

# LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR COUNCILLORS

INFORMATION SHEET  
28 July 2022

## 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 about the Code of Conduct complaints process to councillors who have had a complaint made against them.

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

A councillor who is subject to a Code of Conduct complaint (the respondent councillor) will be informed of the complaint if the chairperson of the Code of Conduct Panel (the Panel) determines, following an initial assessment of the complaint, that the whole or part of the complaint is to be investigated and determined by the Panel. The respondent councillor will not be informed of the complaint if, following an initial assessment, the chairperson dismisses the complaint.

Where the complaint proceeds to investigation, the chairperson of the Panel is to notify the respondent councillor of the result of the initial assessment and the reasons for the decision. The chairperson will also provide a copy of the complaint and a copy of any additional information relevant to the complaint provided by the complainant.

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

Any information or documents provided in response (or otherwise required by the Panel during the investigation of the complaint) must be verified by a statutory declaration. 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 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](http://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/making_a_code_of_conduct_complaint) or by contacting the Code of Conduct Panel Executive Officer on (03) 6232 7220 or by email at [lgconduct@dpac.tas.gov.au](mailto:lgconduct@dpac.tas.gov.au).

It is important that these forms are completed correctly or they may be returned to you.

[Act reference: sections 28ZA & 28ZE]

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

It is important for councillors to recognise that a decision by the Code of Conduct Panel to accept a complaint for investigation does not infer that the complaint is more likely to be upheld.

If the complaint is accepted for investigation, the 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:

- Provide it within the period specified by the Panel; and
- Include a statutory declaration verifying the accuracy of the information.

*[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 the complaint?**

The Panel is to 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 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 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. It is not an adversarial process.

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 this 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 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 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 28ZJ]*

## **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 councillor, 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 is to include this information separately in an addendum to the report.

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

*[Act reference: sections 28ZJ & 28ZK]*

## **Is the determination report made public?**

Following receipt of a determination report, the general manager of the relevant council is to ensure that a copy of the determination report is included within an item on the 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, the general manager is to ensure that a copy of the determination report with the addendum is included 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 included within an agenda item 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 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 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]*

## 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]*

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