complaint.
- That given the need to contain costs and to deal with complaints expeditiously, legal representation not be allowed in Standard Panel Hearings.
- That the legislation allows for a Code of Conduct complaint to be submitted locally to the General Manager to check that proper procedure has been adopted before forwarding to the Standards Panel.
- That the one month suspension sanction be changed to allow for up to three months' suspension in order to offer an effective deterrent for bad behaviour.

The Bill was passed in September 2015 and commenced on 13 April 2016.

A key change was that the independent Panel (previously known as the Standards Panel) which was administered by LGAT is now administered by an appointed Executive Officer. During the first year of implementation of the new framework, as a result of an agreement made during the debate in the Legislative Council, the Local Government Division appointed a new staff member to carry out the functions of the Executive Officer for the Code of Conduct Panel. At the conclusion of the first year, and once processes had been established, the position was moved out of the Local Government Division (and is now within another part of the Department of Premier and Cabinet). There are no specific limitations regarding the employment of the Executive Officer. This position could sit in State Government or be outside of State Government (such as in a legal firm). The function of the Executive Officer is to administer the Code of Conduct complaint, hearing and determination process.

At the time of the legislation it was the sector's view that placement of the Executive Officer in the Local Government Division was sensible as it allowed for appropriate alignment with the overarching authority for the Local Government Act and could directly provide feedback to the Division in relation to tools and



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training for both Panel Members and those elected to Local Government. However, the Director of Local Government has since expressed concern regarding the potential for real or perceived conflict between his statutory responsibilities and that of the statutorily separate Code of Conduct Panel. The Director has no influence over Panel decisions.

At the time of transition, LGAT provided significant support to hand over tools, templates letters and reports and training notes which had been updated to reflect changes to the Act, but there will always be a difference in approach and gaps in experience in the early period of transition. The Association continues to provide support and feedback on process as appropriate.

Other improvements which the sector advocated for include:

- Stricter sanctions including suspension of office for up to three months;
- A penalty for failure to comply with a sanction;
- More flexible investigation and hearing provisions which mean that a panel is not obliged to conduct a hearing automatically, thus saving time and expense in appropriate circumstances; and
- A review provision on the grounds of failure to provide natural justice.

Regardless of the origin of the changes, as with any significant change process, evaluation is critical and supported.

Consequently, LGAT is now seeking both general and specific feedback on all aspects of the Code of Conduct legislation and process.

An extract of the Code of Conduct Provisions is provided as a separate document.

### 3. Data

Twenty-three code of conduct complaints have been received by the Local Government Division between 13 April 2016 and 1 June 2017. It is worth noting however that few complaints were lodged prior to councils adopting the Model Code. Some of the initial complaint activity would likely reflect public interest generated by media coverage of the changes as well as renewed faith in the process because of improvements to process, sanctions and enforcement.

<b>Complaints</b>	<b>23</b>
Dismissed without a hearing	9
Sanctions applied	9
<i>Caution</i>	5
<i>Caution and training</i>	3
<i>Training</i>	1
Complaints lodged -	
<i>Internal to council</i>	12
<i>External to council</i>	11

*Review of the Code of Conduct: Provisions and Processes*

Average cost of determination	\$2449.22 (based on closed cases)
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#### 4. Specific Areas of Concern

LGAT is aware, at a high level, of some concerns expressed within the Local Government sector. These include:

- The legality of the Model Code;
- The extent (or lack of) to which Chairs are determining at an early stage not to proceed based on a complaint being frivolous and vexatious;
- The weight given to unsubstantiated claims;
- The application and nature of training sanctions, the lack of interaction with Council or LGAT with regard to training requirements, the application of training sanctions to a whole council when the complaint is against individuals;
- The lack of interaction/advice from General Managers in relation to complaints being determined;
- The experience/consistency (or lack of) of the panellists and/or executive officer;
- The application of procedural fairness and natural justice processes;
- The appropriateness of code of conducts panels for matters which have other avenues for appeal (e.g. planning decisions);
- The cost of determining a complaint;
- The role of the Local Government Division;
- Communication with councillors by the general manager following the referral of a complaint to the EO; and

Additionally, the Local Government Division has raised concern that the funding model is insufficient to ensure the code of conduct framework supports efficient panel processes.

