A REVIEW OF THE OPERATION OF THE LOCAL GOVERNMENT STANDARDS PANEL AND ITS SUPPORTING LEGISLATION

Report by the Standards Panel Review Committee
June 2011
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Executive Summary

The commencement in October 2007 of the Local Government (Official Conduct) Amendment Act 2007 and the introduction of the Local Government (Rules of Conduct) Regulations 2007 were significant milestones in the disciplinary framework governing the behaviour of local government council members. The statutory disciplinary framework allows for the Minister for Local Government to establish a primary State-wide standards panel (and indeed additional standards panels) for all local governments. A standards panel has the authority to make binding determinations on allegations of minor misconduct by local government council members.

Standards panels are established to fulfil two key objectives, which are to:

- make determinations on the balance of probabilities in light of the evidence presented rather than the strict rule of law to ensure the process is not legalistic; and
- administer justice and resolve complaints relatively quickly.

Following the commencement of the Local Government (Official Conduct) Amendment Act 2007, the primary Local Government Standards Panel (the Panel) was established. At the time, a commitment was given to the local government sector by the then Local Government Minister that a review of the disciplinary framework would be undertaken following the initial “start-up” phase. In late 2010, an independent Standards Panel Review Committee (Review Committee) was established by the Minister for Local Government, the Hon John Castrilli MLA, to conduct such a review.

The Review Committee comprised of the following personnel:

- Wendy Murray, Executive Director, Strategic Policy and Local Government Reform, the Department (Chairperson);
- Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce (Consumer Protection Division); and
- John Lightowlers, General Counsel, Public Sector Commission.

Andrew Main, Manager Legislation at the Department (until 21 April 2011), was an ex officio member of the Review Committee.

The terms of reference for the Review Committee required the review process to include an examination of the operation of the Panel and its supporting legislation.

The Review Committee sought submissions from key stakeholders regarding the Panel and the way the disciplinary framework functions through:

- an on-line survey;
- telephone submissions;
- face-to-face interviews; or
- written submissions.
Key findings from the consultation phase, specifically from the on-line survey that targeted all local government council members, CEOs and complaints officers show that while the majority (82% of council member respondents) agree that their respective local government encourages ethical behaviour, only 43% know what constitutes a minor breach of conduct. Also that 40% of all survey respondents have confidence in the Panel and its processes to resolve complaints and 57% do not know whether the current size and composition of the Panel is appropriate. This data suggests a general lack of awareness about the Panel, its role and its membership.

In addition an audit of complaints data covering the period between 2007/08 and 2009/10 was conducted which revealed that:

- only 4% of all council members have been the subject of complaints alleging minor breaches of conduct;
- a total of 26 out of 139 local government councils (19%) have been involved in complaints alleging minor breaches of conduct by council members;
- most allegations (252 in total) made against council members related to obtaining personal advantage or acting to the disadvantage of others (99); inappropriate working relationships with local government staff (60); and transgressions of local laws (44);
- there were eight State Administrative Tribunal (SAT) applications made, resulting in five SAT decisions being handed down and in all cases the Panel’s decisions were affirmed; and
- in 2009/10, based on the departmental files audited, it was taking approximately six months on average for complaints to be concluded.

To the end of the March quarter of 2010/11, there were 73 Panel findings of no minor breach of conduct occurring as compared to 32 findings of a breach.

Although to-date only a small percentage of council members have been the subject of minor breach complaints, it is apparent from the survey data and the feedback received from stakeholders that a range of issues have emerged from the establishment of the Panel in 2007. Overwhelmingly these relate to concerns about the efficiency of the Panel, and, as a result of the way local government members use the Panel and the Panel’s own processes, concerns over its effectiveness.

The committee formed two central conclusions which direct the majority of the recommendations towards achieving improved operations of the Panel. The Review Committee concluded that the current disciplinary framework of a single State-wide Panel, supported by the Department:

- provides for an independent and informal mechanism to resolve minor misconduct allegations promptly, that is valued and supported by industry bodies, is a relatively less expensive model to operate from the perspective of local governments, and, provides for sitting members who are knowledgeable in local government matters; and
- that it has not been implemented in the way that was originally intended (for reasons unknown), particularly in relation to utilising mediation and/or conciliation services as a preliminary step.
The issues arising from the consultations, discussion of options and related recommendations are summarised below. Although most recommendations can address issues pertinent to several of the Terms of Reference (as shown in Table 1) they have been allocated in response to one set of issues and Term of Reference.

1 Achievement of the original objectives of the disciplinary framework

The Review Committee concluded from its analysis of submissions and available information that the original objectives of the Standards Panel have not been fully achieved in two ways:

- the administrative processes are quite legalistic; and
- the resolution of complaints has not been quick.

The audit analysis supports a conclusion that justice is achieved as demonstrated by all applications to SAT resulting in the decisions of the Panel being affirmed.

The Committee further concluded that the legalistic nature of the Panel operations are in part due to the way the legislation is currently applied and that the resolution of complaints was in part delayed by administrative procedures.

Recommendations 33 to 37 in the body of the Report address the need to simplify administrative procedures.

- The Local Government Act be amended to provide for the member with legal experience to fulfil the role of the Presiding Member of the Panel rather than the departmental member.
- The Local Government Act be amended to streamline and simplify the procedures that the Panel is currently required to follow in dealing with complaints.
- The Local Government Act be amended to allow a complainant to withdraw a complaint at any time prior to a hearing taking place.
- The Local Government Act be amended to allow a person to lodge a complaint no later than six months after the alleged breach is believed to have occurred rather than two years.
- The Local Government Act be amended by requiring WALGA under clause 4.1 of Schedule 5.1 to submit to the Minister the names of three persons with experience as a member of council with 21 days.

2 Effectiveness and efficiency, including timeliness, of the complaints making and resolution processes and operation of the Panel in undertaking its statutory functions

The audit of complaints showed that the average time taken to complete prehearing procedures rose to 133 working days (in 2008/09) and the average time to conclude complaints resulting in no breach outcome rose to 154 working days in 2008/09.

In part, these timeframes were impacted by an increase in the volume and type of complaints which is addressed under Term of Reference 6. The consultations also revealed concerns with the efficiency and operations of the Panel. In particular they are:

- a serious lack of timeliness of Panel decisions;
- the two departmental staff who support the Panel have operated largely in isolation from the rest of the Department and its usual management and accountability protocols;
• departmental information technology resources are under-utilised in relation to the operation of the Panel; and
• a heavy reliance by the Panel on written evidence to make its decisions.

Recommendations numbered 7 to 14 and 19 to 23 aim to increase the efficient operations of the Panel.
• The work of staff who support the Panel be fully supported by the systems and resources of the Department’s Governance Branch and a regular reporting regime be established with management.
• The Manager of the Department’s Governance Branch monitor the complaint handling processes undertaken by departmental staff who support the Panel to manage the efficiency and effectiveness of the complaints handling processes.
• The Manager of the Department’s Governance Branch report, no less frequently than on a quarterly basis, to the Panel on the efficiency and effectiveness of the complaints handling processes.
• The Department prepare an induction manual for all current and for any new Panel members, including deputy members.
• As soon as is practicable after their appointments, all new Panel members and deputy members undergo a brief induction session with the Manager of the Department’s Governance Branch, the Presiding Member of the Panel and departmental staff who support the Panel.
• The Presiding Member of the Panel conduct at least annual briefings for all deputy members to ensure that they remain informed about all aspects of the Panel’s operation should they be required to deputise for a member at any time.
• Departmental staff who support the Panel work closely with the Department’s Communications Branch to create a simplified and more user-friendly Complaint Form, as well as create brief and easy-to-read guidelines about how complaints should be lodged and the revised complaint handling processes.
• Departmental staff who support the Panel work closely with the Department’s Communications Branch to develop a feedback form that should be sent to each party to a complaint following the conclusion of the dispute resolution process.
• The Department’s revised pre-hearing procedures for handling complaints alleging minor breaches of conduct be aligned with the best-practice guidelines published by the Commonwealth Ombudsman, which are consistent with the Australian Standard on complaint handling.
• Time benchmarks be established and published for key stages of the pre-hearing procedures.
• The Panel conduct hearings face-to-face within the relevant local government region whenever convenient and practical to do so. When not practical to do so, the Panel should conduct the hearing via teleconference or videoconference when appropriate.
• Departmental staff who support the Panel fully utilise the Department’s complaints database to record on a regular and ongoing basis all key documents and stages of the complaint handling process, as well as when preparing the Panel’s annual reports.
• The Department’s Information Technology Branch tailor the complaints database in consultation with the Manager of the Governance Branch to better reflect the Panel’s administrative processes by creating task profiles for complaint projects and enabling time benchmarks to be assigned to key stages within the complaints handling process.

3 Appropriateness of the scope of matters referred to the Panel and the risks and benefits of expanding or reducing its scope

In general, the Review Committee formed the view that local governments should bear appropriate responsibility for managing the risk of misconduct by council members as much as possible at the local level, by being empowered to deal with low-level behavioural issues promptly. This approach should result in fewer complaints being lodged with the Panel, and in improved timeliness in the resolution of low-level issues.

The issues arising from the surveys and consultations that contributed to the framing of recommendations in relation to this Term of Reference are that:

• local governments lack the authority to promptly address low-level misconduct by council members; and
• a more holistic approach for managing the risk of misconduct at all levels (i.e. minor, serious and criminal) in the sector is lacking;

The Review Committee considered the options of a local conduct committee model, which is being trialled at the City of Wanneroo, and a voluntary mediation/conciliation model. The recommendation for a mediation/conciliation model is based on the lower resource demands which should result from the effective intervention of a mediation/conciliation process.

The Committee also considered the potential for the Panel to deal with both minor and serious misconduct complaints. This is similar to the model operating in Tasmania and the Northern Territory whereby SAT would become the body for review-only of panel decisions. This option has long-term resource implications for the Department and in the context of existing concerns, it is not recommended.

Recommendations that support local government to be empowered to better manage the risk of misconduct and to achieve a more holistic approach for managing the risk of misconduct at all levels are recommendations numbered 1 to 6 and 28 to 32.

• The Department advise and assist all local governments to develop a policy for providing a mediation and/or conciliation service through qualified and independent persons
• All local governments advise the Department when the mediation and/or conciliation services policy is initially adopted and, thereafter, whenever someone is engaged to mediate/conciliate a matter involving a council member
• Local Government CEOs and the Department encourage all mayors and presidents to complete training offered by WALGA on how to manage conflicts, particularly during council and committee meetings.
• The Department liaise more closely with the CCC through its Corruption Prevention Directorate with the aim of building the capacity within the local government sector to better manage the risk of misconduct at all levels (i.e. minor, serious and criminal).
• The Department, in consultation with the local government sector, establish a uniform code of conduct for council members that would be mandatory for all local governments.

• The Department establish an accountability framework for the local government sector for all levels of misconduct (i.e. minor, serious and criminal) modelled on the Conduct Guide established by the former Office of the Public Sector Standards Commissioner for the WA Public Sector.

• The Local Government Act be amended to give the mayor or president of the local council the authority to make limited conduct orders against a council member who engages in local misconduct regardless of whether the misconduct occurs at a council or committee meeting.

• The Local Government Act be amended to include a new class of breach called "inappropriate conduct" (as is the case in Queensland) or "local misconduct" that could be dealt with by the local mayor or president.

• The Local Government Act be amended by renaming the term "minor breach" to "minor misconduct" and the definition encompass the concept of "local misconduct".

• The Local Government Act be amended by adding a definition for "official misconduct", which should be consistent with the Corruption and Crime Commission Act 2003 definition of "serious misconduct", and if committed by a council member would be dealt with under that Act. The term "serious breach" under the Local Government Act should be renamed "serious misconduct".

