

Complaint Handling Policy for complaints lodged with the Director of Local Government

Council dispute resolution policies

The first step in dealing with a complaint that relates to a council is to consider whether the matter can be appropriately resolved with the Council. This will depend on the nature and complexity of the matter. For example, there may be circumstances where a minor breach of a procedural requirement can be adequately remedied by the Council, whereas evidence of a potential offence under the *Local Government Act 1993* (the Act) or related legislation is always appropriately directed to the Office of Local Government. You may wish to contact the Office of Local Government in the first instance to discuss your concern and appropriate avenues to resolve it.

Office of Local Government

The Department of Premier and Cabinet's Office of Local Government (the Office) supports the functions and powers of the Director of Local Government (the Director). The Director, appointed under section 334 of the Act, is responsible for the general administration of the Act. One of the Director's functions includes the investigation of complaints made against councils, councillors, general managers and staff of councils.

The purpose of this policy is to outline how complaints are handled and includes:

- what happens when complaints are received by the Director;
- how the Director decides which complaints should be investigated; and
- what the outcomes of an investigation might be.

Complainants (those lodging complaints) are encouraged to resolve complaints with the respondent (the subject of the complaint) or with the council prior to lodging a complaint with the Director.

Procedural fairness during investigations is ensured by treating all people fairly, making decisions free from bias and providing a fair hearing.

Confidentiality of complainants and respondents is maintained as much as possible when dealing with complaints and investigations. Should the complaint proceed to the point in which a negative finding might be made, the respondent is entitled to be provided with an opportunity to respond to the allegations. This may include providing the identity of the complainant.

Complaints should advise the Office if they do not wish to be identified. This may be considered in determining whether and/or how an investigation is to proceed.

The Director's power to manage complaints

The Director may receive complaints about non-compliance with the Act or offences under the Act, in accordance with section 339E of the Act. Complaints may relate to the council, councillor/s, general manager and/or council employees.

The Director has the power to do anything necessary or convenient to perform any function under the Act, or any other legislation, including the handling of complaints.¹

The Act also provides for evidence gathering powers under sections 338 (council) and 338AA (any person) of the Act. Failure to comply with requirements under those sections is an offence.

Lodging a complaint

Complaints must be in writing and can be posted to PO Box 123, Hobart TAS 7001 or emailed to localgovernment@dpac.tas.gov.au. Complaints must be verified by a statutory declaration prior to being submitted.

Any attachments provided with the complaint must be clearly labelled and referred to within the complaint to highlight why they are relevant.

Complaints are acknowledged in writing within 10 business days once received by the Director.

Preliminary assessment

All complaints are subject to an initial assessment which looks at any available information and determines the best way to address a complaint. The Director will then decide² if the complaint is to be:

- rejected;
- dismissed;
- referred; or
- investigated.

A decision to reject a complaint is made after an initial assessment is completed. A decision to dismiss a complaint can be made at any time during the assessment or investigation process.

A complaint can be considered as a whole or in parts. Therefore, a decision can be made to reject, dismiss, refer or investigate different parts of a complaint. If this occurs the complainant will be notified and provided with advice if the whole or part/s of the complaint are best dealt with by another regulatory authority.

How the Director deals with complaints

Dismissal

The Director may determine the procedure for handling complaints³ and investigations⁴ including reasons for dismissing complaints. The reasons include but are not limited to the following:

1. The Director does not have the power to investigate the complaint

The Director cannot investigate matters that do not relate to functions as described in the Act. Complaints must also relate to a failure by a council, councillor or general manager to comply with the requirements of any Act, or to a possible offence committed by a councillor, general

¹ Section 335(2) *Local Government Act 1993*

² Section 339E(4) *Local Government Act 1993*

³ Section 339E(4) *Local Government Act 1993*

⁴ Section 339EA(3) *Local Government Act 1993*

manager or council employee under the Act.⁵ For example the Director cannot investigate a complaint that relates to a private organisation and does not relate to a council.

Disclosures under the *Public Interest Disclosures Act 2009* cannot be made to or investigated by the Director.

2. The complaint is more appropriately investigated by another authority

Some complaints can be appropriately investigated by more than one regulatory authority. In such cases, the preliminary assessment will consider which authority is best placed to deal with the complaint.

Matters that relate to a breach of the Local Government Code of Conduct for councillors should be dealt with by the Code of Conduct Panel. The Code of Conduct outlines the behaviours that are expected from councillors.

