

Fact Sheet – Local Government Amendment (Governance and Integrity) Bill 2024

The Local Government Amendment (Governance and Integrity) Bill 2024 was introduced into Parliament on 30 April 2024. This Fact Sheet provides an outline of the key reforms included in the Bill.

Background

The Local Government Amendment (Governance and Integrity) Bill 2024 makes a series of amendments to the *Local Government Act 2020* (the LGA 2020) to improve council integrity, accountability and governance across the local government sector in relation to:

- councillor conduct, leadership and training
- early intervention and effective dispute resolution
- oversight mechanisms.

The Bill responds to governance issues raised in recent government interventions, integrity body reports – including IBAC’s Operation Sandon Special Report – and other government consultations such as the Local Government Culture Project.

Further information about the background and rationale for the reforms is provided by the Local Government Reforms 2024 Consultation Paper which is available on the Local Government Victoria website.

Overview

The main purposes of the Local Government Amendment (Governance and Integrity) Bill 2024 are:

- to provide for ongoing mandatory training for councillors and mayors
- to improve the councillor conduct framework and clarify the responsibilities of councillors
- to provide for the suspension and disqualification of individual councillors in certain circumstances

- to provide further powers to the Chief Municipal Inspector
- to make other miscellaneous amendments to the LGA 2020.

The Bill also amends the *Local Government Act 1989* to reflect machinery of government changes and makes consequential amendments to the *Victorian Civil and Administrative Tribunal Act 1998*.

Commencement

The Bill will commence in two stages.

The provisions that relate to the upcoming council elections and Ministerial oversight and appointment powers will come into operation on the day after Royal Assent. These provisions will not operate retrospectively.

The provisions that relate to the Model Councillor Code of Conduct, training and internal arbitrations and Councillor Conduct Panels will come into operation when the new council term starts following the elections in October 2024. This will provide time to prepare supporting regulations and guidance and ensure that matters currently underway are not impacted by the changes.

Next steps and implementation

The Local Government (Electoral) Regulations 2020 will be amended in June 2024 to give effect to the change to the close of the roll and other key dates for the October 2024 council elections.

Consultations on the development of the Model Councillor Code of Conduct and the content requirements for the councillor professional development training and the mayoral training will commence in May 2024. This is to ensure the regulations and supporting materials are in place ahead of the council elections in October 2024.

Reforms to strengthen council leadership, capability and councillor conduct

Mandatory training for councillors and mayors

The Bill sets out a comprehensive mandatory training program for councillors by requiring:

- councillor induction training to be completed within 4 months of taking the oath or affirmation of office (currently councillors have 6 months to complete this training)
- professional development training to be completed by all councillors each year of their term, beginning in the full calendar year following their election
- mayoral training to be completed by all mayors, deputy mayors and acting mayors (if their appointment is for 1 month or more) within 1 month of appointment.

The new training requirements provided for in the Bill are modelled on the current councillor induction training provisions in sections 32 and 33 of the LGA 2020.

Councillor induction training

The Bill amends section 32 of the LGA 2020 to require a councillor to complete councillor induction training within 4 months after the day the councillor takes the oath or affirmation of office.

The Bill also provides that if a councillor is unable to take or complete councillor induction training because of a leave of absence, the councillor must take or complete the training within one month after returning from leave.

Professional development training

The Bill inserts new provisions to require every councillor to complete professional development training annually to ensure that the councillor understands their role and responsibilities.

A councillor must undertake professional development training once in each year of their term beginning in the first full calendar year after the councillor is elected. The period or date by which a councillor must complete the training will be prescribed in regulations following further consultation.

The Chief Executive Officer (CEO) of the council has an obligation to ensure that the professional development training is available to be undertaken and to provide reasonable assistance to a councillor to enable them to access the professional development training.

The content that must be covered in this new mandatory training will be prescribed in regulations and will be developed through further consultation.

A failure to complete the training and make a written declaration within the timeframes prescribed by the regulations may result in a councillor's allowance being withheld until the training is complete. A councillor is entitled to receive any allowance that has been withheld once they have completed the training.

