

LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2021 – EXPLANATORY NOTES

These regulations bring into effect **sections 48 to 51** of the *Local Government Legislation Amendment Act 2019*.

In particular, the following will take effect: sections 5.102A, 5.103, 5.104 and 5.105.

| | Regulation | Explanation |
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| 3 | Model Code of Conduct | These regulations provide for the model code of conduct for council members, committee members and candidates in Schedule 1. |
| 4 | <i>Local Government (Rules of Conduct) Regulations 2007</i> repealed | This regulation repeals the <i>Local Government (Rules of Conduct) Regulations 2007</i> (Rules of Conduct Regulations) as they now form part of the Model Code regulations (Schedule 1, Division 4). |
| 5 | <i>Local Government (Administration) Regulations 1996</i> amended | <p>This regulation inserts new Part 9A – Minor breaches by council members - into the Model Code regulations. It replaces existing regulation 4 of the Rules of Conduct Regulations (Contravention of certain local laws) and instead inserts it into the Administration Regulations.</p> <p>Part 9A provides that a contravention of a local law that relates to the conduct of people at council or committee meetings is a minor breach for the purposes of section 5.105(1)(b) of the Act. This is not a rule of conduct, which is why it is separate to the provisions in the Model Code.</p> |
| 6 | <i>Local Government (Audit) Regulations 1996</i> amended | This regulation amends the statutory requirements for the compliance audit return to capture the adoption of the Model Code and deletes the reference to the Rules of Conduct Regulations. |
| 7 | <i>Local Government (Constitution) Regulations 1998</i> amended | This regulation amends Schedule 1 Form 7 (Declaration by elected member of council) of the Constitution Regulations to reference the code of conduct adopted by the relevant local government, rather than the Rules of Conduct Regulations. |
| | Schedule 1 – Model code of conduct | |
| 1 | Citation | New section 5.104 of the Local Government Act requires local governments to adopt the model code of conduct within three months of these Regulations coming into operation. Until the Model Code is adopted, in accordance with section 5.104(5), the model code is taken to be a local government’s adopted code of conduct until the local government adopts a code of conduct. |

| | Regulation | Explanation |
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| | | <p>The Model Code, as drafted, provides a template for local governments to adopt the code as their own by inserting their local government name.</p> <p>In accordance with section 5.104(3), local governments can include additional behaviours under Division 3 that are not inconsistent with the Code, which may not currently be represented.</p> <p>To adopt the code, a resolution needs to be passed by an absolute majority. Once the code is adopted, it must be published on the local government's website.</p> |
| 2 | Terms Used | This clause defines "Act", "candidate", "complaint" and "publish". All other terms used have the same meaning as in the Act unless the contrary intention appears. |
| | Division 2 – General principles | |
| 3 | Overview of Division | As per new section 5.103(2)(a), the Model Code is to contain general principles to guide behaviour. These are set out in Division 2. |
| 4 | Personal Integrity | <p>This clause outlines specific personal integrity principles, including the need to:</p> <ul style="list-style-type: none"> • act with reasonable care and diligence; • act with honesty and integrity; • act lawfully; • identify and appropriately manage any conflict of interest; • avoid damage to the reputation of the local government. |
| 5 | Relationships with others | This clause outlines principles for relationships with others, including the need to treat others with respect, courtesy and fairness, and maintain and contribute to a harmonious, safe and productive work environment. |
| 6 | Accountability | This clause outlines principles for accountability, including that decisions should be based on relevant and factually correct information and that a council or committee member should be open and accountable to, and represent, the community in the district. |
| | Division 3 - Behaviour | |
| 7 | Overview of Division | <p>As per new section 5.103(2)(b), the Model Code is to contain requirements relating to behaviour.</p> <p>This division sets the standards of behaviour which enable and empower members to meet the principles outlined in Division 2. Division 3 behaviour breaches are managed by local</p> |