Other authorities who might be better placed to carry out an investigation include the relevant council, the Ombudsman, the Integrity Commission, the Auditor-General and Tasmania Police.

Further information about lodging complaints with these authorities can be found at the link on the Office's webpage titled [Complaints and Investigations](#).

3. The complaint lacks substance

The complaint can be dismissed if it lacks substance. This may be because the preliminary assessment shows that the complaint is vexatious, is frivolous, is based on incorrect information, is not supported by the available information or evidence, or is otherwise misinformed.

4. The complaint can be dealt with appropriately another way

There may be times when a matter can be dealt with by direct contact with the people involved and prevent the need for an investigation. For example the Director can provide advice directly to the council to inform processes and prevent further issues arising.

5. Complaints under investigation or appropriately dealt with previously

In the absence of new and compelling information or evidence, the Director will not investigate complaints that are currently being investigated or have previously been lodged and/or addressed appropriately by other authorities or the Director.

6. Unjustifiable use of resources

Some complaints involve issues which, if proved, would only amount to a technical or minor breach. The investigation of such complaints may not be an appropriate use of the Office's limited resources and can unnecessarily divert time and effort away from more serious investigations.

Additionally, some complaints can be addressed appropriately by direct contact which may include the provision of information or advice or mediation with the relevant people, without the need for a full investigation.

⁵ Section 339E(1)(a) & (b) Local Government Act 1993

7. Investigation of the complaint is not in the public interest

It is important that the Director weighs up the benefits of an investigation against the costs of conducting one. This helps create public value from the work done by the Director and the Office.

Factors to be considered in determining whether it is in the public interest to investigate a complaint include, but are not limited to:

- the nature and seriousness of the alleged breach;
- the time that has elapsed since the alleged breach occurred;
 - usually complaints related to incidents that occurred more than two years ago will not be assessed because, in accordance with section 252A of the Act, legal action in relation to an offence must be started within two years of the offence.
- the likely impact on the wider community of the alleged breach;
- the sufficiency of evidence available to support prosecution for offences;
- whether or not the alleged breach appears to be a mistake made in good faith; and
- whether or not the alleged breach appears to have been made wilfully.

Sharing information from complaints with other authorities

Section 339EA(4) of the Act enables the Director to share information with other regulatory authorities.

Information from a complaint may be shared when it is more appropriately addressed by another authority. This could include sharing the whole or part of the complaint.

The Office will continue to investigate any remaining parts of a complaint that were not provided to another authority.

Authorities that the Office may consider sharing information with include, but are not limited to:

- the Integrity Commission;
- the Ombudsman;
- the relevant council;
- the Auditor-General; or
- Tasmania Police.

Investigation of complaints

The Director prioritises the investigation of complaints involving serious or systemic non-compliance with, or offences under, the Act.

Outcome of complaints

The Director will write to the complainant when a determination has been made and inform them of the outcome. Other people involved may also receive a letter about the outcome.

The outcome may include one of the following:

- dismissed after an initial assessment or investigation or dismissed if it is already being investigated;

- upheld or partly upheld – where the evidence supports a breach of the Act or an offence; and
- referred to another authority to investigate.

The Director may take actions based on the outcome. These may include, but are not limited to:

- referring possible offences to the Director of Public Prosecutions who may prosecute the offence through a court;
- providing education and training to those directly involved or even more broadly if the complaint has highlighted there may be similar issues in other councils;
- providing advice to those involved to facilitate improved behaviour;
- issuing a reprimand and/or caution to require compliance in the future;
- supporting the use of an independent adviser;
- requesting that a statement is read in an open meeting of Council; and
- recommending to the Minister for Local Government that they consider:
 - issuing a performance improvement direction⁶; or
 - establishing a Board of Inquiry⁷ or a Local Government Board⁸ to further investigate or review issues.

Investigation records

Investigations are undertaken on a confidential basis. This is to protect the integrity of information and evidence obtained during the investigation and to promote confidence in investigation processes so that persons are able to provide information without fear of retribution.

As such, investigation records are treated as confidential, subject to right to information requirements.

While there may be certain circumstances where it is in the public interest to do so, the Director does not generally make public comment about the issues or result of an investigation, due to its confidential nature.

⁶ Section 214L(1) *Local Government Act 1993*

⁷ Section 215(1) *Local Government Act 1993*

⁸ Section 214(1) *Local Government Act 1993*