

LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2020 – EXPLANATORY NOTES

These regulations will 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
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) Regulation 2007</i> repealed.	The new Local Government (Model Code of Conduct) Regulations repeal the Rules of Conduct regulations as the rules now form part of the Model Code.
5	<i>Local Government (Administration) Regulations 1996</i> amended	<p>This clause amends Administration Regulation 29 (Information to be available for public inspection) to delete the requirement to keep a register maintained under regulation 12(5) of the Rules of Conduct. This regulation was deleted when the new gifts framework was introduced in 2019.</p> <p>This clause also inserts new Part 9A – Minor breaches by council members. It replaces regulation 4 of the existing Rules of Conduct Regulations (Contravention of certain local laws) and inserts it into the Administration Regulations.</p> <p>It 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 clause amends the statutory requirements for the compliance audit return to capture the adoption of the Model Code under section 5.104 and deletes the reference to the Rules of Conduct Regulations.
7	<i>Local Government (Constitution) Regulations 1998</i> amended	This clause 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 Rules of Conduct Regulations.
	Schedule 1 – Model code of conduct	
1	Citation	New section 5.104 of the Local Government Act will require local governments to adopt the model code of conduct within three months of these Regulations coming into operation.

		<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 and publish. All other terms used that are also in the Act have the same meaning, unless the contrary intention appears.
	Division 2 – General principles	
3	Overview of Division	<p>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.</p> <p>Throughout the Model Code, where appropriate, the principles, behaviours and rules of conduct are separated into three categories; personal integrity, relationships with others and accountability.</p>
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, diligence, honesty and integrity • act lawfully • avoid damage to the reputation of the local government • act in accordance with the trust placed in council members and committee members, and • participate in decision-making in an honest, fair, impartial and timely manner.
5	Relationships with others	This clause outlines principles for relationships with others, including the need to treat others with respect and maintain and contribute to a harmonious, safe and productive work environment.
6	Accountability	This clause outlines principles for accountability, including the need for decisions to be based on relevant and factually correct information, and to make decisions on merit.
	Division 3 - Behaviour	
7	Overview of Division	As per new section 5.103(2)(b), the Model Code is to contain requirements relating to behaviour.

		This division sets the standards of behaviour which enable and empower council members to meeting the principles outlined in Division 2. Division 3 behaviour breaches are managed by local governments, and so the division also includes provisions about how to manage complaints. The emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment.
8	Personal Integrity	This clause provides behaviours for council members, committee members and candidates, as well as behaviours specific to council and committee members. It includes a behaviour that the use of social media and other forms of communication complies with the code.
9	Relationships with others	This clause provides for behaviours related to relationships with others, including the requirement to: <ul style="list-style-type: none"> • deal with the media in a positive, informative and appropriate manner • not disparage the character of another council member, committee member, candidate or local government employee • not impute dishonest or unethical motives to another council member, committee member, candidate of local government employee • not make a statement that the member of candidate knows, or could reasonably be expected to know, is false or misleading.
10	Complaints about alleged breach	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. The local government is to authorise at least one person to accept the complaints.
11	Local government to deal with complaints	The process for consideration of a complaint is at the discretion of the local government, however, the Code requires that after considering the complaint, the local government must make a finding as to whether the breach occurred. A local government is also required to dismiss a complaint if it is satisfied that the complaint relates to behaviour which occurred at a council or committee meeting that has already been dealt with or the person responsible for the behaviour has taken remedial action in accordance with the meeting procedures local law. It is a requirement, in accordance with 11(3), that before making a finding, the person to whom the complaint relates, is given a reasonable opportunity to be heard.

		<p>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>After a finding has been made, written notice of the outcome should be given to the complaint and the person to whom the complaint relates.</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 could include training, mediation, counselling or any other action considered appropriate.</p>
12	Other provisions about complaints	<p>Clause 12 provides that the procedure for dealing with complaints is a matter for the local government (to the extent it is not inconsistent with clause 11).</p> <p>If a complaint is made about a candidate, the alleged breach cannot be dealt with unless the candidate is elected as a council member.</p>
	Division 4 – Rules of conduct	
13	Overview of Division	<p>As per section 5.103(2)(c), the Code contains specific rules of conduct. The rules of conduct are specific rules, for which alleged breaches are referred to the Standards Panel.</p> <p>A reference to a council member in this division includes a council member acting as a committee member.</p>
14	Misuse of local government resources	This is based on current regulation 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> , Misuse of local government resources.
15	Securing personal advantage or disadvantaging others	This is based on current regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> , Securing personal advantage or disadvantaging others.
16	Prohibition against involvement in administration	This is based on current regulation 9 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> , Prohibition against involvement in administration.
17	Relations with local government employees	<p>This is based on current regulation 10 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>, Relations with local government employees.</p> <p>This regulation also applies to candidates.</p>
18	Disclosure of information	This is based on current regulation 6 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> , Use of information.

19	Disclosure of interest	This is based on current regulation 11 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> , Disclosure of interest.
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