

LOCAL GOVERNMENT CODE OF CONDUCT – INFORMATION FOR GENERAL MANAGERS

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 (Code of conduct, complaints and complaint resolution) of the *Local Government Act 1993* (the Act). The purpose of this information sheet is to provide guidance 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 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 needs to be included in a 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, the approved statutory declaration form, a checklist for General Managers 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 Code of Conduct Panel Executive Officer on (03) 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.

How is a complaint lodged?

A Code of Conduct complaint is to be lodged with the general manager within six months after the councillor or councillors against whom the complaint is made committed the alleged breach 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 is the general manager's role in the initial assessment of a complaint?

A general manager's role is limited to checking the complaint to ensure that it meets the requirements of section 28V of the Act (note: this requirement does not apply if the general manager is the complainant). This includes checking that the information required under these provisions is included in the complaint.

Where the general manager determines that the code of conduct complaint complies with the requirements of section 28V of the Act, 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
 - o 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 28V, 28Y & 28Z]

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

No. The general manager has no role in assessing whether the complainant has made a reasonable effort to resolve the complaint with the respondent councillor. This is the role of the Chair of the Panel following referral of the complaint by the general manager.

The general manager's role is limited to checking the complaint form to ensure that the complainant has completed the section requiring details of what efforts the complainant has made to resolve the complaint with the respondent councillor.

Where the complainant has failed to complete this section, the general manager will need to:

- Return the complaint to the complainant;
- Notify the complainant that the complaint does not meet the requirements of section 28V of the Act (including the reasons for this); and
- Invite the complainant to lodge an amended complaint, without payment of a further fee, provided it is lodged within the timeframes described above.

[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, the Director is to determine whether to accept or reject the referral and notify the general manager 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 a Code of Conduct 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 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, the chairperson is to notify the councillor who is the subject of the complaint (the respondent councillor), in writing, of the result of the initial assessment and the reasons for it and provide them with a copy of the complaint. The Chairperson is also required to 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]

What happens if a complainant wants to amend or withdraw their 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 required 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 required to notify the general manager if it receives a withdrawal notice.

[Act reference: sections 28W & 28X]

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

The Code of Conduct 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 determining a complaint.

In some circumstances, the Panel may produce an addendum to accompany its report. This is required where information that would otherwise be included in the determination report is required to be kept confidential.

If the Panel produces an addendum to its report, a copy will be provided to the complainant (provided they are a councillor – a copy will not be provided to a complainant who is not a councillor), the respondent councillor, the general manager and the Director of Local Government.

[Act reference: section 28ZK]

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

On receiving a determination report, the general manager is required to include the report within an item on the agenda of the next open council meeting at which it is practicable to do so.

If the report is accompanied by an addendum, the general manager is to ensure that:

- a copy of the determination report is included within an item on the agenda for the first open council meeting at which it is practicable to do so; and
- a copy of the addendum is included within an item on the agenda for the first closed council meeting at which it is practicable to do so.

Where the determination is the subject of a review by the Magistrates Court (Administrative Appeals) Division, these requirements do not apply until the review is complete.

[Act reference: section 28ZK & 28ZP]

What other confidentiality requirements apply to the Panel's determination report?

The following confidentiality requirements apply:

- Any person who receives a determination report must keep it confidential until it is included within an agenda item for a meeting of the relevant council; and
- Any person who receives an addendum must keep it confidential.

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

These requirements do not apply:

- Where the addendum is circulated for the purpose of complying with the general manager's obligation to include the addendum within an agenda item for the relevant closed council meeting (as described above); or
- For the purposes of discussing the addendum with another person who received it as part of the documents circulated for the relevant closed council meeting.

[Act reference: section 28ZK]

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

General managers have a role in monitoring compliance with certain sanctions issued by a Code of Conduct 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 Code of Conduct Panel.

A councillor is required to notify the general manager within seven days of complying with the sanction. If the councillor fails to comply within the relevant timeframe, the general manager is to notify the Director of Local Government in writing.

[Act reference: section 28ZM]

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

In some circumstances, a council must refund the code of conduct complaint lodgment fee paid by a complainant. This occurs where:

- The complaint is referred by the general manager to the Director of Local Government (and accepted);
- The whole complaint is referred to another person or authority by the Code of Conduct Panel (and accepted);
- The whole complaint is withdrawn by the complainant (or complainants jointly) prior to referral by the general manager to the Code of Conduct Panel;
- The complaint (or part of it) is upheld by the Code of Conduct Panel; or

- The respondent councillor(s) resigns/loses office before the complaint is dealt with.

[Act reference: section 28ZO]

What annual reporting requirements apply?

A council must include in its annual report a statement of the number of code of conduct complaints that were received, and the number that were upheld (in whole or in part), for the preceding financial year.

The Council must also include a statement of the total costs met by the council in respect of all code of conduct complaints dealt with during the relevant financial year.

[Act reference: section 72]

Relevant 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_conduct/making_a_code_of_conduct_complaint.

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