

LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR COUNCILLORS

INFORMATION SHEET
September 2024

Local government code of conduct framework

The local government code of conduct framework is prescribed under Part 3, Division 3A of the *Local Government Act 1993* (the Act). The purpose of this information sheet is to provide information about the code of conduct complaints process to councillors who have had a complaint made against them.

What happens when a complaint is made?

Any person may make a code of conduct complaint against a councillor in relation to an alleged breach by the councillor of the code of conduct.

The complaint must be lodged with the general manager of the relevant council within six months after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct.

The general manager is required within 14 days after receiving the complaint to assess the complaint to determine whether it meets the requirements of section 28V of the Act (note: this requirement does not apply if the general manager is the complainant). This includes determining whether the council's internal dispute resolution process has been complied with.

Where the general manager determines that the code of conduct complaint does comply with section 28V, the general manager is to:

- if the complaint is against less than half of all councillors of the council, refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer;
- if the complaint is against half or more of the councillors of the council, refer the complaint to the Director of Local Government.

The general manager is to provide the complaint, including copies of all documentation held by the council in relation to the dispute resolution process undertaken by the council in respect of the complaint, to the Executive Officer of the Code of Conduct Panel.

On receiving a code of conduct complaint, the Executive Officer of the Code of Conduct Panel will appoint a member of the Code of Conduct Panel, who is an Australian lawyer, to be the initial assessor of the complaint. The Executive Officer will provide the initial assessor with a copy of the complaint.

The initial assessor will undertake an initial assessment of the complaint and decide whether to:

- determine that the whole complaint (or part thereof) is to be investigated; or
- dismiss the whole complaint (or part thereof); or
- refer the whole complaint (or part thereof) to another person or authority.

[Act reference: section 28V, 28Z & 28 ZA]

When will a councillor be informed that a complaint has been made against them?

A councillor against whom a complaint is made will be informed that a complaint has been made if the initial assessor determines that the complaint (or part thereof) will be investigated and determined by an investigating Panel. At this time, the initial assessor is to:

- notify the councillor against whom the complaint is made, in writing, of the result of the initial assessment and the reasons for it; and
- provide that councillor with a copy of the complaint; and
- provide a copy of the complaint to the Executive Officer.

The councillor will not be informed of the complaint if, following an initial assessment, the initial assessor dismisses the complaint.

The councillor against whom the complaint is made will be invited to respond to the allegations outlined in the complaint and to provide any relevant information or documentation.

[Act reference: sections 28ZA & 28ZE]

What happens when a code of conduct complaint is accepted for investigation?

If the complaint is accepted for investigation, the investigating Panel:

- is to conduct the investigation with as little formality and as expeditiously as possible;
- is not bound by the rules of evidence; and
- must observe the rules of natural justice.

The investigating Panel may accept evidence given orally on oath or affirmation or by written submissions and documents verified by a statutory declaration.

At any time during the investigation the investigating Panel can make a written request to the complainant, the councillor against whom the complaint is made, a witness or the relevant council to provide information, including documents, that the investigating Panel considers relevant to the determination of the complaint. A person requested to provide information is to do so within the period specified by the investigating Panel, including providing a statutory declaration verifying the accuracy of the information they provide.

It is important for councillors to recognise that a decision by the initial assessor to accept a complaint for investigation does not infer that the complaint is more likely to be upheld.

[Act reference: section 28ZE]

Is a complaint confidential?

Complaints should be treated as confidential. The parties to a complaint should keep the complaint, and all information provided to, and by, the investigating Panel during the assessment and investigation of the complaint (for example, supporting information provided by the complainant and any response to the complaint provided by the councillor against whom the complaint is made), confidential and out of the public domain. This applies from lodgement of the complaint up until:

- the complaint is withdrawn by the complainant;
- the complaint is dismissed by the initial assessor on initial assessment; or
- the Panel's determination report is made public by being included within an agenda item at the first open council meeting at which it is practicable to do so.

Under the *Local Government Act 1993*, a person must not make improper use of information acquired by the person in relation to a code of conduct investigation. This includes using the information to:

- gain an advantage or to avoid a disadvantage for oneself, a member of one's family or a close associate; or
- cause any loss or damage to any person, council, controlling authority, single authority or joint authority.

A fine of up to 50 penalty units applies for breach of these requirements. In addition, where a councillor breaches this provision, a court may make an order barring the councillor from nominating as a councillor for up to seven years. Alternatively, a court may dismiss from office a councillor, member of a joint authority or member of an audit panel found in breach.

The parties to a complaint should also be aware of the potential for civil proceedings, including under defamation laws, where information in relation to a code of conduct complaint is put in the public domain.

[Act reference: section 339]

Will the Panel hold a hearing into the complaint?

The investigating Panel is to investigate a complaint by means of a hearing, unless it reasonably considers that:

- neither the complainant or the councillor against whom the complaint is made would be disadvantaged if a hearing were not held and it is appropriate in the circumstances not to hold a hearing; or
- a hearing is unnecessary in the circumstances because the investigation of the complaint can be adequately conducted by means of written submissions and/or documentary evidence.