• The Rules of Conduct regulation 3 be revised to align the general principles with the principles underpinning the definition of misconduct in the Corruption and Crime Commission Act 2003, and that the principles be included within the recommended uniform code of conduct.

4 Commentary made about the operation of the complaints making and resolution processes and the Panel

The effectiveness of the Panel would improve if the sector was more aware of its functions, powers and operations. The survey revealed:

• a low level of awareness within the local government sector and the wider community of the Panel, its objectives, how it operates, its decisions and its relationship with the Department;

• decisions by the Panel not being publicised has created the perception amongst stakeholders that the Panel operates behind a veil of secrecy with little or no accountability; and

• a lack of clarity in some of the regulations that define the rules of conduct for council members.

The commentary provided further clarification of the issues and relevant recommendations are number 15, 24 and 25 and 40 to 43.

• The Department seek legal advice from the State Solicitor’s Office to clarify whether amendments to the Local Government Act are required to protect individuals against potential defamation action in relation to the retention and dissemination of Panel findings and decisions.
- **Future Panel annual reports** be used as a mechanism for greater openness and transparency by including additional performance and comparative data.

- **The Panel publish** (on its own separate webpage – see recommendation 17) on the Department’s website easy-to-read summaries of all its decisions as soon as is practicable following the making of its determinations.

- **The Rules of Conduct** regulation 11 be amended to require a council member who has a declared conflict of interest to remove himself/herself from the meeting while the relevant matter is being discussed and/or voted on if the person chairing the meeting believes it is appropriate to do so. If the conflict of interest resides with the person chairing the meeting, the other members present are to decide how the conflict is to be managed.

- **The Rules of Conduct regulation 6(2)** be amended to also require council members to handle and store confidential information appropriately so that it is not easily available to those who should not access it.

- **The Rules of Conduct regulation 10(3)** be amended to delete the reference to members of the public being present.

- **The Rules of Conduct regulation 12** be amended to remove the dollar thresholds for gifts and adopt the approach taken in New South Wales which is based on the concept of acceptable “token gifts and benefits”.

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5 Options and recommendations on alternative mechanisms to a standards panel being the body responsible for adjudicating on alleged breaches of the rules of conduct and certain local laws

The Review Committee concluded that the principles underpinning the Panel model are sound. This view is confirmed by the inter-jurisdictional comparison which reveals that this model is applicable in various forms in a number of other States and in the United Kingdom. Nonetheless in light of the issues identified, the Review Committee considered all options which could lead to improving the efficiency and effectiveness of the current disciplinary framework, including:

- abolishing the Panel and requiring another body such as the State Administrative Tribunal (SAT) to deal with all minor and serious complaints against council members; and
- establishing multiple localised panels.

The potential expansion of the Panel was considered under Term of Reference 3. None of the alternative options are recommended by the Review Committee. Given the low level of complaints that have been lodged historically there is no real justification for the additional cost and administrative burden that would be caused by establishing multiple panels apart from a greater potential for dealing with minor complaints at the local level. There would be resource implications for SAT if it was to deal with both minor and serious misconduct allegations, and its current operational jurisdiction would need to be expanded. This is likely to be not supported by the SAT.

As noted, the disciplinary framework was not established as it was originally intended. Consequently the Review Committee concluded it would be premature to abolish the Panel without first adjusting the operations of the Panel to bring it closer to its original design and evaluating the result of improvements.
In the future if the efficiency and effectiveness of the disciplinary framework significantly improves there may be an argument to expand the role of the Panel. The composition of the Panel would require a re-evaluation and significant legislative changes would need to be made. In contrast, if the recommendations are implemented and no significant efficiencies in the Panel model are achieved, the Department may have no alternative other than to consider recommending abolishing the Panel and formulating a new disciplinary framework.

A model without a State-wide Panel could result in the Panel’s current responsibility being divested to each local government (as was considered when the current disciplinary framework was initially being formulated) or alternatively to SAT. Both alternatives would have significant policy hurdles to overcome because if local governments were required to manage and resource their own standards panels there would be potential duplications and obvious financial implications that could ultimately impact on ratepayers. Such a model could also have implications for SAT if it remained a body of review of each panel’s decisions.

Therefore, if in the future a disciplinary framework without a State-wide Panel had to be considered because the revised system as framed by the recommendations had proven to be inefficient and ineffective, the Department would need to convince the local government sector as well as SAT of the merits of the new model.

6 Options and recommendations to improve the operation of the complaints making and resolution processes and the Panel

The way the Panel process is engaged by some complainants has also contributed to issues of timeliness and concerns with efficiency of its operations. Of particular relevance is the finding that one particular Council member was the subject of 21 complaints or 18% of all complaints over three years and 3 Council members at another Council were subject to 21 complaints. These bottlenecks of complaints need review in a wider context.

In short it was found that:

- the Panel has no power to dismiss vexatious or trivial complaints;
- some complainants have engaged in apparent retaliatory behaviour draining departmental resources and monopolising Panel members’ time; and
- the Panel has limited powers to meaningfully penalise council members found guilty of a minor breach of conduct.

The need for consideration of how the volume and type of complaints are impacting on the efficient operation of the Panel is also addressed under Term of Reference 2 and recommendations for improved management oversight and tracking of complaints handling.

Recommendations 38 and 39 propose a widening of the powers of the panel to improve the resolution of complaints and achieve greater consistency with similar disciplinary panels/tribunals in other Australian jurisdictions.

- The Local Government Act be amended to give the Panel the power to dismiss complaints considered vexatious, frivolous, unreasonable or lacking substance. In such cases, the Panel should be required to give the complainant its reasons for dismissing the complaint.
The Local Government Act be amended by giving the Panel the authority to deal with all minor misconduct allegations, including "recurrent breaches", and additional powers to issue punitive orders.

In conclusion it is recommended that the short term recommendations numbered 1 to 27 are adopted in the immediate future and monitored for their effectiveness while the longer term recommendations numbered 28 to 43 are considered and progressed. The longer term recommendations require amendments to the Local Government Act 1995 and the Local Government (Rules of Conduct) Regulations 2007.
Acknowledgements

To undertake a review project of the scope and nature of the Local Government Standards Panel’s operation required input and assistance from several people at various times. The Standards Panel Review Committee must acknowledge the following individuals who willingly provided valuable assistance and in many cases important insights: Alan Barrett, Grant Washer, Michael Farquhar, Andrew Bond, Helen Della Maddalena, Donna Laing and Matthew Daulby at the Public Sector Commission; Brad Jolly, John Lyon and Cr Carol Adams, the current members of the Local Government Standards Panel; Jennifer Mathews, Peta Kenworthy, Kate Waylen, Darryl Schorer, Garry Martyn, Kerry Ireland, Brendan Peyton, David Morris, Tim Fowler, Jenni Law, Rebecca Rosher, Katherine Iustini, Prue Myers, Elliot Kennedy and Sheree Turner at the Department of Local Government; Peter Wilkins and Sarah Cowie at the Office of the Ombudsman (WA); Phil Barden at the Corruption and Crime Commission; and Margaret Halsmith, Australasian Chair of LEADR: Association of Dispute Resolvers.

The Standards Panel Review Committee also acknowledges the support of Alistair Conwell from the Public Sector Commission who managed the review.

