



Premier & Cabinet
Division of Local Government

A guide to code of conduct processes for complainants

March 2013

Introduction

This guide provides information to assist you in making a complaint under a council's code of conduct and to explain how your complaints will be dealt with.

What is a code of conduct complaint?

A code of conduct complaint alleges a council official, acting in their official capacity, has breached the standards covered by the code.

All other complaints are dealt with under council's routine complaints management processes.

When must a code of conduct complaint be made?

You must make the complaint within three months of the alleged conduct occurring or within three months of you becoming aware of the alleged conduct.

A complaint made after three months may be accepted if the general manager or Mayor is satisfied that there are compelling grounds for the matter to be dealt with.

Who must a code of conduct complaint be made to?

If your complaint is about anyone other than the general manager you must make your complaint to the general manager.

If your complaint is about the general manager you must make your complaint to the Mayor.

How must a code of conduct complaint be made?

Your complaint must be made in writing. If you are unable to make a complaint in writing, the complaint will have to be confirmed with you in writing by the general manager or Mayor as soon as possible.

If any of the following apply, you need to indicate this in your written complaint:

- your complaint is made as a public interest disclosure under the *Public Interest Disclosures Act 1994*
- you want your complaint to be resolved by mediation
- you are a councillor making a complaint about other councillors or the general manager and you do not want your identity disclosed. If this is the case, you must state your reasons for not wanting your identity to be disclosed.

Will my identity be disclosed?

Unless you are a councillor, information that identifies you will not be disclosed unless:

- you consent in writing
- you have voluntarily identified yourself

- disclosure is essential for procedural fairness
- the investigator believes disclosure is necessary to investigate your complaint
- disclosure is otherwise in the public interest.

If you are a councillor, your identity will be disclosed unless the person dealing with the complaint is satisfied that grounds exist that would warrant your identity not being disclosed. If you have requested that your identity not be disclosed, there is no obligation for any person dealing with the complaint to comply with that request, but they must inform you prior to disclosing your identity.

Councillors making code of conduct complaints as public interest disclosures must consent in writing to their identity being disclosed before their complaint may be dealt with under the code of conduct. If a councillor is not willing to consent to this, the complaint must be referred to the Division of Local Government instead of being dealt with under the council's code of conduct.

What happens if my complaint is assessed as not being a code of conduct complaint?

If your complaint is assessed as not being a code of conduct complaint, it will be dealt with under the council's routine complaints management procedures.

How will my code of conduct complaint be dealt with?

If your complaint is about a member of staff other than the general manager, a non-councillor member of a council committee or a delegate of council, it will be dealt with by the general manager.

If your complaint is about the general manager or a councillor, unless resolved at the outset by the general manager or Mayor or referred to an external agency, it will be referred to an independent conduct reviewer and dealt with at arm's length of the council. The conduct reviewer may determine to do the following in relation to your complaint:

- take no action
- referred it to the Division of Local Government or another external agency for action
- resolved it by alternative means such as explanation, counselling, training, mediation, informal discussion, negotiation or apology
- investigate it.

How will I know how my complaint has been dealt with?

You will be informed in writing about how your complaint has been dealt with and given reasons for the decision.

If my complaint is investigated, what role will I have in the investigation?

You will be provided with written notice of the investigation and will be invited to make a written submission.

You may be contacted during the investigation for clarification or further information and may be interviewed by the investigator.

You will be given a copy of the investigator's final report.

I am a councillor. Will I be permitted to participate in a decision by the council to impose a sanction?

If you are a councillor you will not be permitted to participate in a decision to impose a sanction. You must absent yourself from the council meeting when the matter is under consideration and take no part in any discussion or voting on the matter.

What obligations do I have as a complainant?

As a complainant, you should not:

- make public allegations of suspected breaches of the code
- disclose information about the consideration of a matter under the code.

If you are a council official, such conduct may itself constitute a breach of the council's code of conduct. If you are a councillor, such breaches are to be referred to the Division and dealt with under the misconduct provisions of the *Local Government Act 1993*.