

20 October 2025

The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government
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Dear Minister

Local Government and Other Legislation Amendment (Councillor Conduct) Bill 2025

I refer to the *Local Government and Other Legislation Amendment (Councillor Conduct) Bill 2025* (Bill) that was introduced into NSW Parliament on 14 October 2025.

Local Government NSW (LGNSW) acknowledges the intent of the Bill is to improve transparency and accountability of NSW councils, to ensure misconduct matters are dealt with promptly and appropriately, and to create a one-stop-shop for misconduct matters involving councillors.

The Bill is broadly consistent with LGNSW's 2025 Policy Platform (subclause 18.4) and advocacy to "*Improve the Code of Conduct framework to ensure complaints are dealt with efficiently, effectively and in line with principles of procedural fairness*". However, LGNSW remains concerned about whether the Bill will achieve these objectives and whether the Land and Environment Court (LEC) is the most appropriate court for dealing with significant conduct matters involving councillors (particularly conduct matters involving bullying and sexual harassment).

LGNSW may raise further issues as debate on the Bill progresses given, its introduction has not been accompanied by a supporting updated draft code of conduct, details on the privileges committee that has been foreshadowed, or guidance from the LEC as to how the relevantly expanded jurisdiction will function.

This last point gives us particular cause for concern, as despite our understanding and appreciation of your evidence in recent Budget Estimates hearings about verbal assurances provided by the Chief Justice of the LEC directly to you concerning his willingness and capacity to take on the work and deal with it expediently, that is of course far removed from our industry's experience of that court, including the associated costs for those proceedings.

We note that the Bill seeks to allow the LEC to hear and determine 'public interest proceedings' against councillors in relation to either or both of a breach of "a law" or "the



council's adopted code of conduct", and where the LEC considers it to be in the public interest and breach is established, the court will have expanded powers to make disciplinary orders. Further, the Bill seeks to expand the scope of who can commence proceedings, including allowing a person (other than a State official) to commence proceedings with the leave of the court in some circumstances. These are significant reforms and there is currently an absence of detail about how some of the reforms will work in practice. For example, what will be the application process, will there be a filing fee (and if so, what will the fee be), will there be a need for legal representation, will there be a requirement for conciliation/mediation before arbitration, etc? LGNSW assumes the court will issue practice notes in due course and we would welcome the opportunity to be consulted on these.

LGNSW also raises the following specific concerns in relation to the Bill:

1. Absence of protection for councillors from double jeopardy for 'damages' arising from bullying or sexual harassment

The Bill currently lacks protection for councillors from potentially having to defend separate proceedings in both the Industrial Relations Commission of New South Wales (IRC) and LEC for 'damages' arising from bullying or sexual harassment:

- Section 733D of the Bill will empower the LEC to make disciplinary orders if, on the balance of probabilities, the LEC considers a councillor has contravened i) a law, or ii) the council's adopted code of conduct.

The disciplinary orders the LEC will be empowered to make include an order requiring the councillor to pay "*compensation, damages, a debt or restitution to another person*" – see subsection 733(1)(b)(iv) of the Bill.

Contravention of "a law" will include contravention of the *Industrial Relations Act 1996 (IR Act)* and/or the *Work Health and Safety Act 2011 (WHS Act)* in relation to bullying and sexual harassment.

- The IRC has new bullying and sexual harassment jurisdictions (from 13 October).

Under the IRC's new jurisdictions, employees who reasonably believe they have been bullied or sexually harassed at work (or an industrial organisation acting on behalf of employees) can apply to the IRC for a stop bullying and/or stop sexual harassment order. Where the IRC is satisfied that bullying or sexual harassment has occurred and there is a risk that the employee will continue to be bullied or sexually harassed at work, the IRC can make any order it considers appropriate to prevent the bullying or sexual harassment, including but not limited to an order for the payment of up to \$100,000 in damages as compensation for loss or damage suffered from the bullying or sexual harassment – see sections 144G and 144T of the IR Act.

