

LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR COMPLAINANTS

INFORMATION SHEET
July 2019

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 guidance to complainants on the complaints process.

Can I 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 relevant council's code of conduct.

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 relevant council's code of conduct.

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

[Act reference: section 28V]

What information do I need to include in the complaint?

A code of conduct complaint is to –

- 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 relevant code of conduct that the councillor has allegedly contravened;
- contain details of the behaviour of each councillor that constitutes the alleged contravention;
- be accompanied by a statutory declaration, signed by the complainant, verifying the accuracy of the information in the complaint;
- contain details of all efforts by the complainant to resolve the issue the subject of the complaint; and
- be accompanied by the code of conduct complaint lodgement fee.

[Act reference: section 28V]

Complaint forms are available on the Local Government Division website at: www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct or by contacting the Code of Conduct Panel Executive Officer on (03) 6232 7013.

How do I lodge the complaint, and is there a timeframe to do so?

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 (the respondent councillor/s) committed the alleged breach of the code of conduct.

[Act reference: section 28V]

Is there a fee for lodging a complaint?

Yes. 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. Fee units are adjusted for indexation each financial year. Information about the value of a fee unit is available on the Department of Treasury and Finance website at:

www.treasury.tas.gov.au

What does the general manager do with the complaint?

On receipt of the complaint, the general manager is to assess the complaint to ensure that it meets the information and other 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 these requirements, they are required 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 Code of Conduct Panel 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.

If the general manager considers that the complaint does not comply with these requirements, they are to return the complaint to the complainant and notify them in writing that:

- The complaint does not comply and the reasons for this;
- They may lodge an amended or substituted complaint, without payment of a further fee, provided it is lodged:
 - o 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 & 28Z]

What happens if I don't include information in the complaint form about my efforts to resolve the complaint with the respondent councillor?

As described above, the general manager will check the complaint form to ensure that includes all the required information, including details of all efforts by the complainant to resolve the complaint with the respondent councillor. The complaint form includes a dedicated section for this information.

Failure to complete this section may result in the general manager returning the complaint to you and inviting you to lodge an amended complaint.

[Act reference: section 28V]

What happens when Code of Conduct Panel receives a complaint?

On receiving a code of conduct complaint, the Executive Officer of the Code of Conduct Panel will constitute a Code of Conduct Panel and provide a copy of the complaint to the chairperson.

The chairperson will then do an initial assessment of the complaint and determine whether to:

- Accept the complaint (or part of it) for investigation/determination by the Panel;
- Dismiss the complaint (or part of the complaint); or
- Refer the complaint (or part of it) to another person or authority.

The chairperson is to complete the initial assessment and notify the complainant and the general manager, in writing, of the result of the initial assessment and reasons for it within 28 days of receiving the complaint.

If the chairperson determines that the complaint (or part of it) will be investigated and determined by the Code of Conduct Panel, they are to notify the councillor who is the subject of the complaint (the respondent councillor), in writing, of the result of the initial assessment and reasons for it and provide them with a copy of the complaint. The Chairperson will also provide a copy of the complaint to the other Panel members.

The Panel will then proceed to investigate and determine the complaint.

[Act reference: sections 28Z & 28ZA]

Can the Chair of the Panel dismiss a complaint on an initial assessment?

Yes, in some circumstances. The Chairperson can dismiss a complaint (or part of it) on initial assessment where they consider the complaint:

- is frivolous, vexatious or trivial;

- does not substantially relate to a contravention of the council's code of conduct;
- is made in contravention of a determination of the Chairperson or a previous determination of the Panel.

If the Chairperson dismisses the complaint on the basis that it is frivolous, vexatious or trivial, the Chairperson may direct the complainant not to make a further complaint in relation to the same matter unless substantive new information is provided in the further complaint.

The Chairperson may also dismiss the complaint if they consider that the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint.

[Act reference: section 28ZB]

Can I amend or withdraw my complaint?

A complainant (or joint complainants) 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 Code of Conduct Panel, at any time during the initial assessment of the complaint. The complaint cannot be amended once the 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 Code of Conduct Panel, the general manager is to notify the Panel's Executive Officer, in writing, of the amendment.

The Code of Conduct Panel is to notify the general manager if it receives a written notice of amendment, unless the amendment was provided to the general manager. The Panel is also required to notify the respondent councillor of the amendment if the respondent councillor has been notified of the complaint.

A complainant can withdraw their complaint by notice in writing to the general manager or the Code of Conduct Panel. This can occur at any time prior to final determination of the complaint by the Panel.

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

The Code of Conduct Panel is to notify the general manager if it receives a withdrawal notice.

[Act reference: sections 28W & 28X]

What happens if a code of conduct complaint is accepted for investigation by the Panel?

If the complaint is accepted for investigation, the Code of Conduct Panel is to proceed to investigate the complaint with as little formality, and as expeditiously, as possible and must observe the rules of natural justice.

The 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 Panel can make a written request to the complainant, the respondent councillor, a witness or the relevant council to provide information, including documents, that the 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 Panel, including providing a statutory declaration verifying the accuracy of the information they provide.

[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 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 respondent), 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 Chairperson of the Panel 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 Act, 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; and
- 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 my complaint?

The Panel must hold a hearing into a complaint unless it reasonably considers that:

- Neither the complainant or the respondent councillor would be disadvantaged if a hearing were not hold 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 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 Code of Conduct complaint that are in dispute and is not to be adversarial.

The 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 respondent councillor and the Code of Conduct Panel.

With the consent of the Panel, a person, a complainant or respondent councillor may be represented at a hearing by an advocate but that person cannot be an Australian lawyer.

Hearings are closed to the public.

The Panel can regulate its own procedures for a hearing.

[Act reference: section 28ZH]

Can I recover the costs of my 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 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 Panel has 120 days to do so.

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

[Act reference: section 28ZD]

What sanctions can the Panel impose where they uphold a complaint?

If the 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 Panel is to provide a copy of its determination report to the complainant, the respondent, 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 Panel must include this information separately in an addendum to the report. This information will not be provided to a complainant that is not a councillor.

[Act reference: sections 28ZJ]

Is the determination report made public?

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

A determination report is confidential until it is tabled by the general manager as outlined above. An addendum to a report must remain confidential (subject to circulation and discussion for the purposes of the relevant 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 by the Local Government Division on its website.

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 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 Panel. If they fail to comply, they may be subject to a fine of up to 50 penalty units on conviction for an offence.

A councillor is required to notify the general manager within seven days of complying with a sanction referred to above. If a councillor fails to comply, the relevant general manager is to notify the Director of Local Government in writing. The Director is then required to deal with the matter 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 Code of Conduct Panel suspends a councillor three times during the councillor's current term of office, or within two consecutive terms of office, the 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]

Are there circumstances where I am eligible to receive a refund of the complaint lodgement fee?

Yes. A Council must refund to the complainant (or to each complainant, in equal shares, where there are joint complainants) the complaint lodgement 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 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 Panel;
- the complaint (or part of it) is upheld by the Panel; or

- all the respondent councillors resign or lose office before the complaint is dealt with.

[Act reference: section 28ZO]

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

A person aggrieved by a determination of the Panel, on the ground that the Panel failed to comply with the rules of natural justice, may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on that ground.

[Act reference: section 28ZP]

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