Abbreviations and Acronyms Used

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<td>All local governments advise the Department when the mediation and/or conciliation services policy is initially adopted and, thereafter, whenever someone is engaged to mediate/conciliate a matter involving a council member.</td>
</tr>
<tr>
<td>3</td>
<td>Local Government CEOs and the Department encourage all mayors and presidents to complete training offered by WALGA on how to manage conflicts, particularly during council and committee meetings.</td>
</tr>
<tr>
<td>4</td>
<td>The Department liaise more closely with the CCC through its Corruption Prevention Directorate with the aim of building the capacity within the local government sector to better manage the risk of misconduct at all levels (i.e. minor, serious and criminal).</td>
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<tr>
<td>5</td>
<td>The Department, in consultation with the local government sector, establish a uniform code of conduct for council members that would be mandatory for all local governments.</td>
</tr>
<tr>
<td>6</td>
<td>The Department establish an accountability framework for the local government sector for all levels of misconduct (i.e. minor, serious and criminal) modelled on the Conduct Guide established by the former Office of the Public Sector Standards Commissioner for the WA Public Sector.</td>
</tr>
<tr>
<td>7</td>
<td>The work of staff who support the Panel be fully supported by the systems and resources of the Department’s Governance Branch and a regular reporting regime be established with management.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Terms of Reference</td>
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<tr>
<td><strong>8</strong> The Manager of the Department’s Governance Branch monitor the complaint handling processes undertaken by departmental staff who support the Panel to manage the efficiency and effectiveness of the complaints handling processes.</td>
<td>1 2 3 4 5 6</td>
</tr>
<tr>
<td><strong>9</strong> The Manager of the Department's Governance Branch report, no less frequently than on a quarterly basis, to the Panel on the efficiency and effectiveness of the complaints handling processes.</td>
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<tr>
<td><strong>10</strong> The Department prepare an induction manual for all current and for any new Panel members, including deputy members.</td>
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<tr>
<td><strong>11</strong> As soon as is practicable after their appointments, all new Panel members and deputy members undergo a brief induction session with the Manager of the Department’s Governance Branch, the Presiding Member of the Panel and departmental staff who support the Panel.</td>
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<tr>
<td><strong>12</strong> The Presiding Member of the Panel conduct at least annual briefings for all deputy members to ensure that they remain informed about all aspects of the Panel’s operation should they be required to deputise for a member at any time.</td>
<td></td>
</tr>
<tr>
<td><strong>13</strong> Departmental staff who support the Panel work closely with the Department’s Communications Branch to create a simplified and more user-friendly Complaint Form, as well as create brief and easy-to-read guidelines about how complaints should be lodged and the revised complaint handling processes.</td>
<td></td>
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<tr>
<td><strong>14</strong> Departmental staff who support the Panel work closely with the Department’s Communications Branch to develop a feedback form that should be sent to each party to a complaint following the conclusion of the dispute resolution process.</td>
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<td>Recommendation</td>
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| **15**  
The Department seek legal advice from the State Solicitor's Office to clarify whether amendments to the Local Government Act are required to protect individuals against potential defamation action in relation to the retention and dissemination of Panel findings and decisions. |                    |
| **16**  
Departmental staff who support the Panel work closely with the Department’s Communications Branch to develop a complaints management communications strategy for the purpose of raising awareness of the Panel, its members, processes, powers and its decisions (and misconduct generally). |                    |
| **17**  
The Department establish a separate and easily accessible webpage on its website for information on lodging complaints with the Panel and allowing for the downloading of copies of the recommended revised Complaint Form. |                    |
| **18**  
The Department encourage each local government to have an easily accessible, separate page on their websites outlining how complaints are handled, who is the complaints officer and how that person can be contacted. |                    |
| **19**  
The Department’s revised pre-hearing procedures for handling complaints alleging minor breaches of conduct be aligned with the best-practice guidelines published by the Commonwealth Ombudsman, which are consistent with the Australian Standard on complaint handling. |                    |
| **20**  
Time benchmarks be established and published for key stages of the pre-hearing procedures. |                    |
| **21**  
The Panel conduct hearings face-to-face within the relevant local government region whenever convenient and practical to do so. When not practical to do so, the Panel should conduct the hearing via teleconference or videoconference when appropriate. |                    |
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Terms of Reference</th>
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<tbody>
<tr>
<td>22 Departmental staff who support the Panel fully utilise the Department’s complaints database to record on a regular and ongoing basis all key documents and stages of the complaint handling process, as well as when preparing the Panel’s annual reports.</td>
<td>1 2 3 4 5 6</td>
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<tr>
<td>23 The Department’s Information Technology Branch tailor the complaints database in consultation with the Manager of the Governance Branch to better reflect the Panel’s administrative processes by creating task profiles for complaint projects and enabling time benchmarks to be assigned to key stages within the complaints handling process.</td>
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<tr>
<td>24 Future Panel annual reports be used as a mechanism for greater openness and transparency by including additional performance and comparative data.</td>
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<tr>
<td>25 The Panel publish (on its own separate webpage – see recommendation 17) on the Department’s website easy-to-read summaries of all its decisions as soon as is practicable following the making of its determinations.</td>
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</tr>
<tr>
<td>26 The data stored on the Department’s complaints database be analysed by the Manager of the Governance Branch on a quarterly basis to identify, in consultation with the Panel, any systemic conduct issues within local governments. Any systemic issues identified may warrant prompt attention at a departmental level or ministerial level (through the Director General of the Department).</td>
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<tr>
<td>27 The Manager of the Department’s Governance Branch liaise, no less frequently than on a quarterly basis, with the Manager of the Advice and Support Branch to convey any trends and systemic issues identified through the level and nature of complaints being lodged, as well as the local councils that have been implicated.</td>
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<tr>
<td>28 The Local Government Act be amended to give the mayor or president of the local council the authority to make limited conduct orders against a council member who engages in local misconduct regardless of whether the misconduct occurs at a council or committee meeting.</td>
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<td>The Local Government Act be amended to include a new class of breach called &quot;inappropriate conduct&quot; (as is the case in Queensland) or &quot;local misconduct&quot; that could be dealt with by the local mayor or president.</td>
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<tr>
<td>The Local Government Act be amended by renaming the term &quot;minor breach&quot; to &quot;minor misconduct&quot; and the definition encompass the concept of &quot;local misconduct&quot;.</td>
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<tr>
<td>The Local Government Act be amended by adding a definition for &quot;official misconduct&quot;, which should be consistent with the Corruption and Crime Commission Act 2003 definition of “serious misconduct”, and if committed by a council member would be dealt with under that Act. The term &quot;serious breach&quot; under the Local Government Act should be renamed &quot;serious misconduct&quot;.</td>
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<tr>
<td>The Rules of Conduct regulation 3 be revised to align the general principles with the principles underpinning the definition of misconduct in the Corruption and Crime Commission Act 2003, and that the principles be included within the recommended uniform code of conduct.</td>
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<tr>
<td>The Local Government Act be amended to provide for the member with legal experience to fulfil the role of the Presiding Member of the Panel rather than the departmental member.</td>
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<tr>
<td>The Local Government Act be amended to streamline and simplify the procedures that the Panel is currently required to follow in dealing with complaints.</td>
<td>1 2 3 4 5 6</td>
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<tr>
<td>The Local Government Act be amended to allow a complainant to withdraw a complaint at any time prior to a hearing taking place.</td>
<td>1 2 3 4 5 6</td>
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<tr>
<td>The Local Government Act be amended to allow a person to lodge a complaint no later than six months after the alleged breach is believed to have occurred rather than two years.</td>
<td>1 2 3 4 5 6</td>
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<tr>
<td>Recommendation</td>
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<tr>
<td>The Local Government Act be amended by requiring WALGA under clause 4.1 of Schedule 5.1 to submit to the Minister the names of three persons with experience as a member of council with 21 days.</td>
<td>1</td>
</tr>
<tr>
<td>The Local Government Act be amended to give the Panel the power to dismiss complaints considered vexatious, frivolous, unreasonable or lacking substance. In such cases, the Panel should be required to give the complainant its reasons for dismissing the complaint.</td>
<td>2</td>
</tr>
<tr>
<td>The Local Government Act be amended by giving the Panel the authority to deal with all minor misconduct allegations, including &quot;recurrent breaches&quot;, and additional powers to issue punitive orders.</td>
<td>3</td>
</tr>
<tr>
<td>The Rules of Conduct regulation 11 be amended to require a council member who has a declared conflict of interest to remove himself/herself from the meeting while the relevant matter is being discussed and/or voted on if the person chairing the meeting believes it is appropriate to do so. If the conflict of interest resides with the person chairing the meeting, the other members present are to decide how the conflict is to be managed.</td>
<td>4</td>
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<tr>
<td>The Rules of Conduct regulation 6(2) be amended to also require council members to handle and store confidential information appropriately so that it is not easily available to those who should not access it.</td>
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<td>The Rules of Conduct regulation 10(3) be amended to delete the reference to members of the public being present.</td>
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<tr>
<td>The Rules of Conduct regulation 12 be amended to remove the dollar thresholds for gifts and adopt the approach taken in New South Wales which is based on the concept of acceptable &quot;token gifts and benefits&quot;.</td>
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**Table 1**  List of Recommendations by Term of Reference
1.0 Background

1.1 The Power to Establish Standards Panels

The power to establish one or more standards panels is vested in the Minister for Local Government through section 5.122 of the Local Government Act. Section 5.122 came into operation on 21 October 2007 with the full proclamation of the Official Conduct Act. Schedule 5.1 of the Local Government Act outlines the provisions related to the Panel, including amongst other matters: membership of the Panel; the terms of office for Panel members; ministerial powers in relation to the Panel; and the Panel’s annual reporting obligations.

On the same day that the Official Conduct Act was commenced in full, the Rules of Conduct regulations also came into operation. The Rules of Conduct regulations essentially established for the first time a standard set of minor breach laws for all local government council members throughout the State. The Rules of Conduct regulations provide the core definitional element for what constitutes a minor breach of conduct by council members.

The commencement of the Official Conduct Act and the introduction of the Rules of Conduct regulations were significant milestones in the new disciplinary framework governing the behaviour of local government council members. The milestones were achieved after many years of development and a lengthy consultation process with WALGA, LGMA and other stakeholders. The high-level objective of the disciplinary framework was to have a mechanism to discipline individual council members to complement the prevailing powers to suspend or dismiss an entire local government council following an inquiry. It was expected that the powers to discipline individual council members would over time result in an improvement in the general behaviour of council members.

A second key high-level objective of the disciplinary framework was to ensure that the process would be conducted independently of the local government council to which the council member, and the subject of a complaint, was elected.

Secondary objectives of the disciplinary framework were to establish a body that would:

- make determinations on the balance of probabilities in light of the evidence presented rather than the strict rule of law to ensure the process was not legalistic; and
- administer justice and resolve complaints relatively quickly.

As part of the development process, a White Paper on the proposed amendment Bill was released in December 2003 in which two options were canvassed, namely to establish a:

- standards panel for each local government; or
- uniform standards panel for all local governments.

Following a period of consultation, the Government of the day decided a uniform panel for all local governments was the most appropriate option.
1.2 Background to the Review

When the disciplinary framework was subsequently established under the previous Government, it was done so with a commitment to stakeholders that a review of its operation would be undertaken after the initial “start-up” phase. Consequently, in 2010 the Hon John Castrilli MLA, Minister for Local Government, requested the Department to undertake a review of the Panel and its supporting legislation to fulfil that commitment to stakeholders. To ensure the review would be independent of the Department, Minister Castrilli approved of the process being overseen by a committee, chaired by a senior departmental officer, who would be assisted by senior officers from other public sector agencies.

Following Minister Castrilli’s approval of how the review would be undertaken, on 14 September 2010, Jennifer Mathews, Director General of the Department, requested Mal Wauchope, Public Sector Commissioner, to nominate an officer to manage the review, and the nomination of a senior PSC officer to fill one position on the Review Committee. The Department also requested the Department of Commerce (Consumer Protection Division) to nominate a senior officer to be the third and final member of the Review Committee.

Subsequently, the Review Committee was established and comprised of the following personnel:

- Wendy Murray, Executive Director, Strategic Policy and Local Government Reform, the Department (Chairperson);
- Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce (Consumer Protection Division); and
- John Lightowlers, General Counsel, PSC.

Andrew Main, Manager Legislation at the Department (until 21 April 2011), was an ex officio member of the Review Committee.

1.3 Terms of Reference

Following consultation with WALGA, LGMA and Panel members, in late 2010 the following terms of reference for the review were agreed by the Review Committee:

To undertake a review of the operation of the Local Government Standards Panel and its supporting legislation to:

1. Assess whether the original objectives of the disciplinary framework have been achieved.
2. Examine the effectiveness and efficiency, including timeliness, of the complaints making and resolution processes and operation of the Panel in undertaking its statutory functions.
3. Identify whether the scope of matters referred to the Panel are appropriate and the risks and benefits of expanding or reducing its scope.
4. Identify and examine existing and additional commentary made about the operation of the complaints making and resolution processes and the Panel.
5. Provide options and recommendations on alternative mechanisms to a standards panel being the body responsible for adjudicating on alleged breaches of the rules of conduct and certain local laws.
6. **Provide options and recommendations to improve the operation of the complaints making and resolution processes and the Panel. Where relevant, options and recommendations are to include an estimate of the resource implications if implemented and which organisations would or could contribute to any additional costs.**

### 1.4 Key Stakeholders

The Review Committee identified several key stakeholders (as shown in table 1) who either currently have (or potentially could have) an interest in how the Panel operates or had in the past some involvement in the establishment of the current disciplinary framework.

<table>
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<tr>
<th><strong>Stakeholder</strong></th>
<th><strong>Comments</strong></th>
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<tbody>
<tr>
<td>Current Panel members</td>
<td>Current Panel members have a unique insight into how the legislation operates and first-hand knowledge of the performance of the dispute resolution process.</td>
</tr>
</tbody>
</table>
| Past Panel members | - Quentin Harrington (October 2007- August 2009).  
| Staff who support the Panel | Staff who support the Panel have day-to-day experience of how the legislation operates and are integral to the performance of the dispute resolution process. |
| Office of the Minister for Local Government | The Minister for Local Government has certain statutory powers in relation to the Panel. |
| Members of the WA Parliament | Members of Parliament may be the recipients of complaints about council members and potentially may have lodged complaints against council members previously. |
| Director General of the Department | The Director General has a statutory role in the operation of the dispute resolution process. |
| Key staff of the Department | - Tim Fowler (Special Advisor, Legislation and Reform).  
- Brendan Peyton (Manager, Governance).  
- Jenni Law (Manager, Advice and Support).  
- Rebecca Rosher (Coordinator, Public Affairs).  
- Kelly Dansie (Manager, Executive Services). |
| LGMA (WA) Board | LGMA (WA) is a key local government body representing managers and aspiring managers within the sector. |
| WALGA State Council | WALGA is a key local government body representing all local governments within WA. |
| Local government CEOs | Many local government CEOs fulfil the role of complaints officer and have a statutory role in the dispute resolution process. |
| Local government complaints officers | Complaints officers have a statutory role in the dispute resolution process. |
### Stakeholder Comments

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<tr>
<th>Stakeholder</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Elected council members who have been the subject of a complaint</td>
<td>Those who have been the subject of a complaint alleging a minor breach of conduct would have first-hand experience of the dispute resolution process.</td>
</tr>
<tr>
<td>Members of the public who have lodged complaints</td>
<td>Members of the public who have previously lodged complaints against council members alleging minor breaches of conduct would have first-hand experience of the dispute resolution process.</td>
</tr>
<tr>
<td>Elected council members</td>
<td>Complaints alleging a minor breach of conduct can be lodged against any elected WA local government council member.</td>
</tr>
<tr>
<td>General public</td>
<td>Members of the general public can lodge complaints alleging a minor breach of conduct by a council member.</td>
</tr>
<tr>
<td>SAT</td>
<td>SAT has a statutory role in the dispute resolution process as the body that can review Panel breach decisions.</td>
</tr>
<tr>
<td>Office of the Ombudsman (WA)</td>
<td>The Office of the Ombudsman (WA) was on the reference group that developed the principles on which the Panel legislation is based and publishes fact sheets on complaint handling.</td>
</tr>
<tr>
<td>Corruption and Crime Commission</td>
<td>The former Anti-Corruption Commission was on the reference group that developed the principles on which the Panel legislation is based.</td>
</tr>
<tr>
<td>State Solicitor's Office</td>
<td>The State Solicitor’s Office plays a role in SAT review hearings of Panel decisions.</td>
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<tr>
<td>Law Society of Western Australia</td>
<td>The Law Society of WA was on the reference group that developed the principles on which the Panel legislation is based.</td>
</tr>
<tr>
<td>PSC</td>
<td>The Performance and Oversight Directorate at PSC administers the public sector Employee Perception Survey and has access to relevant benchmarks on ethical conduct within the WA Public Sector.</td>
</tr>
<tr>
<td>The Department of the Premier and Cabinet</td>
<td>The Department of the Premier and Cabinet is responsible for establishing and implementing sector-wide policies and was regarded as having a potential interest in how the Panel operates.</td>
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### 1.5 Consultation Strategy

In light of the geographical and organisational diversity of stakeholders that spans two levels of government administration, the Review Committee utilised a four-pronged consultation strategy to solicit submissions. Stakeholders were able to make their views known through the following methods:
• an on-line survey;
• telephone submission;
• face-to-face interview; or
• written submission.