At this stage, the Association does not have a lot of detail on these matters, and more is sought as part of this process.

##### 4.1 Model Code

There were a significant number of amendments made by the Legislative Council during the passage of the legislation. A key change of concern was a much more regulated Code with little flexibility for councils to vary the settings. The sector had sought some key inclusions to be regulated rather than the code in its entirety. It was felt that there should be some flexibility and that developing a new Code after each election would ensure the appropriate level of awareness and buy in in relation to appropriate and ethical behaviours.

It should be noted however, that the eight standards of conduct set out in the model code of conduct are the same standards as those provided for under the previous framework (e.g., conflict of interest, use of office, and gifts and benefits).



*Review of the Code of Conduct: Provisions and Processes*

The standard of 'decision making' is technically new however this standard was included in the former Local Government Association of Tasmania (LGAT) model code (developed with inputs from councils, the Local Government Division and the Integrity Commission) and was included in a number of Councils' codes prior to the legislative changes.

An extract from the 2012 LGAT Model Code of Conduct is at **Attachment 1**

Local Government representatives have raised concerns at meetings of the Premier's Local Government Council regarding concerns that the model Code of Conduct is fettering debate. There is a view that the wording of part 7(1) means that councillors cannot speak frankly for fear of causing offence.

Part 7 (1) relates to relationships with community, councillors and Council employees. It states that 'a councillor must treat all persons with courtesy, fairness, dignity and respect and that a councillor must not cause any reasonable person offence or embarrassment.

"Reasonable person" is a common-law term and is not defined within the Model Code or the Act. The intention of this clause is not to fetter debate, rather to promote respectful debate. A frivolous or vexatious complaint under this section can be dismissed by the chairperson at the initial assessment stage.

#### 4.2 Experience of Panellists

In establishing the new Code of Conduct Panel, the Local Government Division, with assistance from LGAT, conducted an Expression of Interest process for panellists.

Seven of the twelve appointed panel members had previously been members of a council's Code of Conduct Panel or a member of the Standards Panel. Standards Panel members were not automatically appointed to the Code of Conduct Panel.

While there was no EOI specifically for panel Chairs, for all but one of the 23 complaints received under the new framework, a previous Code of Conduct or Standards Panel member has been appointed as the Chair of the Panel.

During May and June 2017, a subsequent recruitment process was undertaken to appoint further panel members. The recruitment process was undertaken by local government members. This process is expected to be finalised in the coming months.

The future selection of panel members is proposed to follow a similar process whereby the selection panel that recommends new appointments comprises representatives from the local government sector and an existing panellist. The local government representatives will be elected members nominated by LGAT. This ensures that the sector owns the decisions regarding panel membership.

An Executive Officer was appointed to fulfil the administrative role previously undertaken by LGAT. As indicated earlier, LGAT provided extensive handover tools, including materials updated to reflect the changed legislation, and the LGAT

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Registrar worked with the Executive Officer to outline previously used and successful processes.

The Local Government Division has continued to refine the documentation in the context of the new framework and provided training to Panellists, through face-to-face sessions and the provision of written advice on issues raised by the panel members.

In addition, the Deputy Solicitor-General provided specific procedural fairness training to the Panel members and has offered the services of the Solicitor-General Office on an ongoing basis to the Panel members if they require clarification on any legislative issues.

If new Panel members are appointed, the Local Government Division will undertake to provide these members with training on both the legislative framework, and procedural fairness.

Training of panel members that is provided by LGD is focussed on the legislation and framework. The training does not tell panellists, who are all qualified and experienced, how to perform the role of panellist. Panels operate completely separately to LGD and LGD provides no advise specific to cases.

Training on the new framework has also been offered to all councils to assist councillors, and council staff, to understand the changes. To date, seven councils have undertaken the training.

### 4.3 Sanctions

Two key issues have been raised in this regard.

