



Department of
**Local Government, Sport
and Cultural Industries**



Fact sheet: New breach system

Local Government Amendment Bill 2024

Current system

The Department of Local Government, Sport and Cultural Industries (DLGSC) supports the local government sector in the provision of good governance and compliance by monitoring, promoting and enforcing compliance with the relevant legislation.

DLGSC accepts complaints about alleged breaches of and non-compliance with the *Local Government Act 1995* (the Act) and regulations.

There are currently 3 main levels of complaints that are specific to council members, outlined below.

Behavioural breaches

These breaches include rude or inappropriate behaviour and are dealt with in accordance with Division 3 of the Local Government (Model Code of Conduct) Regulations 2021 (the Model Code of Conduct).

Typical penalties include being required to undertake training as part of a behaviour improvement plan. These breaches are often best resolved through sensitive communication.

Minor breaches

These breaches can range from misusing council resources to a council member using their office to disadvantage others. They are currently assessed by the Local Government Standards Panel (Standards Panel) based on the complaint and response documents submitted.

Typical penalties include being required to make a public apology.

Serious breaches

These breaches include offence provisions such as failing to disclose a relevant interest when being involved in a council decision. Serious breaches can be referred for consideration to the State Administrative Tribunal (SAT) by the Director General of DLGSC.

Penalties from the SAT can include suspension and disqualification from office. These are also offences and can alternatively be prosecuted in court.

Three or more minor breaches can become a recurrent breach, which can be dealt with in the same way as a serious breach.

Local Government Amendment Bill

The Local Government Amendment Bill 2024 (the Bill) introduces a proposed reformed system for breach complaints, including:

- Clearer definition and terminology of types of breaches.
- Replacing the Standards Panel with adjudicators.
- Improved complaint handling, including avenues to collate relevant evidence and information before decisions are made about a complaint.
- New avenues to proactively resolve breaches without use of penalties where appropriate (e.g. through mediation or assignment of a monitor).
- Stronger penalties and escalating sanctions for severe instances of non-compliance.

This fact sheet outlines the new breach system proposed in the Bill.

Adjudicators

The Model Code of Conduct provides for a mandatory code of conduct to be observed by all mayors, presidents, councillors and committee members, including the rules of conduct.

These rules are currently enforced by the Standards Panel, which consists of DLGSC staff members, a council member and a person with relevant legal knowledge. As part of the reforms to introduce the Inspector and support earlier intervention, the Standards Panel will be replaced with adjudicators.

Adjudicators are to be legal practitioners with at least 5 years' experience who are not council members. Adjudicators are appointed by the Minister and are independent of the Inspector.

Adjudicators will be responsible for hearing allegations of conduct breaches. Conduct breach complaints can be made by any person submitting a form to the Inspector. There will be a Principal Adjudicator who will be assisted by one or more adjudicators.

Appeals of a decision of an adjudicator will remain with the SAT, which is the same as the former Standards Panel appeal process.

Proposed new system

Behavioural breaches

The intent remains to require local governments to deal with behavioural breach complaints under their code of conduct.

However, changes to the Act permit regulations to be made to allow a complaint to be referred to the Inspector in limited circumstances. This allows the Inspector to refer a complaint to an adjudicator instead of the local government (for instance, if a local government has fallen into dysfunction).

Complainants and respondents that are council members will also be prohibited from presiding over, participating in, or being present during any discussion or decision-making related to a complaint. This addresses concerns about conflicts of interest when dealing with such complaints.

The establishment of the Inspector is intended to involve the development of guidance and supporting materials to assist local governments respond to behavioural complaints.

Conduct breaches

Minor breaches will be renamed ‘conduct breaches’, to better reflect their potential seriousness. Any person can make a complaint of a conduct breach. Allegations will now be submitted to the Inspector, who will be able to use basic investigative powers to collect relevant evidence, such as video footage of council meetings. Complaints that are frivolous, vexatious, trivial, misconceived or without substance will not satisfy the initial assessment.

To mitigate risks of apprehended bias, the Inspector then refers the complaint and evidence to a separate adjudicator, who is specifically appointed to make findings, order mediation if appropriate, and may make orders for penalties, which can be appealed to the SAT.

If a complaint is referred to an adjudicator, the person (council member) being complained about will be provided with the complaint and invited by an adjudicator to provide a response. This is to ensure procedural fairness. An adjudicator will consider the brief of evidence prepared by the Inspector and any submission from the person being complained about before deciding whether the breach occurred. If an adjudicator determines there was a breach, sanctions can be imposed by an adjudicator.

The range of penalties for conduct breaches will be bolstered to include withholding of council member fees and allowances, and suspension of the council member from office for up to 3 months.

If the Inspector decides that a conduct breach is a recurrent breach, the Inspector must refer the complaint to the Principal Adjudicator or make an allegation to the SAT. In that case, the Inspector must give the complainant and respondent a copy of the allegation.

Specified breaches

Serious breaches will be renamed as specified breaches, with a list of those breaches compiled in a proposed new Schedule to the Act.

The Inspector can allocate a specified breach complaint to an investigator. A copy of a specified breach allegation must be given to the complainant and the respondent.

The Inspector will now deal with these complaints and may progress relevant allegations of these breaches to the SAT.

Within 14 days of receiving a finding, decision or order, the Inspector must publish the following information on its website:

- censures, findings and orders made for specified breaches
- decisions and orders made by the SAT on the review of an adjudicator’s decision
- any decision or order made on an appeal from a decision of the SAT.

