

Behavioural Standards Panel



PRACTICE DIRECTION 1

LODGEMENT OF A COMPLAINT

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Government of
South Australia



Local Government Association
of South Australia

Behavioural Standards Panel



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Lodgement of a complaint

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 1 – Lodgement of a complaint sets out the practices and procedures relating to the lodgement of a referral of a complaint to the Panel.

Before making a complaint

The Panel's role is to deal with complaints about the behaviour of council members that cannot be resolved at the council level, including 'repeated' and 'serious' misbehaviour, as defined under section 262E of the Act. For further information on the Panel's role and functions refer to the separate paper '*Guidance Paper – General Information – Behavioural Standards Panel*'.

Complaints about alleged breaches of the *Behavioural Standards for Council Members* or any behavioural support policy that the council may have adopted, should be made with the relevant council. Councils have primary responsibility to manage the behaviour of their members. Please refer to the relevant council's behavioural management policy for further information.

Person(s) considering making a complaint to the Panel should first consider—

- Whether the person making the complaint is a prescribed person under section 262Q of the Act?

(Please refer to the information under the heading '*Persons who may make a complaint to the Panel*' for further information.)

Note: Members of the public, council employees, or individual council members (other than the principal member) cannot make complaints directly to the Panel.

- Does the complaint relate to a type of behaviour that may be referred to the Panel?

(Please refer to the information under '*The complaints that may be referred to the Panel*' in this document, and the separate guidance paper on '*Types of behavioural matters that may be referred to the Panel*'.)

- Does the complaint relate to a matter that should be referred to another complaint handling body, such as the SA Ombudsman or the Office for Public Integrity?

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(For further information, please refer to 'Other complaint handling agencies' in the separate guidance paper on 'General Information – Behavioural Standards Panel'.)

- Is the complaint being referred within the timeframe? If not, are there reasonable justifications for the delay in referring the complaint?

(Please refer to the information on 'Timeframe for making complaints' within this document.)

- Do they have all the necessary information that the Panel requires, that must be included with the **Complaint Form**?

(Please refer to the information on 'How to refer a complaint' in this document.)

Persons who may refer a complaint to the Panel

The following person(s) may, under section 262Q of the Act, refer a complaint to the Panel—

- the council, through a resolution of the council; or
- the principal member (Mayor) of the council; or
- at least three members of the council; or
- a responsible person in relation to the health and safety duties of council members in accordance with section 75G(5) of the Act – this is a where a responsible person has given a member a reasonable direction not to attend a council meeting.

Due to conflict of interest¹ reasons, the Panel considers that none of the above persons² may refer a complaint to the Panel if—

- they are the subject of a complaint of the types of behaviour that may be referred to the Panel; or
- they are a person alleging that they have been adversely affected by the behaviour of a council member who is the subject of a complaint that may be referred to the Panel.

¹ Chapter 5 Part 4 Division 1 Subdivision 4 of the *Local Government Act 1999* sets out how conflicts of interests are to be dealt with by council members in relation to a matter to be discussed at a meeting of a council, and therefore apply to where a referral is made by the council, through a resolution of the council, for the purposes of s 262Q.

² In relation to referrals by at least three council members, this will apply if one out of the three members has a conflict of interest in referring the matter (because they are either the subject of a complaint or a person affected by another member's behaviour). The member with the conflict of interest cannot be one of the persons referring a complaint to the Panel.

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It would also not be procedurally fair for a council member who is the subject of a complaint or the person adversely affected to be the referrer from the council.

If the complaint is referred to the Panel by anyone other than the council, it is expected that the person(s) lodging the complaint should have notified the council (or person(s) authorised by the council to receive such notification) of either their intention to lodge a complaint or that they have lodged a complaint, with the appropriate request to the council for information that is required to be provided to the Panel. If the person(s) referring the complaint has not done so because they are of the view that doing so would risk the health and safety of another person, this should be indicated to the Panel in the referral.

The complaints that may be referred to the Panel

Complaints on the following three types of alleged behaviour of a council member (defined under section 262E of the Act³) may be referred to the Panel—

- **Misbehaviour** – This is a failure by a member who is the subject of a complaint to comply with their council's efforts to resolve a behavioural matter. This may be a failure by the member the subject of a complaint to comply with –
 - a process, provision or requirement under a council's behavioural management policy⁴; or
 - an agreement reached following a council's dispute or conflict resolution process; or
 - a requirement of a council, under section 262C(1) of the Act, on the council member following an inquiry e.g. a requirement that the member apologise or undertakes specific training.
- **Repeated misbehaviour** – This is a second or subsequent failure by a member to comply with the Behavioural Standards or a council's adopted behavioural support policy.
- **Serious misbehaviour** – This is a failure by a member to comply with the health and safety duties under section 75G of the Act.

Only complaints that fall within the definitions under section 262E of the Act may be referred and considered by the Panel. For further information, including the Panel's guidance in relation to referrals of these matters, you are strongly advised to refer to a separate guidance paper on the '*Types of behavioural matters that may be referred to the Panel*' before referring complaints to the Panel.

³ Refer to s 262E of the *Local Government Act 1999* for specific definitions.

⁴ Complaints about 'administrative acts' may be referred to the Ombudsman.

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Timeframe for referring complaints

Complaints should be referred to the Panel within the following timeframes—

- for alleged ***misbehaviour*** – within 6 months from when the council or person delegated or authorised by the council determined that the council member had failed to comply with the council's required action, an agreement under alternative dispute resolution, or the council's behavioural management policy;
- for alleged ***repeated misbehaviour*** – within 6 months from when the council or person delegated or authorised by the council determined that there has been a repeated breach of the Behavioural Standards or behavioural support policy;
- for alleged ***serious misbehaviour*** – within 6 months from when a responsible person determined that a council member has acted in a way that breached the health and safety duties or did not comply with a reasonable direction from a responsible person under section 75G of the Act. This could be the second or subsequent time that the member has failed to comply with the reasonable direction(s), or where there were no directions given, an undertaking was made by the council member to do or refrain from doing something.

The Panel has the discretion to extend the timeframe, where there are reasonable justifications for the delay, and taking into consideration the circumstances of the matter.

How to refer a complaint

The referral of the complaint must be lodged, in writing, through the **Complaint Form** on the Panel's website.

The '*Checklist of supporting information to be provided with Complaint Form*' details the information and documentation that the Panel requires to be included with the form, to enable the Panel to assess the complaint.

To enable the matter to be considered expeditiously, person(s) referring the complaint should ensure that the required information is provided. Where the person(s) referring the complaint is not the council, the person(s) should request the required information from the council or a person authorised by the council to provide this information.

The Panel may, in the process of assessing the information provided with the complaint form, request that further information be provided.

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For further information on the assessment of a complaint including referring additional related complaints, refer to *Practice Direction 2 – Assessment of a Complaint*.

Acknowledgement of receipt of a complaint

The Panel will send an acknowledgement, in writing, confirming receipt of the complaint as soon as practicable, but no later than 3 business days. The acknowledgment will be sent to the person nominated on the complaint form as the key contact for the complaint.

Confidentiality

All complaints referred to the Panel will be treated confidentially until such time as the Panel determines that a report of the Panel should be published in relation to an inquiry of a complaint referred to the Panel or a complaint that the Panel refused to deal with or determined to take no further action. The Panel may also require that a report provided to a council be considered at a public meeting of the council.

The identity of the persons related to the referred complaint may be kept confidential, if the Panel considers this appropriate, on a case-by-case basis.