

LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR GENERAL MANAGERS

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 on the role of general managers in the code of conduct complaint process.

Who can make a complaint?

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.

A complaint must be made by a natural person. A company or incorporated body cannot make a complaint. A complaint on behalf of a company or incorporated body should be made by a natural person who is an office holder.

A person may make a complaint against more than one councillor, if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged breach of the code of conduct.

A complaint may not be made by more than two complainants jointly.

[Act reference: section 28V]

What information needs to be included in a complaint?

A code of conduct complaint must –

- be in writing;
- state the name and address of the complainant;
- state the name of each councillor against whom the complaint is made;
- state the provisions of the code of conduct that the councillor has allegedly contravened;
- contain details of the behaviour of each councillor that constitutes the alleged contravention;
- contain details of all efforts by the complainant to resolve the subject of the complaint;

- provide details of whether the complainant has engaged in the council's dispute resolution process, the outcome of that process, and the reasons why the complainant is not satisfied with that outcome. If the complainant did not complete the dispute resolution process, they must provide details of the attempts they made to resolve the subject of the complaint through the dispute resolution process, or why they believe that the process is not appropriate in respect of the complaint;
- be accompanied by a statutory declaration signed by the complainant verifying the accuracy of the information in the complaint; and
- be accompanied by the code of conduct complaint lodgement fee.

[Act reference: section 28V]

Complaint forms, the approved statutory declaration form and information about the requirements for completing a statutory declaration are available on the Department of Premier and Cabinet's (DPAC) 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 or by contacting the Executive Officer of the Code of Conduct Panel on 6232 7220 or by email at lgconduct@dpac.tas.gov.au.

It is important that the complainant completes these forms correctly or they may need to be returned to them.

If you face any barriers which prevent you from completing the complaint forms, the Office of Local Government can provide necessary assistance by contacting the Executive Officer of the Code of Conduct Panel on 6232 7220 or by email at lgconduct@dpac.tas.gov.au.

How is a complaint lodged?

Code of conduct complaints are required to 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.

[Act reference: section 28V]

What is the fee for lodging a complaint?

The code of conduct complaint lodgement fee is prescribed under Schedule 3 (Fees) of the *Local Government (General) Regulations 2015*. The lodgement fee is 50 fee units. The current fee is published 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

The value of a fee unit is adjusted for indexation each financial year and published on the Department of Treasury and Finance website at:

www.treasury.tas.gov.au/economy/economic-policy-and-reform/fee-units

What must the general manager do with the complaint?

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).

Where the general manager determines that the code of conduct complaint complies 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.

If the general manager determines that the complaint does not comply with section 28V, they are to return the complaint to the complainant and notify them in writing and within 14 days after receiving the complaint that:

- the complaint does not meet the requirements of section 28V and the reasons for this;
- the complainant may lodge an amended or substituted complaint, without payment of a further fee, provided it is lodged:
 - within the prescribed timeframe for making a complaint (within six months of the alleged contravention); or
 - where the complaint is returned to the complainant after the end of the six month period, or less than 14 days before the end of that period, the complainant may lodge the amended or substituted complaint within 14 days after receiving the returned complaint.

[Act reference: sections 28Y]

Does the general manager have a role in determining whether the complainant has made a reasonable effort to resolve the complaint with the councillor against whom the complaint is made?

No. The general manager has no role in assessing whether the complainant has made a reasonable effort to resolve the complaint with the councillor against whom the complaint is made. This is the role of the initial assessor following referral of the

complaint by the general manager to the Executive Officer of the Code of Conduct Panel.

The general manager's role is limited to assessing the complaint, as outlined above, to determine whether the complainant has completed the section requiring details of what efforts the complainant has made to resolve the complaint with the councillor against whom the complaint is made.

This must include whether the complainant has completed the council's dispute resolution process, the outcome of that process and the reasons why the complainant is not satisfied with that outcome. If the complainant did not complete the dispute resolution process, they must provide details of the attempts they made to resolve the subject of the complaint through the dispute resolution process, or why they believe that the process is not appropriate in respect of the complaint.

Where the complainant has failed to complete this section, the general manager must return the complaint to the complainant and notify them in writing and within 14 days after receiving the complaint that:

- the complaint does not meet the requirements of section 28V and the reasons for this;
- the complainant may lodge an amended or substituted complaint, without payment of a further fee, provided it is lodged:
 - within the prescribed timeframe for making a complaint (within six months of the alleged contravention); or
 - where the complaint is returned to the complainant after the end of the six month period, or less than 14 days before the end of that period, the complainant may lodge the amended or substituted complaint within 14 days after receiving the returned complaint.