The consultation strategy matrix at Appendix A outlines the methods by which each stakeholder was invited to make a submission.

Information about the review, including details regarding the on-line survey for the sector, was sent to all local governments through a circular issued by the Director General of the Department on 9 February 2011. The issuing of the circular coincided with the publication in *The West Australian* of a display advertisement informing the general community of the review and of the options available to make a submission. The display advertisement is at Appendix B.

To coincide with the publication of the display advertisement and the issuing of the departmental circular, information about the review that was already on the Department’s website was updated with the provision of more detail regarding the options available to make submissions.

To facilitate the preparation of written submissions for those wishing to make a submission in this way, the Review Committee prepared a list of issue-based questions about the Panel and its operation that were posted onto the Department’s website on 9 February 2011. The list of questions was also attached to all letters from the Director General of the Department to stakeholders inviting a submission, as were the terms of reference for the review.

All face-to-face interviews were structured in that the officer managing the review asked interviewees a pre-determined set of questions relevant to their roles. Following each interview, all interviewees were given an opportunity to review for accuracy and content the interview notes recorded.

1.6 Administration of the On-line Survey

Anyone wishing to participate in the on-line survey (other than local government council members, CEOs and complaints officers) was required to register with PSC, who hosted and administered the survey. Local government council members, CEOs and complaints officers were automatically registered following the creation of email lists for each of these target groups. Registration was necessary because the survey was administered by emailing all participants their own PIN with the hyperlink to the survey webpage. A valid PIN was required to access the survey webpage. All participants were advised that the PIN was not used to identify individuals. Instead it ensured the integrity of the survey response data because respondents were unable to complete the survey multiple times and unregistered persons were prohibited from accessing the survey webpage.
Sixteen members of the public, who between 2007/08 and 2009/10 had lodged at least one complaint with the Panel alleging a minor breach of conduct by a council member, were contacted by either email or post and invited to register for the on-line survey. Those members of the public who had lodged a complaint in the current 2010/11 financial year were not specifically contacted regarding the on-line survey. The reasons for not doing so are that at the time complaints data was collected there were many unresolved complaints and any complainant from the general community had an opportunity to become aware of the review through other means like, for example, the newspaper advertisement.\(^a\)

Prior to the on-line survey being available to all registrants, it was piloted with a group of seven people that comprised of one senior WALGA officer; three local government CEOs; one council member and two senior PSC officers. Based on the feedback received by participants to the pilot, the Review Committee decided that only minor amendments to the survey were necessary.

The survey was originally available to all registrants for two weeks between 21 February and 4 March 2011. Following requests from a few council members and others to extend the closing date, the survey remained available on-line until 9 March 2011.

Those in the local government sector who did not have a valid or easily accessible email account were posted hard-copies of the survey (Appendix C). Completed hard-copies of the survey that were returned before the closing date were allocated PINs and their responses were recorded by a PSC officer through the survey webpage.

Lodging a telephone submission required the person making the submission to answer the survey questions over the telephone. Only one person made a telephone submission. The completed survey was later allocated a PIN and the data was input into the survey database ensuring it would be subsequently analysed with the other survey responses received.

\(^a\) As at November 2010, there were only six members of the public who had lodged a complaint with the Panel for the first time.
2.0 The Panel and its Administrative Processes

Schedule 5.1 (clause 2) of the Local Government Act stipulates that the Panel must consist of three members who are appointed by the Minister for Local Government, as follows:

- an officer of the Department (who performs the role of the Presiding Member);
- a person who has experience as a member of a local government council; and
- a person with relevant legal knowledge.

Prior to appointing a person with experience as a member of a local government council, the Minister is required to invite WALGA to submit a list of 9 eligible people within 28 days of the invitation being made.

The current members of the Panel are:

- Brad Jolly, Executive Director, Governance and Legislation (departmental officer and the Presiding Member);
- Councillor Carol Adams, Mayor at the Town of Kwinana; and
- John Lyon, a former Deputy State Solicitor.

2.1 Overview of the Current Situation

Complaints alleging a minor breach of conduct by a council member are dealt with by the Panel while those alleging serious breaches must be sent to the Department’s CEO who may subsequently forward the matter to SAT for a determination or indeed to another body, like for example the CCC, depending on the nature of the allegations. A schematic map of the complaint handling and dispute resolution processes followed by departmental staff who support the Panel is at Appendix D.

A minor breach is defined in section 5.105(1) of the Local Government Act as a breach prescribed in the Rules of Conduct regulations or certain local government laws (i.e. a local government Standing Order relating to the conduct of council members at council or committee meetings). A serious breach is defined in section 5.105(3) of the Local Government Act as a breach of any written law, other than a local law established through the Local Government Act, where the offence is specific to the actions of council members. The Local Government Act (section 5.104(4) and (5)) prohibits the Rules of Conduct regulations from specifying a regulation that would define a minor breach under the Act if it would also be a serious breach under the Act.

In situations where the Panel receives a complaint that is in fact an allegation of misconduct that would be outside of its jurisdiction (e.g. a serious breach of conduct), the matter is referred to the Department’s Manager of the Governance Branch for investigation.
In brief, a complaint alleging a minor breach of conduct must be lodged using approved forms (Forms 1 and 1A) and there is also a Form 1B (for recording the council member’s details who is the subject of the complaint) that the local government complaints officer completes. Forms 1 and 1A can be lodged with the relevant complaints officer by anyone (including any local government staff). A complaints officer can also initiate a complaint against a council member alleging a minor breach of conduct. The Local Government Act requires local government complaints officers, within 14 days after the day on which the complaint is received, to acknowledge to the complainant receipt of the complaint; forward a copy of the complaint to the council member who is the subject of the complaint; and forward the complaint and any other relevant information to the Panel.

Following receipt of the complaint, departmental staff who support and report functionally to the Panel, undertake what are termed pre-hearing procedures. There are currently two staff who support the Panel – one Principal Legal Officer and an Advisor Support Officer who together undertake the pre-hearing procedures. The pre-hearing procedures consist of:

- making an initial assessment of the complaint and the allegations made;
- obtaining any further information or clarification from the complaints officer and/or the complainant;
- issuing a Notice of Complaint letter to the council member who is the subject of the complaint and inviting a response within 21 days;
- examining the council member’s response to the complaint (if any is provided); and
- preparing a Summary Report of all the evidence collected (and this can include transcripts of council meetings, copies of documents and any other information considered relevant to the complaint) for the Panel on which the Panel makes its determination.

Panel meetings are usually held monthly, at which time Panel members decide whether or not, on the balance of probabilities, based on the evidence outlined in a Summary Report, the council member in question committed a minor breach of conduct as was alleged. The Panel’s Procedures and Practice Guidelines allow for evidence to be presented by the parties to complaints in various ways, including face-to-face hearings. However, no face-to-face hearings have ever been held by the Panel since its establishment.

If the Panel determines that a minor breach of conduct has been committed, the council member is sent a letter outlining the reasons for its finding (as is required under section 5.110(4) of the Local Government Act) and he/she is given the opportunity to make submissions, within 21 days after the date of the letter, as to how the Panel should deal with the breach. Inviting the council member found to have committed a minor breach of conduct to make submissions is a requirement under section 5.110(6) of the Local Government Act. Once the 21 days expires, at the next scheduled Panel meeting, the Panel decides how to deal with the breach by taking into account any submissions that may have been made by the council member in question.
Correspondence is subsequently issued to all parties outlining the Panel’s reasons for its finding (except to the council member who would have been advised previously), and the reasons for its decision as to what penalties (if any) will be applied. The council member and complainant are also advised that they may apply to SAT within 28 days after the date of the letter for a review of the Panel’s decision. Where applicable, a formal Notice of Order outlining what penalties are to apply to the council member is also attached to the correspondence.

The Panel may adjourn its proceedings regarding any given complaint to seek further information on the matter and consider the complaint at a subsequent meeting in light of any additional material obtained.

If the Panel determines that the allegations against the council member cannot be sustained on the evidence presented, each party is issued with a letter outlining the reasons for the Panel’s finding and the matter is closed.

If the Panel assesses a complaint as being a recurrent breach (i.e. where the council member has previously committed two or more minor breaches) and, therefore, outside of its jurisdiction, the complaint is forwarded to the Director General of the Department and all parties are notified. The Director General decides whether the complaint should be considered a recurrent breach and, if so, the complaint is forwarded to SAT. If the Director General considers the complaint not to be a recurrent breach, the matter is returned to the Panel to be dealt with as a minor breach. The Director General advises all parties of their decision.

2.2 The Relationship between the Department and the Panel

One of the Department’s strategic goals articulated in its Strategic Plan 2010-2015 is to:

- Build good governance in the local government sector and provide effective regulation

Two core strategies to achieve this goal are:

- Develop effective systems, processes and legislation that promote good governance practices.
- Administer and enforce the Local Government Act and other legislation within the portfolio of the Minister for Local Government.

Further, the Department’s 2009/10 Annual Report identifies monitoring the compliance of local governments with their legislative and regulatory obligations as one of its four service functions. Therefore, as the agency responsible for administering the Local Government Act, the Department’s role in supporting the Panel is essential and obligatory.
3.0 Summary and Analysis of Stakeholder Feedback

3.1 On-line Survey

3.1.1 Demographics and Survey Response Rates

Table 2 shows the numbers of survey registrations for each of the target stakeholder groups and the response rates that were achieved. There were a total of 471 survey participants, thereby achieving an overall response rate of 32.79% (PSC considers response rates above 30% to be good in the context of the annual Employee Perception Survey for the WA Public Sector). There were six hard-copy surveys received too late to be included in the analysis of the survey responses. However, the six completed surveys were considered as written submissions and analysed as such.

<table>
<thead>
<tr>
<th>Group</th>
<th>No. of Registrations</th>
<th>No. of Participants</th>
<th>Response Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEOs</td>
<td>141(^c)</td>
<td>60(^d)</td>
<td>42.55%</td>
</tr>
<tr>
<td>Complaints Officers Only</td>
<td>15(^e)</td>
<td>12</td>
<td>80.00%</td>
</tr>
<tr>
<td>Council Members</td>
<td>1273</td>
<td>395(^f)</td>
<td>31.03%</td>
</tr>
<tr>
<td>Members of the Public</td>
<td>7(^g)</td>
<td>5</td>
<td>71.43%</td>
</tr>
<tr>
<td>Overall</td>
<td>1436</td>
<td>471(^n)</td>
<td>32.79%</td>
</tr>
</tbody>
</table>

**TABLE 3: SURVEY RESPONSE RATES FOR TARGET GROUPS**

Good response rates were achieved within all target groups, although few members of the public registered.