If a councillor is on a leave of absence, they will have one month after returning from leave to complete any training that was required during their period of leave.

Mayoral training

The Bill inserts new provisions to require the mayor and any deputy mayor or acting mayor to complete mayoral training within one month of their election or appointment.

An acting mayor is only required to complete the training if their appointment is for a period of one month or more. In recognition that an acting mayor may perform the role on more than one occasion, an acting mayor is not required to complete the training if they have already completed it in the previous 12 months.

The CEO of the council has an obligation to ensure that the mayoral training is available to be undertaken and to provide reasonable assistance to a mayor, deputy mayor or acting mayor to enable them to access the training.

A failure to complete the training and make a written declaration within the timeframes prescribed by the regulations may result in a councillor's allowance being withheld until the training is complete.

The content that must be covered in this new mandatory training will be prescribed in regulations and will be developed through further consultation.

Model Councillor Code of Conduct

The Bill amends section 139 of the LGA 2020 to require councillors to observe a Model Councillor Code of Conduct (Model Code) as prescribed in the regulations.

The Model Code will provide consistent and uniform standards of behaviour across the state. A breach of the Model Code will be considered misconduct and will be grounds for an application to be made for an internal arbitration process.

As the Model Code will be prescribed by regulations, councils will no longer be required to adopt a Councillor Code of Conduct. However, councillors will continue to be required to commit to abide by the Model Code when taking the oath or affirmation of office and councils will be required to publish the Code on their website.

Although these changes mean that councils will no longer be able to include other matters in the Model Code, Councils will be able to supplement the Model Code by adopting supporting council policies that reflect local circumstances.

The Bill also requires councils to develop, adopt and maintain any prescribed policies that would support a councillor to perform their role in accordance with section 28 of the LGA 2020. This provision is intended to allow certain council policies to be incorporated into the Model Code, where it is considered appropriate, and in recognition that councils may require some flexibility to account for local circumstances.

The Bill also inserts a new provision to enable regulations to prescribe procedures that councils must implement in relation to dealing with alleged breaches of the Model Code. Subject to consultation, this provision may enable processes for resolving complaints in the first instance to be prescribed.

The Model Code and these regulations will be designed through consultations.

Strengthen the role of the mayor to promote improved behaviour

The Bill amends section 18 of the LGA 2020 (role of the mayor) to strengthen the ability of the mayor to promote behaviour that meets the standards expected of councillors and hold councillors to account for poor behaviour.

It does so by clarifying, for the avoidance of doubt, that any reasonable steps taken by the mayor that are carried out in a reasonable manner to perform their role is not bullying.

Early intervention and effective dispute resolution

Removal of VCAT's jurisdiction with respect to councillor conduct panel decisions

The Bill repeals section 170 of the LGA 2020 to remove the entitlement for councillors affected by a decision of a Councillor Conduct Panel to seek a review of the decision by the Victorian Civil and Administrative Tribunal (VCAT).

Currently VCAT challenges enable councillors who have had a finding of serious misconduct made against them to re-litigate the matter and have another go at defending their conduct. This renders the councillor conduct process ineffective, prolongs proceedings and places a burden on all those involved in the matter. It also fails to recognise the independence and fairness the Councillor Conduct Panel process affords parties at first instance.

Those affected by a decision of a Councillor Conduct Panel will still be able to lodge an appeal at the Supreme Court on the grounds that the decision is not legal, reasonable or fair.

This is consistent with internal arbitration processes, where VCAT review of a decision of an arbiter is not available.

Councillors affected by a decision made as a result of an application submitted prior to this amendment coming into operation in October 2024 will still be able to lodge an appeal at VCAT.

Councils must not indemnify councillors in relation to arbitrations and Councillor Conduct Panels except in limited circumstances

The Bill prevents a council from indemnifying a councillor against legal cost incurred to defend or be a party to an internal arbitration or Councillor Conduct Panel. This includes any process or proceeding relating to an application, decision or determination of an arbiter or Councillor Conduct Panel.

These proceedings are intended to be informal and provide a timely resolution of disputes. The LGA 2020 makes this clear by providing that parties do not have a right to representation unless representation is considered necessary to ensure that the process is conducted fairly.

