

OFFICIAL

Behavioural Standards Panel



PRACTICE DIRECTION 5

ACTION AND REPORT ON INQUIRY

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Government of
South Australia



Local Government Association
of South Australia

Behavioural Standards Panel

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Action and report on inquiry

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 5 – Action and report on inquiry sets out the practices and procedures relating to the actions the Panel's may take after inquiring into a complaint that has been referred to it under section 262Q of the Act and the Panel's report on an inquiry.

Actions the Panel may take following an inquiry

Under section 262W of the *Local Government Act 1999* (the Act), after inquiring into a complaint referred to the Panel, the Panel may, by order do one or more of the following—

- reprimand the council member (including by means of a public statement);
- direct the council to pass a censure motion in respect of the council member;
- require the council member to issue a public apology (in a manner determined by the Panel);
- require the council member to attend a specified course of training or instruction, or to take other steps;
- require the council member to reimburse the council a specified amount (which may include the reimbursement of the council's costs relating to investigation of the complaint and giving effect to an order by the Panel);
- remove or suspend the member from one or more offices held in the member's capacity as a member of the council or by virtue of being a member of the council (other than the office of member of the council);
- suspend the member from the office of member of the council for a period not exceeding 3 months, with or without an allowance (as determined by the Panel);
- direct the council to lodge a complaint against the council member with the South Australian Civil and Administrative Tribunal (SACAT).

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Where the Panel has made an order requiring the council member or directing the council to take action, the council member or the council (as appropriate) must take action to comply with this order.

(For further information, please refer to the information in this document in relation to the failure of a council member or council to comply with an order of the Panel.)

How the Panel determines appropriate action

The Panel will make a determination on whether the council member's behaviour falls within the definitions of *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* (under section 262E of the Act). This determination will be based on the Panel's evaluation that it is more likely that the alleged misbehaviour¹ occurred than that it did not occur, and on the facts, information and evidence available to the Panel.

Following this, the Panel will determine the appropriate action to take in the circumstances. In making the determination on the appropriate action to take, the Panel may consider (but is not limited to) the following factors—

- the nature and seriousness of the misbehaviour;
- the circumstances in which the misbehaviour occurred;
- the period over which the misbehaviour occurred;
- evidence of any personal benefit from the misbehaviour;
- the impact of the council member's misbehaviour on any person(s) affected by the misbehaviour;
- the actual and potential consequences of the council member's misbehaviour;
- whether the misbehaviour appears to have been inadvertent, ill-informed or the result of naivety, carelessness or misunderstanding;
- whether the council member has acknowledged their misbehaviour and made a commitment not to repeat the misbehaviour;

¹ The term 'misbehaviour' (without bold or italics) in this practice direction refers to any one or more of the three types of misbehaviour defined in s 262E of the Act – *misbehaviour*, *repeated misbehaviour* and *serious misbehaviour*.

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- the significance of the consequences of the misbehaviour (from a public and/or a council perspective);
- the extent to which the misbehaviour may be representative of a culture or common practice within the council which needs to be addressed;
- whether action would be in the public interest;
- any other relevant considerations, including any other aggravating or mitigating factors.

The Panel may consider prior instances where a council member has breached a standard of behaviour (including the breaches of Part 2 of the previous the *Code of Conduct for Council Members*) and the actions that were taken by the council to address the member's misbehaviour as relevant considerations to a determination of an appropriate action, and may be taken into account by the Panel where it—

- indicates that the council member was, or should have been, well aware of the standard of behaviour expected and the potential consequences of their behaviour; or
- demonstrates that the council member may be unwilling to adhere to the standard of behaviour expected.

Opportunity to make submissions

Before the Panel makes a determination whether or not to take action under section 262W of the Act, both the person(s) who referred the complaint and the council member who is the subject of the complaint will be given an opportunity to make submissions on the matter.

In accordance with section 262W(2) of the Act, if the person primarily affected by the behaviour that is the subject of a complaint referred to the Panel is a council employee, the Panel must, before determining whether or not to take action under section 262W of the Act, ensure that any registered industrial association representing the employee is given an opportunity to make submissions on the matter.

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Reports on inquiries

If action is taken in respect of a council member under section 262W of the Act, the Panel must provide a report on the matter to the council.

The Panel may require—

- the report to be considered in public at a meeting of the council; and
- the council to provide a report to the Panel, within a period and in such manner as is specified by the Panel, detailing—
 - if the Panel made an order requiring the council member to take action—the member's compliance with the requirement; or
 - if the Panel made an order directing the council to take action—the council's compliance with the direction.

The Panel will write to the following persons to provide a report on the matter to—

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

The Panel may, in providing a report, to the above persons require them to ensure that the whole or a specified part of the report is not disclosed to any other person or otherwise published.

The Panel may also redact parts of the report provided to any of the above persons.

Council members and council employees are subject to integrity provisions that require that they must not disclose information or a document that the member or employee knows, or ought reasonably to know, is information or a document that is otherwise required to be treated confidentially. Alleged breaches of integrity provisions may be referred to the South Australian Ombudsman.

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

If a report on an inquiry relates to a complaint where the person primarily affected by the behaviour that is the subject of the complaint is a council employee, the Panel must provide the report to any registered industrial association representing the employee (section 262X(3) of the Act).

The Panel may, in providing a report, require the registered industrial association to ensure that the whole or a specified part of the report is not disclosed to any other person or otherwise published. A registered industrial association that contravenes or fails to comply with this requirement is guilty of an offence - Maximum penalty: \$10 000 (section 262X(4) of the Act).

The Panel may also redact parts of the report provided to the registered industrial association.

Publication of reports

Under section 262X of the Act, the Panel may publish, in such manner as the Panel thinks fit, a report on an inquiry, or a complaint that the Panel refused to deal with, or determined to take no further action on.

These reports will be published on the Panel's website. The Panel may redact parts of the published report.

Failure of a council member to comply with an order of the Panel

If a member of a council fails to comply with an order of the Panel requiring the member to take action under section 262W(1) of the Act, the council is to ensure that a complaint is lodged against the council member with SACAT.

A complaint against the council member with SACAT may be lodged by the chief executive officer of a council, or a person authorised in writing by the Minister or the council (section 264(1) of the Act).

The complaint must be lodged within a time prescribed by the rules of SACAT under section 94 of the *South Australian Civil and Administrative Tribunal Act 2013*.

Under section 267 of the Act, on the hearing of a complaint, SACAT may, if it is satisfied that a ground on which the complaint was lodged exists and that there is proper cause for taking action

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against the person to whom the complaint relates, by an order or orders do one or more of the following—

- reprimand the person (including by means of a public statement);
- require the person to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps;
- require the person to reimburse the council a specified amount (which may include the reimbursement of the council's costs relating to investigation of the complaint and giving effect to an order under this section);
- impose a fine not exceeding \$15 000 on the person;
- suspend the person from any office under the Act for a period not exceeding 6 months;
- disqualify the person from any office under the Act;
- disqualify the person from becoming a member of a council, a council committee or a subsidiary of a council for a period not exceeding 5 years.

If a person is disqualified by an order of SACAT under section 267(1)(e) of the Act, the office immediately becomes vacant.

Failure of a council to comply with an order of the Panel

If the Panel considers that a council has failed to comply with a direction or requirement of the Panel under section 262W of the Act, the Panel may provide a report to the Minister on the matter.

The Minister may take action on the basis of a report from the Panel. If the Minister is satisfied that a council has failed to comply with a direction or requirement of the Panel under section 262W of the Act, the Minister may give directions to the council to rectify the matter, or to prevent a recurrence of the act, failure or irregularity (section 273(2) of the Act).