1)The appropriateness and legality of applying sanctions, such as training, to a whole council, rather than targeted individuals has been questioned. While the legislation provides for a requirement to undertake training to be applied as a sanction, there is no detail on the nature of the training and no requirement to consider or consult on the availability of such training.

2) LGAT has raised concerns about sanctions which reference the LGAT or another entity regarding training, without any prior dialogue as to the suitability or availability of that training.

#### Costs

There has been a perceived increase in the cost of determining complaints. The costs are outlined above (data) but early examination by LGAT suggests that the costs being experienced by councils where complaints have been lodged are not dissimilar to LGAT's full cost attribution (applied to Hobart City Council while they were not a member) but may reflect a higher direct cost than previously experienced by councils because the administration costs were not separately accounted for but rather captured through LGAT's general subscriptions.

The Director of Local Government has raised concerns that the legislation does not

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outline a process by which costs of the Executive Officer that are not related to specific cases can be re-couped. Cited as examples are matters such as responding to general phone calls from panellists and general emails from members of the sector, and providing data and information on request such as the data that is included in this discussion paper. It is felt that this issue was masked during the first year of implementation of the framework while the Executive Officer was employed by the LGD. However, with the Executive Officer now being external to LGD (to promote independence), the organisation that accommodates the Executive Officer is now paying for this time and the commentary from the LGD is that this is unsustainable. There has been a suggestion that there be a fixed cost for the Executive Officer shared among councils on a population share basis with the argument that it was previously borne by councils through their LGAT membership fee, as LGAT absorbed these costs.

The suggested fixed cost has been approximated at \$100,000. This far exceeds the resource cost LGAT dedicated to the task. It could also be argued that the Local Government Division carries responsibility for ensuring compliance with the Local Government Act, and therefore the administrative roles of the of the executive officer should be funded by the State Government as is the case with the Integrity Commission and RMPAT. Furthermore, it should be recognised that LGAT provides a supportive role in building councils' capacity and compliance in relation to a range of legislation which arguably should be delivered by responsible agencies.

**4.4 Processes**

Anecdotal advice suggests there has been inconsistent practice across Panels in relation to evidence and hearing processes with concern raised that too much weight is given initially to unsubstantiated claims (which therefore triggers a full investigation process). It has been raised that the general manager should be able to provide some context along with the complaint when it is first provided to the Chair for initial assessment.

The initial assessment stage is an important improvement to the new framework, which allows for vexatious or frivolous complaints to be dismissed at an early stage. The chair assesses the complaint and determines, on the face of the complaint, whether there is grounds to accept the complaint for investigation or dismissal. If accepted, it is then for the whole Panel to investigate and to determine whether the breach of the council's code of conduct occurred or not.

Under the previous framework, all matters referred to the Standards Panel had to be the subject of a hearing.

Currently, the legislation does not provide the Chair with the power to take into consideration other matters, such as a report from the general manager, when undertaking the initial assessment. The general manager can provide information during the investigation process along with the relevant parties to the complaint. There is also no capacity for a Chair to require a council to make efforts to resolve the complaint before the Chair considers a complaint further. This could be appropriate for alleged behaviour breaches under Part 7(1). The onus on a council to try to resolve a complaint might mean that it has some control to avoid the costs of a code of conduct panel.

*Review of the Code of Conduct: Provisions and Processes***4.5 Communication with councillors by the general manager following the referral of a complaint to the Executive Officer**

Section 28Z of the Act requires general managers to refer a complaint either to the Executive Officer or to the Director of Local Government once he/she has verified that the complaint meets the requirements of section 28V. Under section 28ZK, the general manager is then required to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public. Tabled the report in an open meeting can put a general manager in an invidious position if it is the first time that other councillors become aware of the complaint. While the process must respect natural justice and at the outset a complaint is just an allegation, it could be argued that it is reasonable for councillor colleagues to be aware of investigations that are occurring that are relevant to their council.

**5. Summary**

Following concerns raised by the sector, and a commitment to review the Code of Conduct provisions in the *Local Government Act* by the Minister for Local Government, LGAT has been requested to seek sector inputs and form recommendations for Government.

To that end, LGAT is seeking feedback from Councils no later than **11 August 2017**.

