

# Fact Sheet - Local Government Legislative Amendment (Rating and Other Matters) Act 2022

The *Local Government Legislative Amendment (Rating and Other Matters) Act 2022* received Royal Assent on 9 August 2022. The Act makes a series of miscellaneous and technical amendments to the *Local Government Act 2020* (LG Act 2020) and other Acts.

## Overview

The *Local Government Legislation Amendment (Rating and Other Matters) Act 2022* ('Amendment Act') makes a series of miscellaneous and technical amendments to the *Local Government Act 2020* (LG Act 2020) and other Acts in addition to the rating amendments to the *Local Government Act 1989* (LG Act 1989).

Broadly, these 'non-rating amendments' include the following:

- amendments to the LG Act 2020 in relation to confidentiality provisions which affect the processing and handling of Freedom of Information requests by councils, and other miscellaneous and technical amendments to provisions that clarify and improve their operation
- technical amendments to the Workplace Injury Rehabilitation and Compensation Act 2013, the *Accident Compensation Act 1985*, and the *Essential Services Commission Act 2001*
- minor amendments to the *Domestic Animals Act 1994* to introduce a regulation making power relating to reuniting lost pets and deceased pets.

This fact sheet provides an outline of the non-rating amendments described above.

## Amendments to the *Local Government Act 2020* (LG Act 2020)

### Confidential information and Processing of FOI requests

Under the *Freedom of Information Act 1982* (FOI Act), an agency, which is defined to include a local council, is expected to provide a

right of access to information and disclose a document upon request made in accordance with that Act, unless the document is exempt from release or contains exempt information.

The Amendment Act amends section 125 of the LG Act 2020 to modify how certain kinds of confidential information is to be treated under the FOI Act. This amendment provides that documents containing information described in paragraphs (a) to (g) of the definition of confidential information in section 3(1) of the LG Act 2020, are not automatically exempt documents within the meaning of section 38 of the FOI Act.

The effect of the amendment is to ensure that councils process FOI requests for those categories of confidential information where similar or equivalent categories of information would be exempt under the FOI Act, in accordance with those applicable exemptions under the FOI Act. This upholds the principles of transparency and accountability that underpin both Acts and removes any complexity to processing FOI requests.

### Information relating to the Internal Arbitration Process and the Councillor Conduct Panel process

Additional amendments are also made to section 125 of the LG Act 2020 to provide that confidential information may be disclosed if it is information provided for the purposes of an application for internal arbitration or Councillor Conduct Panel hearing.

Further amendments are made to section 145 of the LG Act 2020 to ensure that, in addition to information provided to or produced by an arbiter for the purpose of an Internal Arbitration Process, the following information is also confidential information under the Act:

- information in an application for an Internal Arbitration Process
- information provided to a Principal Councillor Conduct Registrar or produced by the Principal Councillor Conduct Registrar for an Internal Arbitration Process.

These amendments to section 145 ensure consistency and alignment in how information is treated for Internal Arbitration Processes and Councillor Conduct Panels.

## Council integrity - Councillor Code of Conduct

The Amendment Act amends section 139 of the LG Act 2020 so that the Councillor Code of Conduct will be taken to include the standards of conduct and other matters prescribed in Regulations for that purpose. This removes the need for Councils to republish the standards of conduct prescribed by the Local Government (Governance and Integrity) Regulations 2020 in the Councillor Code of Conduct.

Technical amendments are also made to the definitions of **misconduct** and **standards of conduct** in section 3(1) of the LG Act 2020 to reflect that the Councillor Code of Conduct will automatically include the standards of conduct prescribed under the Regulations.

## Council integrity – Internal Arbitration Process

The Amendment Act amends section 141 of the LG Act 2020 to make it clear that the rules of natural justice apply to the Internal Arbitration Process. Making this explicit ensures consistency with Councillor Conduct Panel hearings under the LG Act 2020.

A new section (147A) is inserted into the LG Act 2020, to provide that an arbiter is not personally liable for anything done or omitted to be done in good faith in the exercise of a power or the discharge of a duty under the LG Act 2020 or in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act. Any liability resulting from such an act or omission that would, but for new section 147A, attach to an arbiter and/or? will attach to the Council.

This new section 147A will ensure that there is consistency in the immunity provided to arbiters and members of Councillor Conduct Panels, which examine applications regarding

misconduct and serious misconduct by a Councillor respectively.