Three or more conduct breaches can still be treated as a recurrent breach, which can be dealt with in the same way as a specified breach.

Any failure of a person to comply with an order must be referred to the SAT.

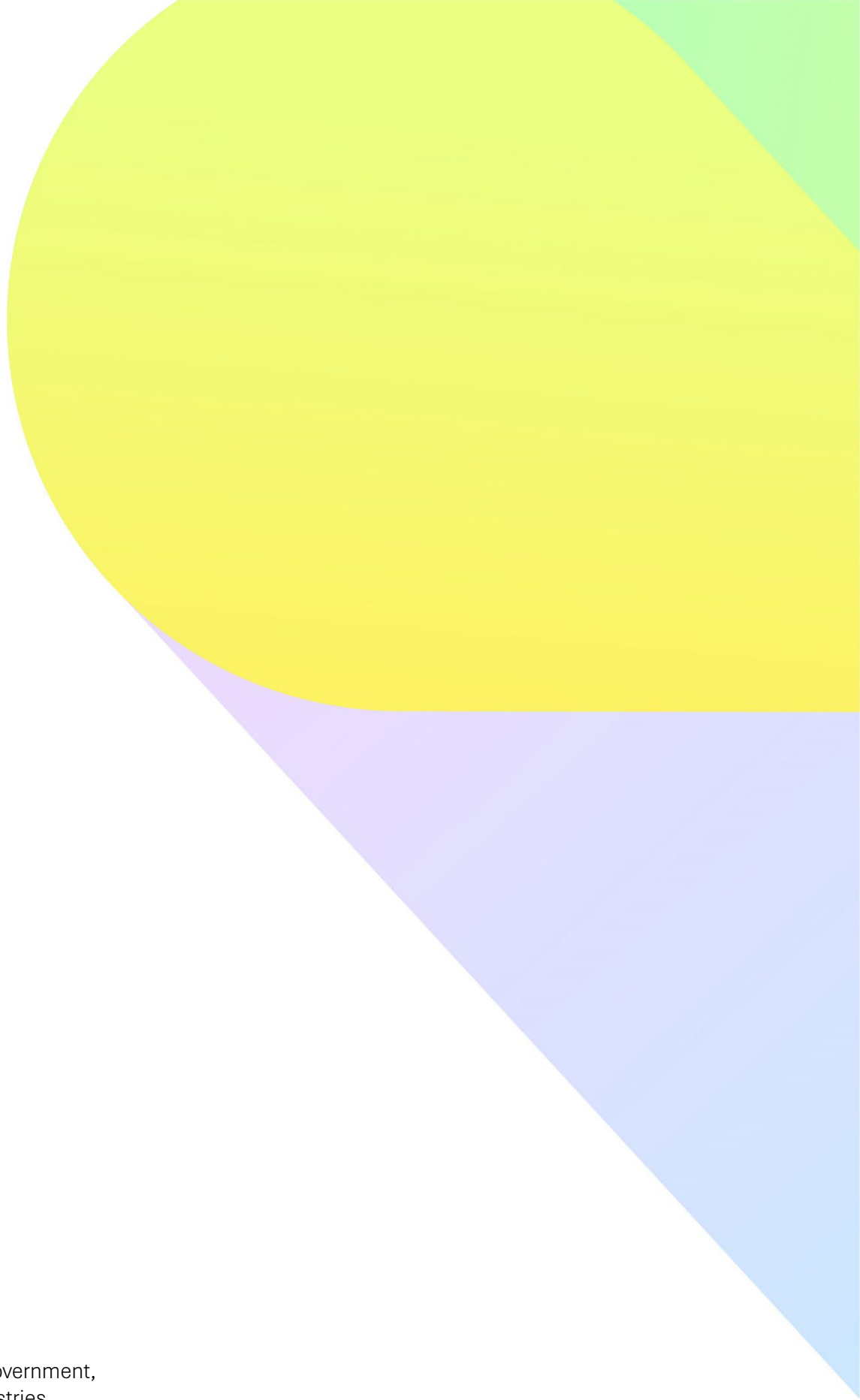
Benefits of the new system

Summary of the key benefits of the proposed new breach system

Making and receiving complaints	<ul style="list-style-type: none">• All complaints can come to the Inspector, providing a consistent approach.• The potential for conflicts of interest is reduced by not requiring a local government CEO to be the complaints officer.• Allows the Inspector the discretion to refuse certain complaints and focus resources on relevant matters.• The ability to request further information to assess a matter provides more accurate outcomes.
Behavioural breaches	<ul style="list-style-type: none">• The proposed system provides a head of power to define behavioural breaches, requiring local governments to respond to complaints under their code of conduct.• The Inspector may refer a complaint to an adjudicator.• Conflicts of interest are reduced as complainants or respondents are no longer allowed to participate in decision-making.
Conduct breaches	<ul style="list-style-type: none">• By using a single adjudicator who is a legal practitioner, rather than a Standards Panel, decisions can be made quicker.• Providing the Inspector with broader powers to obtain information assists with more accurate assessments.
Recurrent breaches	<ul style="list-style-type: none">• By providing for the Inspector to determine whether an allegation should go to the SAT, rather than a complaints officer, the potential for conflicts of interest is reduced.
Specified breaches	<ul style="list-style-type: none">• The Inspector is an independent officer who can allocate complaints to investigators.• Publication of results on the Inspector's website provides greater transparency for the sector.

Questions?

Get in touch with DLGSC via email to actreview@dlgsc.wa.gov.au



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