The investigating Panel may change its decision not to hold a hearing at any time before determining the complaint.

[Act reference: section 28ZG]

What happens at a hearing?

A hearing is an inquiry into the matters raised in the complaint that are in dispute. It is not to be adversarial.

The investigating Panel can require a person (in writing) to attend a hearing and give evidence in person and/or provide documents. Evidence at a hearing is taken on oath or affirmation and can be given orally or in writing.

At a hearing, witnesses may be called by the complainant, the councillor against whom the complaint is made and the investigating Panel.

With the consent of the investigating Panel, a person, a complainant or councillor against whom the complaint is made may be represented at a hearing by an advocate, but that person cannot be an Australian lawyer.

Hearings are closed to the public.

The investigating Panel can regulate its own procedures for a hearing.

[Act reference: section 28ZH]

Can either party to a complaint recover the costs of the complaint?

No. Each party to a complaint bears their own costs associated with the complaint.

[Act reference: section 28ZN]

What is the timeframe for investigating and determining a complaint?

The investigating Panel is to make every endeavour to determine a complaint within 90 days of determining to investigate it. If part of the complaint was referred to another person or authority, the investigating Panel has 120 days to do so.

If the investigating Panel is unable to meet these time frames, the investigating Panel is to include the reasons for this in its determination.

[Act reference: section 28ZD]

What sanctions can the investigating Panel impose when it upholds a complaint?

If the investigating Panel upholds a code of conduct complaint, it may impose one or more of the following sanctions on the respondent councillor:

- a caution;
- a reprimand;
- a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
- a requirement to attend counselling or a training course;
- suspension from performing the functions and powers of his or her office for a period not exceeding 3 months.

In some circumstances, the Panel may also determine not to impose a sanction despite upholding a complaint.

[Act reference: section 28ZI]

Will I receive a copy of the Panel's determination report?

The investigating Panel is to provide a copy of its determination report to each complainant, the councillor against whom the complaint is made, the general manager and the Director of Local Government within 28 days of making a determination.

In circumstances where it is necessary to refer to information that is classified as confidential in the determination report, the investigating Panel is to include this information separately in an addendum to the report. This information is to be provided to the complainant (where that complainant is a councillor), the councillor against whom the complaint is made, the general manager and the Director of Local Government.

This information will not be provided to a complainant who is not a councillor.

[Act reference: sections 28ZK]

Is the determination report made public?

Following receipt of a determination report, the general manager of the council is to include it within an item on the agenda for the first open council meeting at which it is practicable to do so.

If the general manager receives an addendum to the report, they are to include it within an item on the agenda at the first closed council meeting at which it is practicable to do so.

A determination report is confidential until it is included on the agenda for the next meeting of the relevant council. An addendum to a report must remain confidential (subject to circulation and discussion for the purposes of the closed council meeting). Fines of up to 50 penalty units apply to any person that breaches these requirements.

Reports that have been tabled at a public meeting will be made available on the Office of Local Government website at www.dpac.tas.gov.au/divisions/local_government.

A council must report the number of code of conduct complaints received during the relevant financial year, and the number that were upheld (whether wholly or in part), in its annual report. The Council must also detail in the report the total costs met by the council during the preceding financial year for all code of conduct complaints.

[Act reference: sections 28ZK & 72]

What happens if a councillor fails to comply with a sanction imposed by the investigating Panel?

A councillor must comply with a sanction that requires them to apologise to a person or attend counselling or a training course within the timeframe specified by the investigating Panel. If they fail to comply, they may be subject to a fine of up to 50 penalty units.

A councillor is required to notify the Executive Officer within seven days of complying with a sanction referred to above, and provide the Executive Officer with evidence of that compliance.

If a councillor fails to comply, the Executive Officer is to notify the Director of Local Government in writing. The Director is to deal with the notice as if it were a complaint under section 339E of the Act (Complaints against non-compliance or offence).

[Act reference: section 28ZM]

Can a councillor be removed from office for breaching the code of conduct?

If the investigating Panel suspends a councillor three times during the councillor's current term of office, or within two consecutive terms of office, the investigating Panel is to notify the Minister for Local Government of the details of each suspension. On receipt of the notice, the Minister may remove the councillor from office.

[Act reference: section 28ZL]

Can I apply for a review of the Panel's decision?

Yes. A person may apply for a review of the investigating Panel's decision if they were aggrieved by a determination. A person may apply on the grounds that the investigating Panel failed to comply with the rules of natural justice and may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination.

[Act reference: section 28ZP]

Contact details

Code of Conduct Panel Executive Officer:

Email: lgconduct@dpac.tas.gov.au

Telephone: 03 6232 7220

Office of Local Government:

Email: localgovernment@dpac.tas.gov.au

Telephone: 03 6232 7022

Further information

Further information about making a Code of Conduct complaint is available on DPAC's Office of Local Government website at www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/making_a_code_of_conduct_complaint.

Disclaimer: Information on legislation contained in this document is intended for information and general guidance only. **Such information is not professional legal opinion.**