New sections 149(1)(ca) and (cb)) are inserted in the LG Act 2020 to make it expressly clear that the functions of the Principal Councillor Conduct Registrar include to provide general assistance to arbiters in relation to their functions and to publish any decision made by an arbiter and the statement of reasons for that decision. This ensures alignment of the Principal Councillor Conduct Registrar's functions with respect to both the Internal Arbitration Process and the Councillor Conduct Panel process.

## Other miscellaneous and technical amendments

The Amendment Act also makes various technical amendments to provisions of the LG Act 2020, including the following:

Sections 15(2)(b) and 17(1): Clarifies that, in determining the electoral structure or ward boundaries of a Council, the number of voters per Councillor in a ward must not vary from the average number for all of the wards of the municipal district by more than 10 per cent.

Division 6 of Part 7 and section 229: Makes it expressly clear that the processes for standing down a Councillor under sections 224 (by Governor in Council) and 229 (by VCAT) of the LG Act 2020 are separate and unrelated.

Sections 240(12), 243 and 266(2): Clarifies that these provisions will apply to the elections held on the fourth Saturday in October 2024 for the Whittlesea City Council and Casey City Council (despite the elections not being the second general elections for those Council since the introduction of the LG Act 2020).

Section 285(4): Provides that the process for counting votes at a countback must include preferences indicated for a Councillor who was previously elected at the original election and for a Councillor elected at any subsequent countback.

Section 329(7), (8) and (9): Ensures these subsections correctly refer to the commencement of section 361 of the LG Act 2020 (rather than section 362).

The effect of this is that despite the repeal of key provisions in the *Local Government Act 1989*:

- that Act continued to apply to any Councillor or Mayor in office until the general elections in 2020,
- to the preparation of council strategic plans for the financial year ending 30 June 2021,
- and to any internal resolution procedure being conducted or Councillor Conduct Panel established under that Act
- a commission of inquiry or a municipal monitor that was appointed under that Act at the time that the new equivalent provisions of the LG Act 2020 came into operation (on 24 October 2020), is taken to have been appointed under the LG Act 2020.

Further, these amendments are taken to have commenced on 24 October 2020, so that the savings and transitional arrangements made by section 329(7), (8) and (9) are appropriately preserved.

### Amendments to the *Essential Services Commission Act 2001* (ESC Act 2001)

The Amendment Act repeals section 10(kb) of the ESC Act 2001 which incorrectly provided that the Essential Services Commission had functions under section 268 of the LG Act 2020.

### Amendment to the *Accident Compensation Act 1985* (AC Act 1985)

The Amendment Act amends section 82(2A)(d) of the AC Act 1985 to replace the reference to section 154 of the LG Act 2020 (which was incorrectly inserted by the LG Act 2020) with the reference to section 81B of the LG Act 1989.

The effect of the amendment is that there is no entitlement to compensation in respect of a mental injury to a worker caused wholly or predominantly by an application under section 81B of the LG Act 1989 (as in force before its repeal) that alleges misconduct or serious misconduct by a Councillor.

The amendment will apply retrospectively from 24 October 2020 to avoid any unintended consequences of leaving a gap from when the AC Act 1985 was amended in error by the LG Act 2020 (on 24 October 2020) until the commencement of this amendment which fixes the error.

### Amendment to the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act 2013)

The Amendment Act amends section 40(1)(d) of the WIRC Act 2013 to provide that there is no entitlement to compensation in respect of a mental injury to a worker caused wholly or predominantly by an application for an Internal Arbitration Process relating to alleged misconduct of a Councillor under section 143 of the LG Act 2020 or related proceedings. This amendment will ensure that section 40(1)(d) applies to applications for, and hearings regarding, alleged misconduct or serious misconduct by a Councillor.

Further, a transitional amendment is inserted to provide that limitation on entitlement to compensation (made by section 40(1)(d) amendments) only applies to a claim for compensation made on or after the commencement of that amendment.

### Amendment to the *Domestic Animals Act 1994* (DA Act 1985)

The Amendment Act inserts a definition of Council land into section 3(1) of the DA Act 1994:

**"Council land"** means—

- (a) land owned or managed by a Council; or Examples Parks and road reserves.
- (b) roads and public highways that a Council has the care and management of under section 205 of the Local Government Act 1989.

It also inserts new provisions into section 100(1) (paragraphs (fab) and (fac)) of the DA Act 1994, to permit the Governor in Council to make regulations regarding:

- the reuniting of seized or found dogs and cats with their owners
- duties and obligations of Council authorised officers and Council contracted authorised officers in relation to deceased dogs and cats found on Council land (as defined in section 3(1)), including identifying and contacting the owners of those dogs and cats.

For more information visit  
<https://www.localgovernment.vic.gov.au/our-programs/council-rates-and-charges>