[Act reference: section 28V &28Y]

What happens when a complaint is referred to the Director of Local Government?

Where the general manager refers a complaint to the Director of Local Government, the Director is to determine whether to accept or reject the referral and notify the general manager of that determination within 28 days of receiving it.

- If the Director accepts the referral of the complaint, it becomes a complaint under section 339E of the Act (Complaints of non-compliance or offence under the Act).
- If the Director refuses to accept the referral, the general manager is to, as soon as practicable, refer the complaint to the Executive Officer of the Code of Conduct Panel. The Executive Officer is then required to constitute an investigating Panel to investigate the complaint.

If the Director fails to notify the general manager as required, the Director is taken to have accepted the referral of the complaint.

[Act reference: section 28Z]

What happens when a complaint is referred to 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.

Within 28 days after an initial assessor is appointed, the initial assessor is to notify the Director, the complainant and the general manager, in writing, of the result of the initial assessment and the reasons for that result.

If the initial assessor determines that the complaint (or part thereof) will be investigated and determined by an investigating Panel, 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 investigating Panel will then proceed to investigate and determine the complaint.

[Act reference: sections 28Z & 28ZA]

What happens if a complainant wants to amend or withdraw their complaint?

A complainant may amend or withdraw a code of conduct complaint in some circumstances.

A complainant can amend a code of conduct complaint by notice in writing, to the general manager or the investigating Panel, before the Panel has commenced its investigation. The complaint cannot be amended once the investigating Panel has commenced an investigation.

If a notice amending a code of conduct complaint is received by the general manager after the complaint has been referred to the investigating Panel, the general manager is to notify the Executive Officer, in writing, of the amendment.

On becoming aware of an amendment to a complaint, the investigating Panel is to notify the general manager (unless the amendment was provided to the general manager) and the councillor against whom the complaint has been made, in writing of the amendment.

A complainant can withdraw their complaint by notice in writing to the general manager or the investigating Panel at any time before the complaint has been determined.

If a notice of withdrawal is provided to the general manager after the complaint has been referred to the investigating Panel, the general manager is to notify the Executive Officer, in writing, of the withdrawal.

On becoming aware of a notice withdrawing a complaint, the investigating Panel is to notify the general manager (unless the withdrawal was originally provided to the general manager) and the councillor against whom the complaint has been made, in writing of the withdrawal.

[Act reference: sections 28W & 28X]

When is the general manager notified of the outcome of a complaint?

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 must 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]

What are the general manager's obligations on receiving a determination report?

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.

[Act reference: section 28ZK & 28ZP]

What confidentiality requirements apply?

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).

A fine of up to 50 penalty units applies for breach of these requirements.

In addition, 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.

[Act reference: section 28ZK, 339]

Do general managers have a role in monitoring compliance with sanctions issued by the investigating Panel?

No. General managers do not have a role in monitoring compliance with sanctions issued by the investigating Panel for the complaint.

Within seven days after a councillor has fully complied with a sanction, the councillor is to notify the Executive Officer of the Code of Conduct Panel that they have complied with the sanction. The councillor is also required to provide evidence to the Executive Officer of that compliance.

When is a complainant entitled to a refund of the lodgment fee?

A council must refund to the complainant (or to each complainant, in equal shares, where there are joint complainants) the complaint lodgment fee where:

- the complaint is referred by the general manager to the Director of Local Government and the Director accepts the complaint;
- the whole complaint is referred to another person or authority by the investigating Panel and accepted by that person or authority;

- the whole complaint is withdrawn by the complainant (or complainants jointly) prior to the general manager referring it to the investigating Panel;
- the complaint (or part of it) is upheld by the investigating Panel; or
- all the councillors against whom the complaint is made resign or lose office before the complaint is dealt with.

This refund is to be made within 30 days after the circumstances that resulted in the refund being payable.

[Act reference: section 28ZO]

What annual reporting requirements apply?

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: section 72]

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 the Code of Conduct complaint process is available on the Local Government Division website at

[www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_condu
ct/making_a_code_of_conduct_complaint](http://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/making_a_code_of_conduct_complaint).