| | Regulation | Explanation |
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| | | governments, and so the division also includes a mechanism to deal with alleged breaches. The emphasis is on an educative role to establish sound working relationships and avoid repeated breaches. |
| 8 | Personal Integrity | <p>This clause provides for behaviours for council members, committee members and candidates, as well as behaviours specific to council and committee members.</p> <p>Behaviours include that a council member, committee member or candidate must ensure their use of social media and other forms of communication comply with the code. Members must also not be impaired by alcohol or drugs in the performance of their official duties.</p> |
| 9 | Relationships with others | <p>This clause provides for behaviours related to relationships with others, including the requirement to:</p> <ul style="list-style-type: none"> • deal with the media in a positive and appropriate manner; • not use offensive or derogatory language when referring to another person; • not disparage the character of another council member, committee member, candidate or local government employee in connection with the performance of their official duties; and • not impute dishonest or unethical motives to another council member, committee member, candidate or local government employee in connection with the performance of their official duties. |
| 10 | Council or committee meetings | <p>This clause provides for behaviours when attending a council or committee meeting. This includes that a council member, committee member or candidate must not:</p> <ul style="list-style-type: none"> • act in an abusive or threatening manner towards another person; • repeatedly disrupt the meeting; or • make a statement that they know, or could reasonably be expected to know, is false or misleading. |
| 11 | Complaints about alleged breach | <p>This clause provides that a person may make a complaint alleging a breach of Division 3 by submitting the complaint in writing (in a form approved by the local government) within one month of the alleged breach occurring.</p> <p>The local government is to authorise at least one person to receive complaints and withdrawals of complaints.</p> |

| | Regulation | Explanation |
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| 12 | Dealing with complaint | <p>This clause provides a process for dealing with complaints. Subclause (1) requires local governments to make a finding as to whether the breach occurred, unless the complaint is dismissed (clause 13), or withdrawn (clause 14).</p> <p>Before making a finding, the person to whom the complaint relates must be given a reasonable opportunity to be heard. A finding about whether the breach has occurred should be based on whether it is more likely than not that the breach occurred. This is the same premise used by the Standards Panel in its decision making.</p> <p>If a finding of breach is made, the local government can choose to take no further action or develop a plan to address the person's behaviour. This may include training, mediation, counselling or any other action considered appropriate. Subclause (5) requires that the local government must consult with the person to whom the complaint relates in preparing the plan.</p> <p>After a finding has been made, written notice of the outcome needs to be given to the complainant and the person to whom the complaint relates.</p> |
| 13 | Dismissal of complaint | This clause provides that a complaint must be dismissed if the behaviour occurred at a council or committee meeting, and the local government is satisfied that the behaviour has already been dealt with, or the person responsible for the behaviour has taken remedial action in accordance with the meeting procedures local law. |
| 14 | Withdrawal of complaint | This clause provides that a complainant may withdraw a complaint at any time before a finding is made. |
| 15 | Other provisions about complaints | This clause provides that a complaint about a candidate cannot be dealt with unless the candidate is elected. It also allows local governments to determine the procedure for dealing with complaints to the extent it isn't already provided for. |
| | Division 4 – Rules of conduct | |
| 16 | Overview of Division | <p>As per section 5.103(2)(c) of the Amendment Act, the Model Code contains rules of conduct. The rules of conduct are specific rules for which alleged breaches (minor breaches) are referred to the Standards Panel. A reference to a council member in this division includes a council member acting as a committee member.</p> <p>The Rules of Conduct Regulations are being repealed (see regulation 4 above) and replaced by this Division.</p> |

| | Regulation | Explanation |
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| 17 | Misuse of local government resources | This clause is based on regulation 8 of the Rules of Conduct Regulations. It provides that a council member must not misuse local government resources, which includes local government property or services. |
| 18 | Securing personal advantage or disadvantaging others | This is based on regulation 7 of the Rules of Conduct Regulations. It provides that a council member must not make improper use of their office to gain advantage or cause detriment to the local government or any other person. |
| 19 | Prohibition against involvement in administration | This is based on regulation 9 of the Rules of Conduct Regulations. It provides that a council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government (council) or CEO. |
| 20 | Relationship with local government employees | This is based on regulation 10 of the Rules of Conduct Regulations. It provides that a council member or candidate must not direct, influence, abuse or threaten a local government employee. |
| 21 | Disclosure of information | This is based on regulation 6 of the Rules of Conduct Regulations. It provides that a council member must not disclose information that is from a confidential document or was acquired at a closed meeting. |
| 22 | Disclosure of interests | This is based on regulation 11 of the Rules of Conduct Regulations. It provides that a council member must disclose impartiality interests, which includes interests arising from kinship, friendship or membership of an association. |
| 23 | Compliance with plan requirement | This is a new rule of conduct that provides for a minor breach if a council member does not comply with a plan requirement (see clause 12(4)(b)) imposed by the local government following a breach of a behaviour under Division 3. |