Figure 1 shows that most survey respondents (63%) work or worked for rural local government councils as compared to metropolitan councils. The high representation of rural-based council members in the survey responses does reflect the fact that currently 920 council members (or 72% of all council members) are based at rural councils, which comprise 79% of the whole local government sector.

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\(^b\) Some response rates in the graphs that follow do not total 100% because some respondents did not answer all survey questions.

\(^c\) Includes councils at both Christmas Island and the Cocos (Keeling) Islands.

\(^d\) 52 CEOs who participated in the survey are also complaints officers while 8 are not.

\(^e\) Includes only those complaints officers who are not CEOs.

\(^f\) A confidence level of 95% and an error rate of 5% is achieved with this number of respondents.

\(^g\) This figure includes 5 complainants and a former local government CEO and/or complaints officer.

\(^h\) One respondent is a current CEO and a former council member giving a total of 472 rather than 471.
A total of 52 (11%) survey respondents have previously lodged a complaint with the Panel alleging a minor breach of conduct against a council member. Figure 2 shows to which stakeholder groups those respondents belong with more than half (51%) being current or former local government council members and 22% having been the subject of a complaint alleging a minor breach of conduct themselves.

Within the total of 395 current and former council members who participated in the survey, 48 (12%) have been the subject of at least one complaint alleging a minor breach of conduct. This represents 90% of all council members who have been the subject of complaints lodged with the Panel between 2007/08 and 2009/10.
3.1.2 Awareness of Ethical Standards

All council member respondents to the survey were asked two questions regarding the ethical culture at their local councils. The first question asked to what extent they agree or disagree that their local government encourages ethical behaviour. A significant majority (82%) answered with either “agree strongly” or “agree somewhat” as is shown in figure 3. This high level of agreement compares favourably with responses to a similar question that is routinely asked as part of the Employee Perceptions Survey administered to selected agencies within the WA Public Sector each year. In 2010, 4313 WA Public Sector employees from 25 agencies participated in the Employee Perception Survey and 75% of participants answered with either “agree strongly” or “agree somewhat” to the question regarding their agency actively encouraging ethical behaviour.

![Figure 3: The extent to which current and former council members agree their local governments encourage ethical behaviour.](image)

Current and former council members were also asked whether they are (or were at the time they were council members) familiar with their local government’s code of conduct. As figure 4 shows, the vast majority (93%) believe they are (or were at the time they were council members) familiar with their local government’s code of conduct. This result also compares favourably with responses to a similar question in the 2010 Employee Perception Survey that found 77% of WA Public Sector employees who participated in the survey were familiar with their agency’s code of conduct.

While the high level of familiarity with local government codes of conduct amongst current and former council members is noteworthy, it does not in itself suggest anything regarding the degree of adherence to codes of conduct. Also, as there is currently no uniform code of conduct that all local governments must adopt, it is important to note that there can be variations in what each local government’s code of conduct actually covers.
3.1.3 Information Availability

While responses from current and former council members who participated in the survey show a high level of familiarity with local government codes of conduct and it seems many local governments encourage ethical behaviour, the survey also shows less than half (43%) of all survey respondents know that a minor breach is a failure to comply with the Rules of Conduct regulations or certain local laws (figure 5). This suggests a general lack of awareness of what type of allegations the Panel can examine. Indeed, amongst council member respondents, only 39% correctly know what constitutes a minor breach of conduct.
In light of the general lack of knowledge of what constitutes a minor breach of conduct, only 34% of survey respondents believe there is sufficient pro-active work being undertaken to raise awareness of what is considered acceptable behaviour for council members (figure 6). Interestingly, amongst those who have been the subject of complaints alleging a minor breach of conduct, only 25% believe there is sufficient pro-active work being undertaken in this regard. Similarly, almost two-thirds (63%) of CEO respondents do not believe there is sufficient pro-active work being undertaken to make council members aware of what is considered acceptable behaviour.

**FIGURE 6: LEVEL OF AGREEMENT THAT SUFFICIENT PRO-ACTIVE WORK IS BEING UNDERTAKEN ABOUT WHAT IS CONSIDERED ACCEPTABLE BEHAVIOUR BY COUNCIL MEMBERS.**

Most survey respondents believe there is insufficient pro-active work being undertaken to raise awareness of what constitutes a minor breach of conduct and what is considered acceptable behaviour.

Many suggestions were put forward as to what pro-active work could be undertaken to raise awareness of what is considered acceptable behaviour for council members. The following comments summarise those suggestions made by CEO respondents:

- **Regular councillor training.** Perhaps a session dedicated at the Annual WALGA conference and more regional visits/workshops.
- **An information road-show every two years for elected members and senior staff.** Or alternatively, workshops that can be undertaken by WALGA and/or LGMA.
- **The Standards Panel should regularly produce a circular that explains current findings of the Panel and implications to elected members.**
- **Information sessions should be regularly offered as there are changes to complaints officers/CEOs as well as council members over time.**

The above suggestions were consistent with those from council member respondents, as the following examples show:

- **I think education training on this matter is very important for all members of local government even...members of the public.**
• I believe there should be on-going information/training for all councillors and staff as it is too easy to just forget what this subject is all about... hence (in my opinion) the need for ongoing information/training which needs to be conducted right throughout country WA and not just within the Perth metropolitan area.

• The Department needs to regularly advise elected members of the Rules of Conduct via the newsletter and seminars. WALGA should also keep elected members aware of their responsibility to the Rules of Conduct, sessions during the annual conference may be an option. LGMA could do the same. Councils should run an information session, perhaps with staff from the Department once each year.

• Seems to lack wider community circulation...suggest councils [be] required/encouraged to include the information on their websites, and that regular dissemination occurs through the media.

Responses to the question regarding whether or not there is adequate information available about the operation of the Panel and how complaints must be lodged shows that less than half (48%) of all survey respondents believe that there is adequate information available (figure 7). Similarly, less than half (46%) of council member respondents also believe there is adequate information available and 23% don’t know. While most CEO respondents (63%) believe there is adequate information available, 30% believe this is not the case.

This question generated a large number of comments and several ideas were suggested to make more information available about the Panel and its processes. The key suggestions from CEOs include:
• Step-by-step instructions and forms readily available to complaints officers. Perhaps through the Department’s...website would be beneficial.

• There needs to be more information and regular updates of the cases that the Panel is dealing with so that CEOs can use this to inform elected members of the matters that are getting referred to the Panel.

• A requirement for all council members and CEOs to attend information sessions on the [local government] Rules of Conduct provisions.

Several council member respondents also made suggestions regarding how to make more information available about the Panel and its processes. The most pertinent suggestions are covered by the following comments:

• Pamphlet[s] sent to all councillors giving the basics, and including a website for more information.

• Have more reading matter or CD.

• A simple training course would be useful, perhaps on induction. Induction courses for new councillors could be made compulsory...

• Perhaps some information could be provided on the Standards Panel, complaints process and the related complaint forms etc. on the DLG website.... unless they are there and I can't actually find where they are!?

• Department of Local Government should conduct mandatory training for all councillors on an annual basis - at every local government site or district (rural). Attendance needs to be mandatory to enable all councillors to gain the same message about the Code of Conduct, ethical behaviour and reporting obligations.

• Information on [the] basis of complaints and the procedure should be on the Council website and linked to the Department of Local Government website.

• Regular newsletter advising of processes and procedures and perhaps a few case studies that give councillors a greater perspective of the types of issues over which the Panel presides.

• Increase awareness of...[the Panel's] existence. Ensure access to information is simple and straightforward (not buried several levels below a home page on the web). Use the networks of WALGA to get the message out. Put together a travelling road-show, and visit councils during briefing sessions etc.
Almost two-thirds of all survey respondents (66%) believe that it should be an offence to disclose details of a complaint, regardless of whether or not a local government election campaign is underway, until the Panel makes a decision on the allegations (figure 8). A similar percentage (65%) of all council member respondents hold the same view, as do 75% of CEO respondents. Currently, section 5.123 of the Local Government Act only makes it an offence for a person to disclose information about a complaint during a local government election campaign when the complaint is lodged with the Panel during the campaign period. The apparent rationale for the provision is to protect the reputation of the council member who may be the subject of a vexatious complaint and a candidate during an election campaign.

![Figure 8: Level of Agreement on the Need for All Complaints to be Confidential Until the Panel Makes its Decision.](image)

Most survey respondents believe all complaints should remain confidential regardless of whether or not an election campaign is underway.

Once the Panel makes its decision on the allegations within in a complaint, there is strong support amongst all survey respondents (73%), as well as amongst those who have been the subject of a complaint previously (69%) and CEOs (78%), for the decision to be made public with a summary of reasons as to why the specific decision was made (figure 9).
Themes in the comments provided in response to this question include the need for the Panel and council members to be accountable to the public; the educative function that making public Panel decisions would fulfil; and the potential benefit of reducing vexatious complaints. There were also some comments that supported keeping the names of individuals confidential even after the Panel has made a breach finding.

Some comments from council member respondents who support making all Panel decisions public include:

- I believe that complaints for this subject should be treated in the same way as allegations (charges) are made through the normal court system. Charges in the court system are open for the general public to observe and hear the results thereof and therefore conduct complaints should be treated in the same way. Panel decisions should be made public (again like the normal court process) or else it leaves the process open for criticism of secrecy, favouritism, or whatever.

- The Panel needs to be open and accountable and should be prepared to stand up to public scrutiny.

- There are so many reasons why such decisions should be made public...It helps educate and inform. Openness would improve the Panel's credibility with the industry; it has none. It reduces the risk of abuse of power.

- This would be a learning experience for all of us, who may only have a vague idea about the process.

- An elected member is voted in by the public (ratepayer) [so] they should be aware of any findings or actions.
A few council member respondents support the principle of making Panel decisions public only under certain circumstances, like when the council member who is the subject of the complaint approves their details being made public or when a breach finding was determined. However, others reason that making non-breach decisions public would counteract any suspicion about the council member who was the subject of the complaint. As one council member explained:

- ...in small local communities knowledge of complaints becomes known and to discourage gossip it would be best to release all decisions so that those people who are cleared of any misconduct [are not subjected to] unfair gossip.

One CEO, who is also a complaints officer, wrote in support of making Panel decisions public:

- Once a complaint is submitted it goes into a 'black hole'. As a complaints officer I have no idea of the outcome, or timeframe.

### 3.1.4 Rules of Conduct Regulations

Amongst most survey respondents (70%), as well as council member respondents (71%), there is the view that the current Rules of Conduct regulations are adequate in terms of its scope and specificity (figure 10). Although less, the majority of CEO respondents (63%) also believe the Rules of Conduct regulations are adequate in terms of its scope and specificity.

![Figure 10: Level of Agreement on the Adequacy of the Rules of Conduct Regulations. Most survey respondents believe the Rules of Conduct regulations are adequate in terms of its scope and specificity.](image)

While overall there is strong support for the Rules of Conduct regulations in its current form, many of the written comments provided focussed on the need to make the regulations clearer and have the general principles (which are listed in regulation 3) included within the range of minor breach offences. Some respondents also made the point that there are benefits in collating local codes of conduct with the Rules of Conduct regulations.
Pertinent comments from CEOs, include:

- The Rules of Conduct seem to be open to considerable interpretation, and given the number of breaches that are found to have occurred and no action is taken, are somewhat disregarded by some elected members.

- Whilst the regulations specify “general principles”; not all offences against these general principles are addressed in the regulations.