If an arbiter or a Councillor Conduct Panel grants a party leave to have legal representation, then a council will not be prevented from indemnifying a councillor.

Councils will also not be prevented from seeking legal advice in relation to council conduct processes.

Stronger sanctions that may be imposed by an arbiter

The Bill amends section 147 of the LGA 2020 to increase the period of suspension that may be imposed by an arbiter on a finding of misconduct. It also enables an arbiter to direct that a councillor cannot attend or participate in a particular council meeting or is ineligible to hold the positions of mayor or deputy mayor for up to 12 months.

This will mean that an arbiter who has made a finding of misconduct against a councillor may:

- direct the councillor to make an apology in a form or manner specified by the arbiter
- suspend the councillor from the office of councillor for a period specified by the arbiter not exceeding 3 months
- direct that the councillor be removed from any position where the councillor represents the council for the period determined by the arbiter

- direct that the councillor is removed from being the chair of a delegated committee for the period determined by the arbiter
- direct a councillor to attend or undergo training or counselling specified by the arbiter
- direct that the councillor is not to attend or participate in a council meeting specified by the arbiter that occurs after the meeting at which the decision and statement of reasons are tabled
- direct that the councillor is ineligible to hold the office of mayor or deputy mayor for a period specified by the arbiter not exceeding 12 months.

Other technical amendments to improve the operation of provisions relating to the councillor conduct framework

The Bill will also make a number of minor and technical amendments to improve the operation of provisions relating to the councillor conduct framework under the LGA 2020.

This includes amendments to:

- clarify that the role of a councillor set out in section 28(1) of the LGA 2020 is not intended to be an exhaustive description of the role of a councillor
- provide for the delegation of the Principal Councillor Conduct Registrar's functions, duties and powers to any person employed under Part 3 of the *Public Administration Act 2004*
- clarify certain processes including in circumstances where related applications are made in relation the same conduct
- clarify the effect of a councillor's suspension on any ongoing arbitration or councillor conduct panel processes
- better harmonise internal arbitration processes and Councillor Conduct Panel provisions where appropriate.

Oversight mechanisms

Suspension and disqualification of individual councillors

The Bill provides the Minister with the ability to suspend a councillor for up to 12 months if the Minister is satisfied, on receiving advice from a municipal monitor or commission of inquiry, that the councillor is creating a serious risk to health and safety at the council or is preventing the council from performing its functions.

The Bill includes a number of procedural safeguards to ensure that this power is exercised appropriately. This includes:

- a requirement for a municipal monitor or Commission of Inquiry to provide procedural fairness to a person against whom an adverse finding is included in their report

- a requirement for the Minister to be satisfied that the councillor has not already been subject to a Councillor Conduct Panel determination in respect to the conduct and that a matter is not currently under way
- a requirement for the Minister to notify the councillor of the Minister's intention to suspend them and consider any response they provide.

The suspended councillor will also be ineligible to hold the office of mayor or deputy mayor, or to chair a delegated committee of the council, for the remainder of the 12-month term.

The Bill also enables the Governor in Council to disqualify a person from standing at future council elections on the recommendation of the Minister.

This can only occur if:

- the council the person was elected to was dismissed during their term; and
- the Minister is satisfied, on receiving advice from a municipal monitor or commission of inquiry, that the person created a serious risk to health and safety at the council or prevented the council from performing its functions during their time as a councillor.

Similar procedural fairness requirements apply to the exercise of this power by the Minister.

Clarify the application of privileges and statutory secrecy to municipal monitors and Commissions of Inquiry

The Bill seeks to ensure that municipal monitors and commissions of inquiry have adequate information gathering powers by clarifying the application of privileges and statutory secrecy provisions to the disclosure of information by councils.

The Bill seeks to encourage the disclosure of information to a municipal monitor by providing that:

- information provided by a council to a municipal monitor that is legally privileged does not cease to be the subject of legal professional privilege
- when information that is confidential is provided to a municipal monitor, a person cannot be made subject to any criminal, civil, administrative or disciplinary proceedings or actions only because the person has complied with the request
- councils must provide reasonable assistance to a municipal monitor.

