

OFFICIAL

Behavioural Standards Panel



PRACTICE DIRECTION 3

INQUIRY PROCESS

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Local Government Association
of South Australia

Behavioural Standards Panel



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Inquiry process

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 3 – Inquiry process sets out the practices and procedures relating to the Panel's inquiry into a complaint that has been referred to it.

Overview of Panel's inquiry process

Under section 262T(1) of the Act, the Panel may inquire into a complaint referred to the Panel in such a manner as the Panel considers appropriate.

The purpose of an inquiry is to enable the Panel to obtain the relevant information that the Panel requires in order to make a determination on a complaint.

The Act also provides that, in exercising or performing a power or function in relation to inquiring into a complaint, the Panel—

- must proceed with as little formality and technicality and with as much expedition as the requirements of the Act or any other Act and a proper consideration of the matter permit; and
- is not bound by rules of evidence but may inform itself of any matter in any manner that the Panel considers appropriate (section 262U(4)).

Accordingly, an 'inquiry' does not necessarily mean a full formal investigation. However, the inquiry must be conducted in accordance with the principles of procedural fairness (section 262T(2) of the Act).

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How the Panel may inquire

The Panel may inquire into a complaint in any of the following ways—

- **On the information submitted by the person(s) referring the complaint**

The Panel may make a determination on whether the council member that is the subject of the complaint has acted in a way that constitutes *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* (as defined under section 262E of the Act), based on the information presented to the Panel in complaints and in a response from the council member that is the subject of the complaint.

If the Panel considers that there is sufficient supporting information submitted with the complaint form to enable the Panel to make a determination, the Panel will seek a written submission from the council member that is the subject of the complaint. The council member will be provided with the details of the complaint and be given a reasonable opportunity to respond to the allegations in the complaint.

- **Seeking further information through written submissions, oral submissions, or requiring documents or records**

If the Panel considers that the information that was provided with the complaint form is insufficient, the Panel may also collect further information by written or oral submissions from—

- the council member who is the subject of the complaint;
- the council;
- further submissions from the person's referring the complaint;
- any relevant witnesses to the behaviour;
- the person(s) affected by the council member's behaviour.

Written submissions

If the Panel seeks written submissions, the Panel will contact the people that the Panel has identified it requires written submissions from, and will advise the timeframe in which the written submissions are required.

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Oral submissions

If the Panel seeks oral submissions, the Panel will contact the people that the Panel has identified it requires oral submissions from, and will organise a suitable venue, date and time for the oral submissions.

Requiring documents or records

If the Panel considers that it requires further documentation or records from the council, the Panel may require the council or the person authorised by the council to produce certain documents or records within a specified timeframe.

• **A formal investigation**

If the Panel considers that a more detailed form of inquiry is necessary to collect further information, the Panel may determine to undertake a full investigation.

The Panel (or the presiding member acting on its behalf) may appoint an investigator to conduct an inquiry into a complaint referred to the Panel (section 262T).

The Panel may appoint an investigator who will have all the powers relating to inquiries under section 262U(1) of the Act. For further detail, refer to the heading '*Powers relating to inquiries*' below.

The appointed investigator may conduct interviews and prepare formal statements with any of the following people—

- the person(s) who referred the complaint to the Panel;
- any witnesses to the incident or allegation;
- the council member who is the subject of the complaint;
- the person affected by the council member's behaviour;
- any other persons identified who may have information about the incident or allegation.

The appointed investigator may also gather other documentary evidence relating to the complaint.

When the investigation is complete, the appointed investigator will prepare a report for the Panel's consideration.

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The council member that is the subject of the complaint will be given a reasonable opportunity to respond to allegations

Regardless of the manner in which the inquiry is conducted, the Panel will provide an opportunity to the council member that is the subject of the complaint to respond to the allegations in the complaint.

The council member will be provided with—

- details of the complaint, in writing; and
- be given a reasonable opportunity to respond to the allegations in the complaint.

Powers relating to inquiries

Under section 262U(1) of the Act, the Panel or an investigator conducting an inquiry on behalf of the Panel may, in connection with an inquiry—

- require a person's attendance, by summons signed by the Panel or investigator;
- require a person to answer, orally or in writing, questions to the best of their knowledge, information and belief;
- require a person to verify an answer by declaration;
- require a council or person to produce any relevant documents or other records;
- retain documents or other records produced for reasonable periods and make copies of them or their contents;
- call for or receive submissions or representations.

A person or council must not refuse or fail to comply with a requirement under section 262U(1) of the Act—Maximum penalty: \$10 000.

However, a person is not obliged to comply with a requirement of the Panel or an investigator if to do so might incriminate the person of an offence.

A person or a council is also not required to provide information that is privileged on the ground of legal professional privilege.

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

During an inquiry relating to a complaint where the person primarily affected by the behaviour that is the subject of the complaint is an employee of a council, the Panel must ensure that, any registered industrial association representing the employee in the matter is given an opportunity to make submissions relating to the inquiry (section 262T(3) of the Act).

Support person/representation

A person required to attend before the Panel as part of the inquiry, including the council member that is the subject of the complaint and the person(s) affected by the behaviour of the council member, may be accompanied by a support person or other representative of their choice, subject to the Panel's discretion.

The Panel will ensure that adequate notice is given to the interviewee or person making the oral submission to arrange the support person or other representative.

A support person or other representative—

- cannot be someone involved with the matter as they may be required as a witness;
- should not act as an advocate and cannot answer on the person's behalf; and
- must maintain confidentiality on all matters relating to the inquiry.

A person required to attend before the Panel must advise the Panel of their intention to bring a support person or other representative. The Panel recognises the beneficial role of support persons and other representatives, however, the Panel retains discretion as to whether to allow the attendance of the nominated person.

Confidentiality

All inquiries undertaken by 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.

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Questions of law or procedure

Any questions of law or procedure arising before the Panel will be determined by the Presiding Member, and any other questions by unanimous or majority decision of the members (unless there is an equal division of opinion, in which case, the decision of the Presiding Member will be the decision of the Panel) (section 262R(3) of the Act).

Panel may refuse to deal with a complaint at any point in the process

Section 262S(1) of the Act enables the Panel, after having commenced dealing with a complaint, to 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.

Costs

Under section 262M of the Act, the Panel may recover reasonable costs incurred in relation to a complaint against a member of a council referred to the Panel as a debt due from the relevant council.

The reasonable costs of establishing the Panel, and the reasonable ongoing administrative and operational costs of the Panel, are to be paid by the Local Government Association (LGA) under an arrangement established by the Minister from time to time after consultation with the LGA.

The LGA may recover (from time to time) the costs payable by the LGA as a debt from councils.