Some comments from council member respondents, include:

- Impartiality interests are often not declared and they definitely influence decisions, in my observation. This area needs to be tightened. Also, ‘gifts’ are becoming more... indirect (e.g. payment by suppliers for attendance of councillors or CEOs; wives at conferences etc.)...

- It is too easy for an elected member to declare an impartiality interest, and then go on to participate in discussion and vote on a matter, when they actually are not impartial and may even have a financial interest.

- Local governments have their own 'Code of Conduct' and 'Local Law relating to Standing Orders'. It would be beneficial if these documents were collated with the Rules of Conduct.

Figure 11 shows there are similar high levels of agreement amongst all survey respondents, as well as amongst CEO and council member respondents (between 78% and 71% respectively), that the Department should prepare a uniform code of conduct that would apply to all local governments (and which could be added to by local governments).

![Figure 11: Level of Agreement Whether or Not There Should be a Uniform Code of Conduct.](image-url)

A significant majority of survey respondents believe there should be a uniform code of conduct.
3.1.5 How the Panel and the Dispute Resolution Processes are Perceived

Survey respondents were asked to what extent they agree or disagree with the statement that they have confidence in the Panel and its processes to resolve complaints. Figure 12 shows that less than half of all survey respondents (40%) indicated their agreement to some extent with the statement. While only 15% indicated disagreement to some extent with the statement, 22% were equivocal and 12% do not know. These figures closely correspond to those for council member respondents. In contrast, while there are similar levels of agreement with the statement amongst survey respondents who were either the subject of complaints lodged with the Panel or had been complainants previously, there are significantly higher levels of disagreement with the statement in these two groups (36% and 38% respectively). A similar percentage (27%) of local government CEOs (many of whom fulfil the role of complaints officers) also disagree with the statement to some extent although there are similar levels of agreement (37%) compared with the other groups.

Overall, a high percentage of survey respondents (57%) do not know whether the size and composition of the Panel is appropriate, and this is reflected in the responses from council members (59%) and CEOs (50%), suggesting a general lack of knowledge about the Panel and its membership (figure 13).
In light of the general lack of knowledge about the Panel within the local government sector, many comments in response to this question reflected this low level of awareness. One pertinent comment from a CEO who is also a complaints officer at a metropolitan local government summarises this sentiment aptly:

- *I have no idea as to who sits on the Panel, how often or where they meet.*

Three comments from council member respondents that also reflect this general lack of knowledge about the Panel, include:

- *I am unaware of the Panel membership or track record in dealing with complaints. I would be most grateful though to be able to have direct access to this information.*

- *Really don't know much about the Panel or how it operates, it seems to be secret.*

- *This is the first I’m hearing of the Panel!!!*

The independence of the Panel was also a topic that attracted some comments. One CEO wrote:

- *I believe the composition of the Panel should include a broader range of persons from the local government sector (LGMA, WALGA etc.) that also includes some regional based knowledge/representation given the circumstances that constitute any breach in rural/regional areas can differ significantly from those in the metropolitan area. This in turn may require an increase to the Panel size.*
In contrast, one council member respondent wrote:

- **[The] Panel should be completely independent of the local government system and not include members drawn from [the Department], WALGA or councils.**

Another council member respondent, who at one time served as a deputy member on the Panel, remarked:

- **It is my opinion the Panel leans too much towards members with a legal background. When I was a deputy on the Panel I felt that my opinion was not at all valued and I was not required to attend so had no continuity of information. Apart from never [being] asked to attend again, [never] was I provided with information. Hence, my decision not to nominate a second time.**

One council member respondent holds similar views and also doubts the adequacy of the Panel's powers and resources:

- **The current configuration seems hamstrung by legal procedure and therefore ineffectual; they appear to have no real powers and no real resources to conduct their business.**

On the question as to whether multiple standards panels should be established (which the legislations currently allows), there is little support overall (14%), as is shown in figure 14. Almost one quarter of all respondents (24%) did not have sufficient knowledge to answer the question and similar levels are reflected amongst council member and CEO respondents.

![Figure 14: Level of Agreement as to Whether Multiple Panels Should be Established. Most Survey Respondents do not Support Establishing Multiple Standards Panels.](image)

The comments respondents made in response to this question reflects the limited support for the possibility of establishing multiple panels. Those who do not support the possibility are apparently concerned about the perceived additional costs of having multiple panels and that another level of bureaucracy may be created.
One council member noted:

- *I think it would be too difficult and involve unnecessary cost. The Standards Panel must stand alone, be independent and transparent.*

Even those who apparently support the possibility of multiple panels do so with some reservations regarding the level of consistency in decision-making. Others support the possibility providing the time taken to resolve complaints would be reduced. One CEO made the point:

- *If there was a demonstrable link between speed of resolution of a complaint and the number of panels established then I cautiously agree with more panels. However, the challenge with more panels is in gaining an appropriate number of panel members with the right skills and support. Also, you might experience inconsistency between panels in how a complaint is handled.*

One complaints officer wrote:

- *Yes, only if it speeds up the investigation, finding etc. No, if it doesn't increase the turnaround time.*

Responses to the question as to whether it is appropriate that currently CEOs and complaints officers are able to initiate complaints against council members alleging minor breaches of conduct indicate overall strong support (73%), as figure 15 shows. Indeed, 88% of CEO respondents believe it is appropriate to do so.

![Figure 15: Level of agreement as to whether it is appropriate that CEOs and complaints officers are allowed to initiate complaints. Most survey respondents believe it is appropriate that CEOs and complaints officers initiate complaints.](image)

However, there were several comments made regarding the difficult situation that CEOs face who are also complaints officers (and the majority perform both roles) because they are employed by the local government council. One CEO from a rural local government made the following point (however, CEOs in metropolitan councils also expressed similar views):
• In smaller local authorities there is usually no other person capable or in the position to be able to make the complaints. It does however put the CEO in [an] awkward situation where they are required to report breaches, yet those people are the same ones to undertake performance reviews and can have a bearing on the employment of the CEO. While it is supposed to be impartial, in reality it is not as complaints are taken personally.

A former CEO supports the ability for CEOs to lodge complaints, however, is reluctant to do in the future because of their experience of the process:

• As a CEO I made several complaints and was not consulted by the Panel on any of the issues I raised and a decision was made to dismiss the complaints made without any reference to me. I did receive a copy of the decision and I felt that the spirit and intent of the Rules of Conduct had been completely overlooked. Given this I will probably not bother to make any complaints in the future.

One council member respondent who supports CEOs and complaints officers being able to lodge complaints wrote:

• Yes, these people know the law, are outside the councillor group and should be able to make an unbiased report or complaint.

Another council member respondent who also supports CEOs and complaints officers lodging complaints made a comment that intimates of a preliminary stage being conducted at the local government level before the Panel is involved:

• Only if it has been unable to resolved at the local level after face-to-face and then mediation attempts.

Figure 16 shows that there is similar strong support (77% overall and 79% amongst council member respondents) for having a preliminary stage (e.g. mediation) built into the dispute resolution process ensuring that the Panel would only deal with matters unable to be dealt with at the local government level. Interestingly, 63% of those who have been the subject of complaints alleging minor breaches of conduct also support a preliminary stage being built into the dispute resolution process.
FIGURE 16: SURVEY RESPONSES AS TO WHETHER A PRELIMINARY STAGE SHOULD BE BUILT INTO THE DISPUTE RESOLUTION PROCESS.
THERE IS STRONG SUPPORT FOR A PRELIMINARY STAGE BEING BUILT INTO THE DISPUTE RESOLUTION PROCESS.

Many respondents made supportive comments in response to the question of whether there should be a preliminary stage, like mediation, built into the dispute resolution system. Some respondents emphasised the need for mediation to be conducted independently of the local government and by suitably trained people. One CEO wrote:

- **The time it takes to process even a minor breach is far too long and needs review. Perhaps skilled mediation is worth consideration but they should be properly trained and independent mediators.**

Some respondents suggested that mediation should be conducted by the Panel, as one complaints officer wrote:

- **Mediation should however be an agreed outcome that the Panel suggests and facilitates.**

Some council member respondents perceived potential benefits of having mediation available:

- **My view is that mediation might alleviate a considerable amount of time and trouble on behalf of the Panel. It allows for a somewhat more informal and less adversarial approach**

- **This may save time and resources and an independent body...may be able to find a common sense resolution to minor issues/complaints.**

- **Mediation is almost always better for the future of relationships between aggrieved or conflicting parties. It would also lessen the Panel's workload.**
While marginally less than half (48%) of all survey respondents believe the Panel should have greater flexibility (i.e. wider powers) in how it can deal with complaints alleging minor breaches of conduct, there was a high percentage (23%) who felt unable to answer the question (figure 17). There is strong support amongst CEOs (72%) for the Panel to have greater flexibility in how it can deal with complaints, although 18% of CEOs and 24% of council member respondents felt unable to answer the question, indicating many may have limited knowledge about the Panel’s existing powers.

Several respondents made comments regarding their lack of knowledge of the Panel’s current powers that prevented them from providing a definitive answer to the question. As one CEO wrote:

- *As I am not aware of any matters [with which] the Panel has dealt, nor the outcomes, I can’t make an informed decision as to whether alternatives should be considered.*

One CEO suggested the Panel should have greater powers regarding sanctions:

- *Greater sanctions, [the] power to suspend more readily and deal with recidivists who are paralysing good governance processes.*

Figure 18 shows there is strong support overall (84%) for each party to a complaint to be given the opportunity to put their cases to the Panel in person. There are similar high levels of support for this amongst those who have previously lodged complaints with the Panel (73%) and amongst those council members who have been the subject of complaints lodged (69%).
Some comments on this question present qualified support for allowing parties to a complaint to put their cases to the Panel in person. Some respondents are concerned that face-to-face hearings may result in lawyers becoming involved. This can be summed up by a comment from one CEO:

- Only where appropriate and where it can add value and contribute to a swift outcome. Councillors not to be represented by a lawyer though. It will become more obvious to Panel members as to why a complaint has been lodged if they were to deal with the particular councillor in person!

This sentiment is echoed in a comment from one council member respondent:

- Caution here - more confident and literate people may be able to put their case more fluently or persuasively than others, leading to inequitable outcomes. Going too far down this path leads to the use of expensive advocates and potentially lawyers etc.

Another CEO from a rural council believes conducting face-to-face hearings expands the concept of procedural fairness:

- Can be undertaken by teleconference for rural/regional based local governments same as [a] mediation process is undertaken in industrial related matters where mediation is required. This alleviates the problem of travelling to [the] metropolitan area for rural/regional based local governments and expands the procedural fairness concept to 'being heard'.
One council member who has been the subject of a complaint wrote:

- *I personally would have liked to look the Panel in the eye. Also I am confident that my testimony would have held up under scrutiny and my accuser(s) would have been found wanting.*

Survey respondents were asked if the Panel finds that a council member has committed a minor breach of conduct should it be required to invite the person to submit as to how the Panel should deal with the breach (as the legislation currently requires). While overall there was more support (57%) for the legislation to remain unchanged, 23% believe this requirement is unnecessary (figure 19). Amongst those who have previously lodged complaints with the Panel, only 42% support the current requirement while almost the same level (40%) do not. Interestingly, while more respondents who have been the subject of complaints lodged with the Panel support the requirement (58%), almost one quarter (23%) do not. There is also a high level of CEO respondents (43%) who do not support the requirement while 48% do support it.

![Graph showing level of support](image.png)

**Figure 19: Level of Support for Allowing Council Members Found Guilty of a Minor Breach to Make Submissions to the Panel.**

While there is support for the requirement to allow council members found guilty of a minor breach to make submissions to the Panel there is also many who do not support it.