In relation to commissions of inquiry, the Bill clarifies the meaning of 'reasonable excuse' for the purpose of complying with a request of a Commission, making it consistent with the definition of 'reasonable excuse' in the *Inquiries Act 2014*.

The Chief Municipal Inspector

The Bill will provide the Chief Municipal Inspector (CMI) with the power to table reports in Parliament and brief Ministers with responsibilities under the LGA 2020.

The Bill also provides the CMI with the power to serve infringement notices for specified electoral and personal interests related offences under the LGA 2020.

These offences and their respective penalty amount will be prescribed in regulations.

The types of offences that are intended to be made infringeable are low level offences relating to the conduct of council elections and personal interests returns, such as the requirement to submit campaign donation returns.

The proposed infringement regulations will be developed in accordance with the Attorney-General's Guidelines to the *Infringements Act 2006*.

Other technical amendments relating to oversight and appointment powers

The Bill will also make a number of minor and technical amendments relating to oversight and appointment powers under the LGA 2020.

This includes amendments to:

- streamline the current stand down provisions to automatically stand down a councillor who is charged with an offence that would result in their disqualification until the charge is withdrawn or they are not convicted of the offence. If the charge is withdrawn or no conviction is recorded, the councillor is entitled to receive any allowance that has been withheld. If a councillor is convicted, then they are disqualified and the office is vacated.
- improve the administration of Ministerial appointments by clarifying and making consistent provisions relating to instruments of appointments and councils' obligations to cover costs of Ministerial appointments
- authorise the tabling of a commission of inquiry report in Parliament on days Parliament is not sitting and provide for a report to be absolutely privileged upon publication
- provide municipal monitors with statutory immunity, consistent with other statutory appointments under the LGA 2020.

Other miscellaneous amendments

The Bill includes other miscellaneous amendments that relate to the conduct of council elections and that seek to remedy administrative limitations and ensure that the LGA 2020 operates as intended.

Changes to the close of the roll

The Bill changes the close of the roll for the upcoming October 2024 council elections to 7 August 2024.

By moving this date forward other key dates such as the opening and closing of nominations and the date for ballot pack mail-outs can also be brought forward through the Local Government (Electoral) Regulations 2020. This will provide more time for candidates to nominate and for the Victorian Electoral Commission (VEC) and CEOs to undertake their critical functions in relation to the conduct of local government elections.

Public access to summary of personal interests

Section 135 of the LGA 2020 requires the CEO of a council to prepare a summary of the personal interests information disclosed by a person in a personal interests return and to publish a summary of the personal interests on the council's website.

To ensure the timely publication of these summaries, the Bill amends sections 135 of the LGA 2020 to require this summary of personal interests to be published on the council's Internet site within 45 days after an initial personal interests return or biannual personal interests return is due to be lodged.

Compliance exemptions

Section 177 of the LGA 2020 enables councils to apply to the Minister for a compliance exemption from a regulatory requirement located in either the LG Act 2020 or regulations made under the LGA 2020. The scope of a compliance exemption was intended to be limited to requirements located in regulations made under the LGA 2020 as evidenced by the Explanatory Memorandum for the Local Government Bill 2019 which stated that clause 177 'allows a council to apply to the Minister for an exemption from compliance with a requirement set out in a regulation'.

This Bill amends section 177 of the LGA 2020 to clarify that a council may apply for a compliance exemption from a regulatory requirement under regulations made under the LGA 2020, and not the Act itself.

Clarifying the operation of section 114 with respect to the transfer of land

Section 114 of the LGA 2020 requires a council that is selling or exchanging land to comply with notification, consultation and valuation requirements, except where section.

Currently it is not clear how section 114 of the LGA 2020 applies to circumstances where a council transfers or gifts land without consideration or for a nominal amount to an entity, other than when transferring or exchanging land to an entity specified in section 116 of the LGA 2020.

The Bill amends section 114 of the LGA 2020 to clarify that the procedural requirements set out in section 114 also apply to a council which is transferring land to another person or entity without consideration or for a nominal amount.