



Government of **Western Australia**  
Local Government Standards Panel

# **Local Government Standards Panel**

## **Reform Consultation Process**

### **Discussion Points**



# Reform Consultation Process- Points For Discussion



- **Is it the view of the Minister / us that the Conduct Panel still has a mandate to "resolve minor breach complaints relatively quickly" and "provide the sector with guidance and benchmarks about acceptable standards of behaviour"?**
  - Is this role largely being taken over by the Inspectorate?
  - General comment that an initial investigation and then referral to the Panel would be time-consuming, especially for "minor" breaches.
- **What is the Minister's / our view in relation to the composition, administration and resourcing of the Conduct Panel? I may be biased in my view - however, the initial intention of having someone with "local government experience" is that the Panel doesn't become detached from the realities of the local government sector, and a perspective can be brought to decision making on regular and acceptable conduct. What is envisioned with the Conduct Panel being comprised of "suitably qualified and experienced professionals"?**
  - Agreed, it is vitally important that local Councillors have representation here. Their practical experience is invaluable, and they have a unique point of view a general professional will not have.
  - If WALGA was already complaining that the Panel has a disconnect with industry attitudes this will encourage that view.
  - As WALGA currently recommends the local Councillors this gives an important stakeholder input into the system.
- **What is the view of the Minister on the publication of findings where there has been no breach of the Regulations? We have had situations where the paper has been alerted that a Standard Panel complaint is in about a sitting Councillor - with no formal avenue available to an elected member to "clear their name" when a no breach is found - additionally, the findings of no breach can be informative to complainants prior to lodging a complaint, about what the Conduct Panel does and doesn't consider a breach of the Regulations.**
  - "No breach" findings should be publishable – this is important guidance for the sector.
  - This would also promote transparency and accountability for complainants and respondents.
  - Confidentiality could remain during the hearing process until the Conduct Panel has handed down its finding and any appeal period has lapsed.
- **What is envisioned with the Conduct Panel being comprised of "suitably qualified and experienced professionals"?**
  - This should be defined similarly? to the current regime – general thoughts:
    - A legal member will be required for legal interpretation and writing of decisions.
    - Departmental Members will be required to input on policy etc.
    - See comments above as to local councillors being required for expertise.
    - Is it envisioned this would be a job for ex- councillors?
  - It is a real risk that this will become monopolized by large legal firms which already deal in local government matters, inevitably this will lead to conflicts of interest and a limited resource for the Panel.
    - i.e., where a firm provides legal counsel to a CEO or a Council, is it appropriate to act where one of those Councillors is being investigated?
  - If the government intends to seek "tenders" to undertake this work, be aware that small firms or sole practitioners do not tend to undertake these tenders due to unnecessary red tape and expense. This leads to monopolization by 2-3 firms in Perth that usually undertake local government work.
    - Once a tender is won, if it is for a "non-commercial" price, these firms will typically use junior and inexperienced people to undertake this work (being more cost-effective and not cutting into billable hour minimums).
  - To be frank, (generally speaking) the Department is not willing to pay enough per hour to get an application by a wide range of dedicated people, with suitable qualifications, who will do the job in an efficient and accurate manner.
  - Suggest increased payments to attract experienced people.
  - Suggest an easy application process.

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- **What is our view on complainants/respondents being allowed to present to the Conduct Panel?**

- If the Inspector is presenting the Panel with the evidence regarding the Complaint, then is this strictly necessary? How will that process be interrelated with the Inspector's investigation?
- This would result in the matter being held much more like legal proceedings.
- The example of the Liquor Commission is relevant here - the process was meant to be "informal" to allow parties to have a reasonable opportunity to state their case – however, it has now become very formal in that:
  - The process itself is complicated – being modeled on court proceedings (as it is considered to be a fair process) – this involves:
    - Preliminary submissions (by the complainant)
    - Preliminary submissions (by respondent);
    - One or more rounds of response submissions by the complainant; and
    - One or more rounds of Response submissions (by respondent).
      - This exchange of paperwork process takes 3 – 6 months to undertake at a minimum. So, there will be a very slow turnaround.
    - Booking a hearing (possibly having to arrange multiple parties if there are witnesses etc)
    - Attending the formal hearing at SAT (formal in look and feel);
    - Waiting for the decision to be written and handed down.

- **This will take a LONG time.**
- There will be arguments as to what is admissible evidence.
- There will be arguments about procedural fairness.
- For the most part parties are represented by lawyers (or even barristers).
- It is very expensive to be represented by a lawyer as this is time-intensive – why should local governments pay for this with ratepayer's funds – or alternatively why should an innocent Councillor have to go to this expense personally?

- **Generally, this would require much greater resources within the Department. Including:**

- More staff for preparation of matters and papers etc.
- Admin during hearings.
- Payments for reading, attendance, and writing time;

- **Where would hearings be held?**

- **Where there are difficult relationships in a case, how will the safety of the relevant Councillor and the Panel be assured?**

- **If the penalties remain "as is" this is an enormous expense and use of resources for an outcome that is currently seen as essentially ineffective.**

- **If the Conduct Panel becomes "quasi-judicial" in this manner, is it more appropriate to appeal to the Supreme Court rather than to SAT?**

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- **Will the legislation provide a more prescriptive conflict of interest definition for Conduct Panel members? We operate in somewhat of a grey space at present.**
  - Good idea.
- **What is our view on the Inspector providing evidence to the Conduct Panel - importantly, should the Inspector provide a "recommendation" for a finding based on a prior assessment?**
  - Need to know more details about this and how it's meant to interrelate with the Department and the Panel.
  - I suspect the success of the Inspector greatly depends on resourcing.
  - There would appear to be the danger of the Inspectorate having "too many hats" and having a conflict where they are dealing with a CEO, a single Councillor or an entire Council at the same time, possibly for overlapping, or possibly for discrete matters.
  - Not sure the Panel could be considered at all "independent" - essentially it would be following Department directions.
- **What is our view on stronger powers to impose penalties, appeal mechanisms, and the power to recommend prosecution through the courts?**
  - Suggest a sliding scale for fines (i.e., to a maximum of \$5,000 or similar),
  - Suspension would be a good penalty.
  - Prosecution via the courts is only as good as the penalties they are allowed to impose.
  - Suggest definitions of "serious" and "repeated" breaches for clarity.
- **The relationship between the State Solicitor's Office (SSO) and the Conduct Panel - this arrangement has not been ideal for us in the past and has often undermined the standards sought to be set through the Standard Panel's decisions.**
  - Unfortunately, the Department and/or panel need to be represented by someone and it is unlikely there is any other choice
  - Perhaps there could be a required process as to consultation or reporting.
- Vexatious Complaints – assessment and decision by Inspectorate
  - Suggest the possibility of a civil fine for repeat vexatious complainants
- The new statement "Elected members will only be able to use the title of their local government position while performing their role in an official capacity."
  - Will it be a breach of conduct to do this?
  - How is this policed?
  - What if they are notoriously known as a local Councillor?
  - Surely this should be tending to go the other way – at all time, the person must act as if they are an elected official and in the public eye – unless it is established, they are acting in a private or employment role?

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- **An overriding issue is what happens to the "less serious complaints" and where is the line drawn as to what constitutes a less serious/more serious matter.**
  - Who draws the line - is it legislated and then up to the Inspector and the independent monitors to filter after they have looked at what is actually going on?
  - Understanding the monitors can work with a local government to resolve issues - but do they have any powers if there has been some sort of poor behaviour (that didn't warrant it being classified a more serious breach, but where some sort of warning might be justified).