A few survey respondents correctly regard inviting submissions from a council member, who has been found to have committed a minor breach of conduct, as to how the Panel should deal with the breach as being consistent with the principle of natural justice and with how legal proceedings are conducted. One CEO made the point:

- *In legal proceedings there is an opportunity for a solicitor to provide a statement of mitigation or seek a particular form of punishment/sanction.*
Others, however, see this requirement as being unnecessary because the Panel would have arrived at its decision based on submissions made from both parties to the complaint. Some were also concerned about time delays and about creating a perception that the Panel is inconsistent with its penalties. Some comments from council member respondents include:

- **The Panel should determine this. Such [a] procedure is time consuming and delays the process unnecessarily.**

- **No, the Panel needs to have a range of punishment options and make an independent ruling. Having the offender submit what they think is appropriate leaves the Panel in a position where they can be accused of not being consistent - two offenders with the same offence may get a different ruling just because they can deliver a good argument to the Panel. Equity and fairness must override a compelling argument.**

- **This is a dubious provision and a bit over the top...I suppose in a criminal court analogy, the defence would argue for a certain penalty but really, in this local government context, the person could always appeal to SAT.**

### 3.1.6 The Possibility of another Body Dealing with Minor Breach Complaints

On the question of whether it may be more appropriate for another body to deal with complaints alleging minor breaches of conduct, overall there is limited support for this to happen (10%), as is shown in figure 20. There are similar low levels of support for this possibility amongst respondents from the key target groups. Although there is more support for this possibility amongst those respondents who have been the subject of complaints previously (19%), the majority in this group also do not support the idea (46%). However, it is interesting to note that almost one quarter of all respondents (23%) who answered “don’t know”.

![Figure 20: Responses Regarding the Possibility of Having Another Body Deal with Complaints Alleging Minor Breaches of Conduct. There is Limited Support for Having Another Body Deal with Complaints Alleging Minor Breaches of Conduct.](image-url)
Some comments to this question suggest that the Department should deal with allegations of minor breaches of conduct, while others believe that the local government is best placed to deal with such matters. Others question as to whether there is another body that could deal with such matters. Comments made by CEOs reflecting these views include:

- *I believe that the Standards Panel should only be an appeals body and the local government should deal with the matter through a report to the Department.*

- *In some instances there should be a prescribed penalty for an obvious breach and this could be dealt with by the Department of Local Government.*

- *What other body? Not the CCC - we don't want elected members being treated as criminals if they have just been found guilty offences under the rules of conduct.*

These sentiments were largely expressed by council member respondents and some comments supported the Panel framework:

- *Each [local government] should deal with its own minor breaches. There are many ways in which this could be done effectively. It would save the time and cost involved with the Panel's complicated and legalised processes.*

- *I am not sure if another body has [the] knowledge to be of help - this other body would have to be well-versed in local government, issues and standards.*

- *I believe that the Panel as is set-up and operating within the [Department], is the best body and in the best administrative location for processing alleged minor breaches.*

- *As long as the Panel has the appropriate expertise, there's really no need for another body to deal with complaints.*

One council member respondent perhaps most aptly captured the sub-text of all comments made:

- *It is more important that these breaches are dealt with effectively than who does it.*

### 3.1.7 The Cost-sharing Arrangement

On the question of the appropriateness of the cost-sharing arrangement between the Department and local governments in relation to the operation of the Panel, a low level of CEO respondents (38%) affirm the arrangement and 28% do not (figure 21). It is notable that 30% of CEO respondents and 40% of all respondents lack the knowledge to provide a definitive answer as to whether they agree or disagree with the arrangement.
Schedule 5.1 (clause 9) of the Local Government Act provides for the local government of the council member who is the subject of a complaint to pay the remuneration (and any allowances) of Panel members (other than the departmental officer member who is not paid any fees associated with the Panel) dealing with the complaint. If on the same occasion the Panel deals with more than one complaint the costs are apportioned between the relevant local governments as determined by the Panel. Between 2007/08 and 2009/10, local governments paid a total of $33,549.06 for the two non-departmental Panel members’ fees.\(^1\) The salaries and associated costs of the two full-time departmental officers who support the Panel are paid by the Department. The total salary and on-costs for the two officers between 21 October 2007 (when the official conduct legislation was fully proclaimed) and the end of 2009/10 was $504,154.96.\(^1\)

The high levels of respondents who answered “don’t know” reflects a general lack of knowledge about the Panel. As Panel members have not previously been required to be reimbursed for the cost of travel and accommodation to attend a Panel meeting, it is unclear as to whether such costs would be considered as allowances and, therefore, would also be paid by the relevant local government.\(^k\)

Most comments in response to this matter argue for the Department to fund all the costs associated with the Panel. One CEO wrote:

- *I don’t believe any cost should be apportioned to the local government for what is essentially their [the Department’s] requirement/obligation to enact the legislation provisions.*

\(^{1}\) $33,549.06 is made up of $18,606.98 (for 2007/08 to 2008/09) and $14,942.08 (for 2009/10).

\(^{1}\) $504,154.96 is made up of 120,093.16 (for 2007/08), $187,958.30 (for 2008/09) and $196,103.50 (for 2009/10) and includes on-costs.

\(^{k}\) Departmental staff advised on 29 March 2011 that the State Solicitor’s Office will be contacted to clarify this matter.
Similarly, one council member respondent comments:

- **The Local Government Department should fund and be responsible [for] the entire process.**

However, another council member respondent takes a different view:

- **I believe this is a local government...matter and therefore all parties have a duty to contribute to the process.**

### 3.1.8 General Comments

The numerous general comments made by survey respondents covered several issues that are canvassed by specific survey questions. The following comments present a summary of the pertinent issues raised. Remarks made by CEO respondents mainly covered issues of timeliness, lack of communication and transparency while one CEO remarked that the Panel plays an important role in the local government sector:

- **The current system lacks transparency for all parties concerned.**

- **In my view the main problem with the complaints process is the length of time it takes to resolve a complaint.**

- **As the complaints officer I do not receive any updates on what is happening with complaints - the Panel has six from me within the last 5 months and I have no notification whatsoever except to say the complaint has been received.**

- **The role of the Standards Panel is vital for the success of this industry and guides elected membership towards improved standards. The Panel is a great step towards improvement for this industry and an essential tool to assist the industry improve outcomes.**

General comments from council member respondents cover issues of timeliness, transparency, independence, vexatious complaints, the Panel’s powers, the perceived misuse of the system by some, and codes of conduct matters:

- **Experience has shown that the complaints process grinds exceedingly slow and the failure of the Standards Panel to rule on complaints within a reasonable time has itself been the cause of great injustice.**

- **I just feel a fair and quick process should deal with complaints in a timely manner and if more resources are required to expedite these issues they should be given as at the moment it is farcical the time and length involved.**
I had a complaint lodged against me. It was 'petty' but was a minor breach. From the time the complaint was lodged to the date of the Panel's decision, nine (9) months elapsed. The Panel's decision was contained on twenty (20) pages. The whole process was a complete waste of time and money...This issue could have been handled locally, or in-house. The Panel's involvement did absolutely nothing to improve compliance with the [Code of Conduct] or to provide better [local government]. It was a costly time consuming waste.

The complaints process is conducted behind a veil of secrecy. Openness is an indispensable requirement of justice.

The Panel is unnecessary. Each [local government] should determine its own complaints. The cost and time involved in the Panel investigating and determining a complaint is a waste of resources. The Panel should be disbanded.

My experience and those of my colleagues whom have had similar experiences feel that this panel/body is a toothless tiger and to all intents and purposes a waste of valuable resources. If you are going to have such a body in place it needs the power to enforce.

Penalties for breaches need to be reviewed, as they are currently inadequate, and do not [act] as a deterrent...

I believe the current Act has served local government quite well but there would appear to be some need to streamline the process. For example asking the person how he or she thinks the Panel should deal with the breach [section] 5.110 (5) is completely unnecessary. The powers of the Panel to deal with the breach [section] 5.110 (6) are limited and generally lack teeth. This clause needs to be addressed and strengthened.

The cost in time and money of defending frivolous and vexatious complaints is demoralising.

The current process is being used by some councillors to escalate personal disputes so as to cause detriment and cost to respondents.

The [Code of Conduct] is important. Each [local government] should be left to manage the compliance with their own [Code of Conduct]. There is no need for the Panel to have any role in a [local government] enforcing its [Code of Conduct]. The cost and time involved in having a Panel investigate and rule on a minor complaint is a waste of resources and would be better directed elsewhere.

I strongly agree with having a uniform and enforceable [Code of Conduct] for all [local governments], as having a local [Code of Conduct] in my experience does not have much command/influence over councillor conduct. A comprehensive [Code of Conduct], like the [local government] Rules of Conduct, implemented and administered by the [Department], should have more of a behavioural influence locally.
The Panel and its support staff need to be totally independent of the Department of Local Government.

### 3.2 Summary of Written Submissions

There were 16 written submissions received, including seven hard-copy survey responses that were received too late to be included in the survey data analysis. Appendix E lists the individuals and organisations that lodged written submissions (three hard-copy surveys were lodged anonymously).

#### 3.2.1 Key Issues Regarding the Panel and its Operation

As was the case with the survey responses, some written submissions raised the lack of timeliness of Panel decisions as a key issue. One industry body notes:

- *...the fundamental objective of the Local Government Standards Panel's operation is to provide the most expeditious resolution to a breach allegation...Although it is accepted the nature of some allegations may require extensive inquiry, there is anecdotal evidence the average period for resolution of any complaint is between 5 and 8 months.*

Similarly, another industry body observes:

- *The Panel is too slow and cumbersome. In the latest annual report it states that the Panel did not have a quorum for two months. The number of people to sit on the Panel should be expanded to overcome this problem. Complaints should go directly to the Department rather than through a complaints officer because the complaints officer operates merely as a post box.*

Two council members note that long delays before a Panel decision is made can have serious negative repercussions, principally for those who are the subject of the complaint although not exclusively:

- *The Panel's inability to act in a timely manner has detrimental repercussions and in my case has not only seriously damaged my reputation but has resulted in a huge financial loss to our ratepayers.*

- *The result of [the Panel's] actions was that no decisions were reached for six months...The allegations were all eventually rejected, but not before serious damage had been done to the reputation of councillors involved, as well as distracting them from their proper duties.*

Several other issues raised in the written submissions cover the following areas: the availability of information about the Panel and how it operates; membership of the Panel and its independence; the Rules of Conduct regulations; the powers of the Panel; the dispute resolution processes; the possibility of incorporating mediation into the system; and the cost-sharing arrangement between the Department and local governments.
3.2.2 Information Availability

Although some council members believe there is currently adequate information available about the Panel and how it operates, and there is sufficient pro-active work being undertaken in this regard, other submissions put forward the opposing view. One industry body suggests:

- *The information could be clearer. The Panel should have its own website... CEOs should ensure council members are aware of the Rules of Conduct regulations and the operation of the Panel.*

Two council members who believe there is limited information available remark:

- *The complainant...was given little clear information on how the Panel would conduct its considerations.*

- *Each council member should be supplied with written information. CEOs should inform members.*

One industry body remarks that Panel decisions should be made public:

- *The Department should provide, on an on-going basis, a précis of decisions made by the Panel to facilitate information updates to elected members.*

Similarly, another submission includes the following comment:

- *All decisions made by the Panel should be available on the Department's website for accountability and educational purposes.*

3.2.3 The Rules of Conduct Regulations

Although some stakeholders have the view that the Rules of Conduct regulations are adequate in their current form, other written submissions contain suggestions for specific amendments to the legislation. One submission includes the following suggestion:

- *The legalistic nature of the regulations impacts on the Panel's decisions and processes. Regulation 11 (disclosure of interest) is unenforceable...it requires repeal or reconsideration.*

Two industry bodies make the following suggestions:

- *Regulation 6(2) should be amended [and] state that elected members must handle confidential information in a way that ensures it cannot be obtained by others. Regulation 10(3) should apply to public council and committee meetings (regardless of whether members of the public are present). It should also apply to comments about other elected members.*
• A councillor cannot be reported for a minor breach if they make inappropriate comments outside of a council or committee, for example, a briefing session. It is the local government’s experience that an elected member can avoid being reported if they make an inappropriate comment outside the formal council/committee process.

