

LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR COMPLAINANTS

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 to complainants about the code of conduct complaints 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 do I need to include in the 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 this 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 these forms are completed correctly, or they may be returned to you.

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 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 allegedly committed the contravention 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. 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 does 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]

What happens when the general manager refers a complaint?

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]

Can the initial assessor dismiss a complaint on an initial assessment?

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

- the complaint to be frivolous, vexatious or trivial; or
- the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint; or
- the complainant has not participated satisfactorily in the council's dispute resolution process; or
- it is not in the public interest for an investigating Panel to be convened; or
- the complaint does not substantially relate to a contravention of the code of conduct; or
- the complaint is made in contravention of a determination of the initial assessor that the complaint (or part thereof) is frivolous, vexatious or trivial and that the complainant is not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint; or

- the complaint is made in contravention of a previous determination of the investigating Panel for the complaint dismissing the complaint, that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

[Act reference: section 28ZB]

Can I amend or withdraw my 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 it 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]

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

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

- to conduct the investigation with as little formality and as expeditiously as possible;
- 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.

[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 the time of lodgement of the complaint until:

- the complaint is withdrawn by the complainant;
- the complaint is dismissed by the initial assessor on initial assessment; or
- the investigating 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 investigating Panel hold a hearing into my complaint?

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

- neither the complainant nor the councillor against whom the complaint is made would be disadvantaged if a hearing was 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 I recover the costs of my complaint?

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

All reasonable costs and expenses incurred in the investigation by the investigating Panel are payable by the relevant council in respect of the complaint.

[Act reference: section 28ZN, 28ZE]

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 councillor against whom the complaint is made:

- 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 investigating Panel may also determine not to impose a sanction despite upholding a complaint.

[Act reference: section 28ZI]

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

Yes. 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]

Is the determination report made public?

Yes. 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]

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 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]

Can I apply for a review of the investigating 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.

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