

OFFICIAL

# Behavioural Standards Panel



## PRACTICE DIRECTION 4

### ALTERNATIVE DISPUTE RESOLUTION

February 2023



Government of  
South Australia



Local Government Association  
of South Australia

# Behavioural Standards Panel



## Contents

<b>Alternative Dispute Resolution</b> .....	<b>1</b>
Different alternative dispute resolution processes .....	1
Mediation .....	1
Conciliation .....	1
Arbitration .....	2
Matters the Panel may consider .....	2
If the Panel is considering an alternative dispute resolution process .....	2
If agreement is reached in an alternative dispute resolution process .....	3
If the alternative dispute resolution does not lead to a resolution.....	4
If council member does not comply with the agreement reached under the alternative dispute resolution .....	4



# Behavioural Standards Panel

## Alternative Dispute Resolution

The Behavioural Standards Panel (the Panel) may, under section 262N(2)(a) of the *Local Government Act 1999* (the Act), publish practice directions relating to the practices and procedures in respect of matters before the Panel.

*Practice Direction 4 – Alternative Dispute Resolution* sets out the practices and procedures relating to alternative dispute resolutions processes by the Panel.

Under section 262V of the Act, the Panel may, at any time, arrange for mediation, conciliation, arbitration or other dispute or conflict resolution (alternative dispute resolution).

### Different alternative dispute resolution processes

The three main types of alternative dispute resolution processes that the Panel may utilise are—

#### Mediation

Mediation is a process of dispute resolution where an impartial third-party helps communication and negotiations between the parties, but does not decide the dispute. Mediation is a process of resolving issues between parties using a third-party mediator to assist them at arriving at an agreement. The mediator typically meets with the parties together and separately for a better understanding of the dynamics involved in order to allow the parties themselves to come to a common point of resolution. This does not always mean that the actual mid-point is found, but rather a place somewhere between each of the parties starting position.

#### Conciliation

Conciliation is a dispute resolution process that involves an impartial third-party acting as a conciliator. A conciliator is more interventionist and given more authority to persuade or encourage the parties toward an agreement. In the conciliation process, often the conciliator will try to determine what the goals of each party are, and then suggest possible solutions. A conciliator needs to discuss with each side separately during the whole negotiation process. The goal of conciliation is to find an outcome that is mutually acceptable to both parties. A conciliator has a role to improve communication and lower tensions between two parties.

# Behavioural Standards Panel

## Arbitration

Arbitration is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. Arbitration has a formal process, although less formality than a court hearing. The parties to the dispute agree to an unbiased third party (an arbitrator) hearing the dispute, and also to comply with the decision of the arbitrator. The arbitrator needs to make a decision based on evidence.

The Panel may also utilise other dispute or conflict resolution, for example, conflict coaching or facilitation, if the Panel considers this appropriate.

## Matters the Panel may consider

The Panel may consider utilising alternative dispute resolution processes where the Panel considers that it is appropriate, in all the circumstances, having regard to—

- the nature of the behaviour;
- the position of the persons (other council members, employees and others) involved;
- the relationships between the persons (other council members, employees and others) involved;
- whether any alternative dispute or conflict resolution process, or any other informal action has been undertaken, and if it has, its nature, the process, and the outcomes.

## If the Panel is considering an alternative dispute resolution process

If the Panel considers that an alternative dispute resolution process may be appropriate, the Panel will contact the council member the subject of the complaint and the person(s) identified as part of the dispute to discuss the options.

When parties agree to an alternative dispute resolution process the Panel will appoint an appropriately qualified professional, and organise a suitable venue, time and date agreeable to the parties.

All parties will be encouraged to act in good faith during any discussions or negotiations.

Alternative dispute resolution process will be confidential to the parties.

# Behavioural Standards Panel



## If agreement is reached in an alternative dispute resolution process

In accordance with section 262V of the Act, if an agreement is reached through an alternative dispute resolution process, the agreement must be recorded in writing and signed by the parties and by a member of the Panel on behalf of the Panel. A copy of the agreement must be given to each of the parties.

If the Panel is satisfied that the subject matter of the complaint has been properly resolved by alternative dispute resolution, the Panel may determine to take no further action on the complaint.

# Behavioural Standards Panel

## If the alternative dispute resolution does not lead to a resolution

If a resolution is unable to be reached through an alternative dispute resolution process, the Panel may determine to proceed to—

- an inquiry process; or
- if the Panel considers there is sufficient information before it, the Panel may proceed to consider making a determination that the council member's behaviour constitutes ***misbehaviour***, ***repeated misbehaviour*** or ***serious misbehaviour*** (under section 262E of the Act) and may determine the actions the Panel may order the council member or the council to undertake.

The Panel will inform the relevant parties of the next steps in the process.

## If council member does not comply with the agreement reached under the alternative dispute resolution

If the Panel is made aware that the council member has not complied with the agreement reached under the alternative dispute resolution process, the Panel may determine to—

- conduct an inquiry process; or
- if the Panel considers there was sufficient information provided as part of the earlier complaint referred to the Panel and the further information about the non-compliance with the agreement under the alternative dispute resolution process, the Panel may proceed to consider making a determination that the council member's behaviour constitutes ***misbehaviour***, ***repeated misbehaviour*** or ***serious misbehaviour*** (under section 262E of the Act) and may determine the actions the Panel may order the council member or the council to undertake.