

Behavioural Standards Panel



GUIDANCE PAPER

TYPES OF BEHAVIOURAL MATTERS THAT
MAY BE REFFERRED TO THE PANEL

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Behavioural Standards Panel



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TYPES OF BEHAVIOURAL MATTERS THAT MAY BE REFERRED TO THE BEHAVIOURAL STANDARDS PANEL

There are three types of behavioural matters that may be referred to the Behavioural Standards Panel (by a council or someone from a council prescribed under section 262Q of the Local Government Act 1999 (the Act) to do so) – these are complaints alleging misbehaviour, repeated misbehaviour, and serious misbehaviour by a council member (defined under section 262E of the Act).

1. Misbehaviour

A complaint alleging ***misbehaviour*** by a council member is that the member (who is the subject of the complaint) has not complied with a council's efforts to resolve a behavioural matter that the council has dealt with as a breach of either the Behavioural Standards or the council's own behavioural support policy.

Misbehaviour may be one or more of the following—

- A failure by council member to comply with a council's behavioural management policy¹. For example, the council member has not provided a response or co-operated with the person responsible for managing the complaint, as required by their council's behavioural management policy.
- A failure by a council member to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted by a council to resolve a complaint. For example, this could be where a council member has failed to make a private apology or failed to refrain from repeating the specified behaviour, as was agreed.
- A failure by a council member to comply with a requirement of the council on the member, under section 262C of the Act, following an inquiry into a complaint about the member's behaviour. For example, this could be a council member refusing to make a public apology or refusing to undertake specific training, as required under a council resolution.

¹ Complaints about 'administrative acts' may be referred to the Ombudsman.

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2. Repeated misbehaviour

A complaint alleging **repeated misbehaviour** is that a council member has failed to comply with Chapter 5 Part 4 Division 2 of the Act, being the Behavioural Standards or a council's adopted behavioural support policy, more than once.

Repeated misbehaviour is not just multiple complaints to the council about a council member's behaviour.

For **repeated misbehaviour** to occur, the relevant council or a person responsible for managing the complaint must have addressed a complaint that a council member has failed to comply with the Behavioural Standards or a council behavioural support policy, through informal action or formal action, in accordance with the council's behavioural management policy.

Matters referred to the Panel must have been the subject of at least one formal action. However, the Panel considers that informal actions may be suitable to address certain complaints and should be considered in the first instance, where appropriate.

Failure after informal action

'Informal action' may be taken by the Mayor or person responsible for managing the complaint, in accordance with a council's behavioural management policy. Informal actions may include addressing the complaint through informal action/s, for example, through informal mediation or discussions, and may include an agreement or requirement for the member to apologise or undertake training.

In order for such informal action to be considered by the Panel for the purpose of **repeated misbehaviour** there must be a record of agreed actions, and a determination by the Mayor or person responsible for managing the complaint that the subject of the complaint has failed to undertake the agreed actions and has failed to comply with the Behavioural Standards or the council's behavioural support policy.

Formal action

'Formal action' is action that has been taken by a council—

- alternative dispute resolution under section 262B(2)(b)(iii) of the Act, or
- action under section 262C of the Act, following a process of inquiry as provided for under the council's behavioural management policy.

Under section 262B(2)(b)(iii) of the Act, alternative dispute resolution may include arranging for mediation, conciliation, arbitration or other dispute or conflict resolution in relation to a complaint.

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Under section 262C of the Act, formal actions include passing a censure motion, requiring a public apology, undertaking training, removing or suspending the member from council positions (other than the office of member of the council).

Record keeping

Regardless of whether informal or formal action is taken, the complaint, the determination, or agreement that there has been a failure by the council member, and the action taken by the council or the person responsible for managing the complaint, needs to be documented.

Documentation of the action must include—

- details of the complainant;
- details of the person complained about;
- a summary of the matter;
- a summary of actions taken in response; and
- details of agreed actions, if any (note informal action must include details of the failure of the subject of the complaint to take the action(s) they have agreed to).

For example, for informal action, this may include a record of discussions and a record of an agreement from the member to do something (e.g. a private apology to another person, or an undertaking not to repeat the behaviour).

Past breaches of the Code of Conduct for Council Members

In a complaint of **repeated misbehaviour**, breaches by a council member of Part 2 of the previous *Code of Conduct for Council Members* (the Code) may be taken into consideration by the Panel as a 'first failure'.

The second or subsequent failure by the council member must be a failure to comply with the Behavioural Standards or a council's behavioural support policy.

3. Serious misbehaviour

A complaint alleging **serious misbehaviour** is that a council member has failed to comply with the health and safety duties under section 75G of the Act.

Section 75G of the Act provides that a council member must—

- take reasonable care that the member's acts or omissions do not adversely affect the health and safety of other council members or council employees; and
- comply, so far as the member is reasonably able, with any reasonable direction that is given by a responsible person for the purposes of ensuring that the member's acts or omissions do not adversely affect the health and safety of other council members or council employees.

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These duties are in addition to and do not limit the operation of the *Work Health and Safety Act 2012*, and the meaning of 'health' is the same as under that Act.

Who is a 'responsible person'?

The 'responsible person', under section 75G of the Act, depends on who the person whose health and safety may be adversely affected is.

The 'responsible person' in relation to council members or the chief executive officer of a council is generally the Mayor, however, it may be the Deputy Mayor or another council member chosen by the council if the Mayor is involved either as the person adversely affected or is the person who is alleged to have breached the health and safety duties.

If the person adversely affected is a council employee, the chief executive officer of the council is the 'responsible person'. This is consistent with the duties of chief executive officers under the *Work Health and Safety Act 2012*.

What can the responsible person do?

The 'responsible person' is able to give a reasonable direction to a council member to ensure that the member's actions or omissions do not adversely affect the health and safety of other council members or council employees.

For example, this could be a direction that the council member not enter the administrative building of the council, or comply with directions relating to how that member may communicate with other members or employees.

A reasonable direction may also be that the member not attend a council meeting, if this is considered reasonably necessary to protect the health and safety of the person adversely affected.

A reasonable direction that a member not attend a council meeting may only be given if there are no other reasonable directions considered appropriate in the circumstances to ensure the health and safety of the affected person. A member the subject of such a direction will be taken to have been granted leave of absence from attending council meetings for the duration of the direction.

If a reasonable direction that a member not attend a meeting of a council is given, the responsible person must ensure that a complaint relating to the matter is referred to the Behavioural Standards Panel.

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Do all complaints of alleged breaches of the health and safety duties by a council member (serious misbehaviour) have to be referred to the Panel?

No.

A council may decide that reasonable direction/s given to the council member are sufficient to protect a council member or employee's health and safety, and that there is no need to take the matter any further through a referral to the Behavioural Standards Panel (the Panel).

On the other hand, a council may decide that there needs to be additional actions to address this behaviour, and would then refer the matter to the Panel for inquiry.

A council may also decide to refer a matter to the Panel if a member does not comply with a reasonable direction.

If a member has breached their health and safety duties, and the council as whole does not decide to refer the matter to the Panel, the principal member, or three members may, if they are of a view that this is needed.

Are there any circumstances where alleged serious misbehaviour must be referred to the Panel?

Yes, if a responsible person gives a reasonable direction that a council member not attend a meeting of a council, the responsible person must ensure that a complaint relating to the matter is referred to the Panel.

This will ensure that the matter is considered and dealt with by the Panel and the direction not to attend a meeting does not continue unreasonably.

While council chief executive officers do not have the power to refer matters to the Panel generally, sections 75G(5) and 262Q(d) of the Act give them a specific power to refer matters in this circumstance.