

Behavioural Standards Panel



PRACTICE DIRECTION 2

ASSESSMENT OF A COMPLAINT

March 2023



Behavioural Standards Panel

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Assessment 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 2 – Assessment of a complaint sets out the practices and procedures relating to the assessment of a complaint.

Once the Panel has acknowledged receipt of a referral of a complaint, the Panel will assess the complaint.

There are two parts to the assessment of the complaint. The first part will be an initial assessment of whether the Panel has all the relevant information it needs, and whether the Panel will deal with the complaint or if there are reasons for refusing to deal with the complaint. The second part of the assessment is how the Panel will determine to deal with a complaint.

Whether the Panel decides to deal with the complaint or refuses to deal with the complaint

The Panel will assess the complaint and make a determination—

- That the complaint has been referred by a prescribed person(s), under section 262Q of the Act, being one of the following—
 - 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.
- That the complaint alleges behaviour that falls within the definitions under section 262E of the Act which may be referred to the Panel – ***misbehaviour***, ***repeated misbehaviour*** and ***serious misbehaviour***.

(For further information, refer to a separate guidance paper on the '*Types of behavioural matters that may be referred to the Panel*'.)

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- That the information required in the **Complaint Form**, along with the supporting information, has been provided to the Panel.
- Whether the complaint is being referred within the timeframe, and if not, are there reasonable justifications for the delay in referring the complaint.

(For further information, refer to the information on ‘*Timeframe for making complaints*’ in ‘*Practice Direction 1 – Lodgement of complaint*’.)

- Whether there are reasons for the Panel to refuse to deal with the complaint. Under section 262S(1) of the Act, the Panel may refuse to deal with a complaint referred to the Panel or, having commenced dealing with a complaint, determine to take no further action on it if the Panel is satisfied—
 - that the subject matter of the complaint is trivial; or
 - that the complaint is frivolous or vexatious or is not made in good faith; or
 - that the complainant or the person on whose behalf the complaint was made does not have a sufficient personal interest in the matter raised in the complaint; or
 - that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the Panel to deal with or continue to deal with the complaint; or
 - that the subject matter of the complaint has been or is already being assessed or investigated, whether by the Panel or another person or body (but disregarding any dealing with the complaint by the relevant council following which the matter was referred to the Panel); or
 - that the council has dealt with the complaint adequately; or
 - that it is otherwise in the public interest to refuse to deal with, or determine to take no further action on, the complaint.

Referral to the relevant council

If the Panel considers that the complaint does not allege ***misbehaviour***, ***repeated misbehaviour*** or ***serious misbehaviour*** by a member of a council, the Panel may refer a complaint referred to it to the relevant council (section 262S(4) of the Act).

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How the Panel will determine to deal with the complaint

The Panel may inquire into a complaint referred to it in such manner as the Panel considers appropriate, conducting the inquiry in accordance with principles of procedural fairness (section 262T of the Act).

The Panel may also, at any time, arrange for mediation, conciliation, arbitration or other dispute or conflict resolution (alternative dispute resolution) to be conducted in order to resolve a matter (section 262V of the Act).

As part of the assessment of a complaint, once the Panel has determined to deal with a complaint, the Panel will determine how to proceed – that is, whether the Panel determines to conduct an inquiry or an alternative dispute resolution process, at this point.

Multiple complaints may be considered as one complaint

Where multiple complaints relating to the same or substantially similar matters have been lodged, the Panel may determine to consider these complaints as a single complaint.

Panel may request further information

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

If the person(s) referring the complaint is unable to obtain the required information from the council or other person(s) at the council who are authorised to provide the relevant information, the Panel may require that specific information relevant to the matter be provided to the Panel.

If the Panel requires information, to enable the complaint to be assessed as expediently as possible, the information should be provided to the Panel within the relevant timeframe specified by the Panel in its request. The Panel may grant an extension of time in reasonable circumstances, if requested.

If the information required cannot be provided, the reasons why must be provided to the Panel.

If the Panel does not have all the relevant information, the Panel may refuse to deal with the complaint.

If the Panel determines to deal with the complaint, the Panel or an investigator conducting an inquiry may require a council or person to produce any relevant documents or other records. It is an offence for a person or a council to refuse or fail to comply with this requirement – maximum penalty: \$10 000.

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What happens after the complaint has been assessed?

If the Panel determines to deal with the complaint

If the Panel determines to deal with the complaint, the Panel will notify the following persons, outlining the next steps in the process and any requirements for confidentiality—

- the person(s) who referred the complaint;
- the person delegated or authorised by the council;
- the council member that is the subject of the complaint; and
- if the Panel considers it appropriate, the person(s) affected by the behaviour the subject of the complaint.

Once the Panel has determined whether the matter will proceed to an inquiry or a dispute resolution process the above persons will be contacted again to inform them of the next steps in the process.

If the Panel determines to refuse to deal with a complaint

If the Panel determines to refuse to deal with a complaint, or determines to take no further action on the complaint, the Panel will inform the following persons of that decision and of the reasons for it—

- the person(s) who referred the complaint;
- the person delegated or authorised by the council;
- the council member that is the subject of the complaint (if necessary); and
- if the Panel considers it appropriate, the person(s) affected by the behaviour the subject of the complaint.

Where person affected by the council member's behaviour is a council employee

If the person(s) primarily affected by a council member's behaviour that is the subject of a complaint is an employee of a council, the Panel must, before refusing to deal with, or determining to take no further action on, the complaint, invite and recognise submissions from a registered industrial association that represents the interests of council employees (section 262S(2) of the Act).