An “employee” (for the purposes of the IRC’s bullying and sexual harassment jurisdictions) is defined at section 144A of the IR Act as follows:

“144A Definitions

In this part—

employee—

- (a) *includes a worker within the meaning of the Work Health and Safety Act 2011, and*
- (b) *does not include a worker who may apply to the Fair Work Commission for an order under the Fair Work Act 2009 of the Commonwealth, section 789FC. (emphasis added)*

The above definition expands the meaning of “employee” beyond its common law meaning to include a “worker” within the meaning of the WHS Act.

Section 7 of the WHS Act defines a “worker” as follows:

“7 Meaning of “worker”

- (1) *A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as—*
 - (a) *an employee, or*
 - (b) *a contractor or subcontractor, or*
 - (c) *an employee of a contractor or subcontractor, or*
 - (d) *an employee of a labour hire company who has been assigned to work in the person’s business or undertaking, or*
 - (e) *an outworker, or*
 - (f) *an apprentice or trainee, or*
 - (g) *a student gaining work experience, or*
 - (h) *a volunteer, or*
 - (i) *a person of a prescribed class.*
- (2) *For the purposes of this Act, a police officer is—*
 - (a) *a worker, and*
 - (b) *at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.*
- (3) *The person conducting the business or undertaking is also a worker if the person is an individual who carries out work in that business or undertaking.”*

Unlike the definitions under the WHS Act for “person conducting a business or undertaking” and “officer”, which expressly exclude an “*elected member of a local*



authority”when acting in that capacity, there is no such exclusion in the definition of a worker. Given this, LGNSW understands that councillors, whilst carrying out work in any capacity at a council, will fall within the expanded meaning of “employee” and will be able to apply to the IRC for stop bullying and stop sexual harassment orders (including seeking orders for damages of up to \$100,000).

The Bill ought to be amended to prevent a person from commencing proceedings in both the IRC and LEC for damages in relation to the same conduct.

We note that sections 144I and 144V of the IR Act prevent a person from applying for a stop bullying or stop sexual harassment order in the IRC if the person has commenced proceedings or made a complaint in relation to the same conduct under an “*anti-discrimination law*”. In LGNSW’s opinion, sections 144I and 144V of the IR Act ought to be amended to prevent a person from applying for a stop bullying or stop sexual harassment order in the IRC if the person has commenced proceedings or made a complaint in relation to the same conduct in the LEC. There should also be reciprocal provisions in the LG Act to prevent a person from commencing proceedings for a stop bullying or stop sexual harassment order in the LEC if the person has commenced proceedings or made a complaint in relation to the same conduct in the IRC.

2. Whether LEC or IRC?

LGNSW would prefer ‘public interest proceedings’ against councillors be dealt with by the IRC rather than the LEC, particularly where they concern bullying and sexual harassment. Notably, the IRC (including the Industrial Court):

- Is a superior court of record
- Specialises in work, health and safety (WHS) matters
- Can hear and determine bullying and sexual harassment matters (from 13 October 2025)
- Is experienced in conciliating matters, which often results in quicker outcomes and less legal expense (the IRC is generally required to conciliate matters before arbitration); and
- Often deals with issues involving misconduct (behavioural issues).

However, having public interest proceedings dealt with by the LEC (rather than the IRC) should not be used as a basis for delaying passage of the Bill.



In closing Minister, we would ask that you formally establish a working party, including LGNSW representatives, to facilitate the introduction of these new practices. This should include advising on the as yet unseen drafts of updated Codes of Conduct, privileges committee framework, and relevant practice notes of the LEC concerning the relevant jurisdiction should the Bill pass and it be expanded as intended.

For further information please contact Adam Dansie, Director Workforce & Legal on (02) 9242 4140 or adam.dansie@lgnsw.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Phyllis Miller'.

Cr Phyllis Miller OAM
President