Specifically, the following advice is sought:

For All Councils

- Are the concerns that have been noted above justified? If so, how could they be addressed?
- What general concerns do you have in relation to the Code of Conduct processes outlined in the Local Government Act?
- What changes would you recommend? Please focus in particular on the Model Code, Sanctions, and Determination Processes.
- Are there any specific elements of the new framework that are working well and should remain unchanged?

For Councils/Councillors who have been subject to a complaint under the new provisions:

- Were you satisfied with the process of determining the complaint? What could have been improved?
- Was the outcome, including sanctions, appropriate? If not, why?
- If applicable, how did the current process compare to that undertaken under the previous legislation (LGAT Standards Panel)? What was improved, what was less effective?
- Can you provide a case study outlining the complaint and experience?

Please direct your feedback to:



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**Dion Lester**  
**Policy Director, LGAT**  
**Dion.lester@lgat.tas.gov.au**

**Attachment 1: LGAT Model Code of Conduct 2014 – Extract**

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## Standard of Conduct 1 – Objective decision-making

### Expectations of Councillors

Councillors must ensure that:

- a) In all of their dealings related to their Council duties, including in making decisions, they strive to do so free of any bias or pre-judgement;
- b) They make decisions solely on merit and in accordance with their statutory obligations when carrying out public business, including the awarding of contracts or recommending individuals for rewards or benefits; and
- c) In making decisions they must:
  - inform themselves as much as possible;
  - take all relevant facts known to them, or that they should be reasonably aware of, into consideration; and
  - have regard to the particular merits of each case independent of any personalities involved.

### Supporting Examples

- 1) If a councillor makes a public pronouncement about support of, or opposition to, an application prior to a decision of Council or suggests prior to a forthcoming Council or Council Committee meeting that they have already come to a decision, it is likely to give members of the public the view that the Councillor has already pre-judged the matter before a decision is made (whether that view is right or wrong does not matter).
- 2) Councillors ought not sign a public petition to Council or be party to a legal claim against Council which demonstrates that in their capacity to influence a decision of Council, they will be likely to bring a partial and/ or prejudiced view.

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## Standard of Conduct 7 – Relationships with the community, councillors and council staff.

### Expectations of Councillors

Councillors must ensure that:

- a) Where appropriate, make sure stakeholders have an opportunity to be heard about decisions that affect them;
- b) They do not make allegations to or about other Councillors or members of the public which are defamatory, slanderous, derogatory or discriminatory;
- c) They behave in a manner that is free from discrimination, bullying or harassment;
- d) They listen to and respect each other's views in Council and committee meetings and any other proceedings of the Council, and make certain that issues, not personalities, are the focus of debate;

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- e) They refrain from directing council staff, other than giving appropriate direction to the General Manager in the performance of the Council's functions by way of Council or committee resolution, or by the Mayor exercising his or her functions under Section 27(1(ba)) of the *Local Government Act*;
- f) They refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other member of the staff of the Council or a delegate of the Council, in the exercise of the functions of the member or delegate; and
- g) They refrain from contacting an employee of the Council unless in accordance with procedures governing the interaction of Councillors and Council employees that have been authorised by the General Manager.

**Supporting examples**

- 1) Councillors should show respect to all other Councillors, even if they hold different views and not try to change a view through intimidation or bullying.
- 2) Councillors should respect the impartiality and integrity of Council staff and behave towards them in a way that engenders mutual respect.
- 3) Councillors should treat all employees with courtesy and respect and observe any guidelines that the General Manager puts in place regarding contact with employees.
- 4) Councillors must not victimise another councillor for having made a complaint.
- 5) Councillors must not verbally attack another Councillor personally, only their views should be challenged in a rational and dignified manner.
- 6) When referring to other Councillors in a public forum, including electronic forms of communication, Councillors should be conscious of how their comments will be perceived. Councillors should ask themselves what a reasonable observer would think.

**5 GENERAL BUSINESS**

**6 CLOSED ITEMS**

**No Closed Items have been identified for this Agenda**

**7 CLOSE OF MEETING**