Although one industry body does not favour establishing a uniform code of conduct, most council members who lodged written submissions express their support for the possibility. One submission (although not from a council member) that summarises that support includes the following point:

• [Section] 5.103 of the [Local Government] Act requires each local government to prepare or adopt a code of conduct...However, there are no legislative requirements about what the code should contain or that a minor breach is committed if the code is breached.

3.2.4 Membership of the Panel and its Perceived Independence

Varying views are expressed in the written submissions about the membership of the Panel largely around the issue of the Panel’s independence. Some submissions argue for all Panel members to be legal practitioners or at least to have experience in administrative law. One submission includes the following remark:

• The composition of future Panels would benefit from the requirement that the third Panel member be a legal practitioner.

In contrast, others expressed the view that having too many lawyers on the Panel would be a problem:

• The Panel should not consist entirely of members who are lawyers as they do not have an understanding of the role of council members. More council members should be on the Panel.

A few submissions raise the issue of the Panel’s independence being compromised because one member is a departmental representative. Two council members wrote:

• The Panel must be totally independent of the Department.

• ...despite claims that it is independent it acts as another branch of the Local Government Department, which is unavoidable when the chairman of the Panel is also a senior executive of the Department.

Similarly, an industry body makes the following point:

• Concern is expressed as to the independence of a Standards Panel that contains a member, and its Presiding Member, [who is] an officer of the Department of Local Government. This person may also be aware of or involved in investigations, reviews or enquiries being conducted by the Department at the local government where a minor breach complaint originates...
3.2.5 The Powers of the Panel

Several written submissions include comments and suggestions related to the powers of the Panel that encompasses its jurisdiction to consider allegations of minor breaches of conduct by council members through to the penalties it can impose when a breach has been found to have occurred. One submission proposes the following changes to the powers of the Panel:

- Sections 5.107(4), 5.108(3) and 5.109(2) [of the Local Government Act] provide that a complaint about a breach can be made within 2 years after an alleged breach occurred...the period should be reduced to a period of between 3 months and 1 year.

- Consideration should be given to amending s. 5.110(6) [of the Local Government Act] to allow the Panel when it finds that a breach of the regulations has occurred but no sanction is appropriate, to simply not make a sanction order.

- Conversely...where the Panel finds that conduct has occurred that is more serious the range of sanctions it is able to impose is limited to those prescribed in s. 5.110(6). Currently the power to suspend lies with SAT under s. 5.119 and 5.117.

One industry body proposes strengthening the Panel’s penalty powers as follows:

- The Panel should be able to suspend an elected member for up to six months for a minor breach of conduct. Where an elected member is found guilty of a recurrent breach, a penalty of either suspension for longer than six months or dismissal should be available to the Panel...If a Panel order requires the publication of an advertisement in a newspaper, it should be placed and paid for by the guilty council member. If the council member fails to place the advertisement, the Panel should have the power to impose a further penalty. Rather than an apology, the penalty should be constructed as an admission statement because currently an apology can be given without any meaning behind the words.

There is also support amongst those who lodged written submissions for empowering the Panel to dismiss any complaint that it considers to be vexatious and/or trivial. In highlighting this issue, a submission from an industry body includes the following remark:

- ...the Standards Panel may be hamstrung in having to deal with matters that are essentially vexatious, frivolous and/or trivial complaints...

Similarly, the following comment was submitted from another industry body:

- Yes, to speed up the process. The Panel should have the power to declare complaints trivial or vexatious.

The same sentiment is expressed in a submission from a council member, who also believes those who make vexatious complaints should be penalised:

- The Panel must have the power to dismiss complaints found to be vexatious and have an absolute duty to prosecute the perpetrators.
3.2.6 The Panel and the Dispute Resolution Processes

In light of the perceived lack of timeliness in Panel decision-making, some written submissions include comments regarding the processes that are followed by the Panel. Written submissions addressing the Panel’s processes covered matters relating to the possibility of multiple panels being established, confidentiality and suggestions about how Panel hearings should be conducted. One public sector agency remarks that the Local Government Act imposes on the Panel an inefficient process to follow:

- The legislation prescribes some rigid and cumbersome procedures for the Panel...Section 5.110(2) [of the Local Government Act] requires the Panel to make a finding as to whether a breach has occurred. Section 5.110 (4) requires the Panel to give each party notice of any reasons for its findings. The Panel is then required to give a council member an opportunity to make submissions as to how the Panel should deal with it before making its decision. The process seems inefficient and confusing.

Submissions from two industry bodies support the possibility of establishing multiple panels on the grounds that it may improve efficiencies in the Panel’s processes, as the following comments show:

- [Expediency] can be achieved through improvements to the Standards Panel's operational processes, by legislative amendment and through the formation of additional standards panels.
- Multiple panels may be appropriate and could speed up the process, however, standardised processes will be required to ensure that findings and penalties are consistent.

In relation to the issue of whether or not details of a complaint should be confidential prior to the Panel making its decision, one council member who lodged a written submission believes that such a requirement is not necessary. However, there is also support for confidentiality to be maintained amongst council members and industry bodies. One industry body makes the following comment in its submission:

- Fundamental to the fair operation of this legislation is the requirement that all minor, recurrent and serious breach allegations are to remain confidential until the matter has been determined...damage to an individual's reputation is not limited to the period of an election campaign...

One issue that elicited some strident comments is how the Panel conducts its hearings before arriving at its decisions. One industry body makes the following observation:

- ...the Standards Panel has yet to visit a local government to conduct a hearing.

Almost half of all written submissions received support the idea of parties to a complaint being given the opportunity to put their cases to the Panel in person. Some comments from council members that support this view include:
• Secrecy is no help to anyone. Usually leads to wrong conclusions and suppositions. Each party should be given the opportunity to put their case to the Panel - how else can a judgement be made!

• Justice is about openness and accountability. The Panel's hearings should be open to public scrutiny.

Most written submissions received express support for allowing CEOs and Complaints Offices to lodge complaints against council members alleging minor breaches of conduct. One submission includes the following comment in relation to this issue:

• ...it is nevertheless appropriate that they [CEOs and complaints officers] have the ability as they may be the person[s] impacted by the conduct of the council member...

One industry body’s observation also acknowledges the difficult situation that CEOs can find themselves in if they do lodge a complaint against a council member because local government CEOs are employed by councils:

• Yes, they [CEOs] are often the ones subject to unfair and unjustified criticism. Processes need to be put in place to protect the officers from retribution (e.g. not to renew the CEO's employment contract).

3.2.7 Mediation as a Preliminary Stage in the Process

There is strong support amongst those who lodged written submissions (i.e. council members, industry bodies and a public sector agency) for including a mediation stage in the dispute resolution process. All those who support the idea agree that making mediation available early in the process is likely to result in better outcomes for all parties. One industry body expresses the view that mediation should be available at every stage of the dispute resolution process and believes the Department should establish a pool or panel of mediators that can be readily accessed:

• Mediation should be available at every stage. In this way the person subject to the complaint can re-assess their situation. The Department should have a panel of mediators to which a complaint could be directed before the Panel is involved.

Support for making mediation available in the dispute resolution process is aptly summarised by the following observation from a public sector agency:

• The opportunity for a complainant, and the council member against whom the complaint is made, to sit down, with the assistance of a mediator, and endeavour to better understand each other's position is likely to result in more satisfactory and effective resolutions than might be achieved by the sanctions contemplated by the [Local Government] Act.
3.2.8 The Cost-sharing Arrangement

Amongst those who lodged written submissions, there is approximately equal numbers who support the current funding arrangement between the Department and local governments in relation to the dispute resolution system as there are those who do not know anything about the arrangement. However, one industry body believes the Department should bear the total cost of the dispute resolution system:

- The full cost should be borne by the State as was the intention when the legislation was first proposed.

3.2.9 General Comments

Some who lodged written submissions took the opportunity to make general comments about the Panel and the dispute resolution process. Some are highly critical of the Panel and the way it currently operates while others offer qualified support. Although critical of many aspects of the way the dispute resolution system currently operates, one industry body documents its support for the Panel concept in the following way:

- The Association is highly supportive of the mechanism established to deal with minor [breach] complaints against individual members of council.

One council member who is also critical of the way the dispute resolution system dealt with her complaint writes:

- I support the continuance of [the Panel], but for a range of reasons it has clearly failed on this occasion.

A council member expresses her qualified support in the following way:

- A fully resourced and functioning Panel could be a useful tool...but it can never be effective unless truly independent.

Two council members who are clearly dissatisfied with the way the current system operates assert:

- I believe the current system is just a catalyst for people to be vexatious and [it] is used to harass and bully.

- If the State Government is serious in its desire to foster strong and effective local democracy it must accept that the actions of the Panel have resulted in a diminution of the efficiency of local governments throughout the State, and dissolve it forthwith.

3.3 Summary of Face-to-face Interviews

Five formal face-to-face interviews were conducted with key personnel at the Department between 18 February 2011 and 1 March 2011, in addition to one interview with the Minister for Local Government, as is shown in Appendix F. Follow-up meetings with some staff were also conducted and several meetings were held with departmental staff who support the Panel.
3.3.1 Key Issues Regarding the Panel and its Operation

On the question as to what are the issues facing the Panel and how it operates, one interviewee remarked:

- The system is too cumbersome and legalistic...The system is also too process-driven resulting in Panel decisions taking months and even years...In addition, Panel decisions are sometimes perceived as perplexing by the parties involved, as are the penalties decided...Another issue is the fact that the Panel does not go out into regional areas to resolve complaints quickly. Hearing from both parties directly and making a decision on the spot would be less complicated than the current system...Making complaints is another issue because the person completing the complaint form must know the difference between a minor breach and a serious breach.

Another interviewee identified similar issues, namely timeliness, inadequate penalties and unnecessarily legalistic procedures:

- The time taken to deal with complaints is an issue...Another issue is that the process is too legalistic. There is too much paperwork that is disproportionate to the nature of the allegations given it is minor breaches with which the Panel deals...Another issue is that the consequences of a minor breach seem inconsequential – training has no meaningful weight and an apology, while better, also lacks weight.

Another interviewee also identified timeliness as an issue, as well as other matters:

- The time taken by the Panel to assess a complaint and decide as to how it is to be handled.
- The perception that there is no separation between the Department and the Panel.
- A general lack of information means that [departmental] staff “go in blind” when visiting local governments.
- There is no understanding within the sector of the Panel’s processes and what outcomes it reaches.

Others noted the general lack of information available to the media about the Panel and its relationship with the Department:

- The media has limited knowledge of the relationship between the Department and the Panel. There is a general lack of information available to the media and no information is provided pro-actively. The result of this information vacuum is that the credibility of the Panel is compromised, as well as that of the Department.

3.3.2 The Powers of the Panel

When interviewees were asked about the powers of the Panel, some remarked that the Panel should have the power to dismiss trivial or vexatious complaints. Some also suggested that the penalties available to the Panel to deal with a minor breach of conduct were limited and inadequate. One interviewee remarked:
• Penalties need to be more realistic and have meaning. Penalties need to equate to the level of seriousness of the breach. Penalties available should include: fines, suspension from council and even disqualification from council membership for life. Also, there should be a penalty for making vexatious complaints so there will be a disincentive for making such complaints. Only legitimate complaints should be accepted and the system should be efficient while ensuring that natural justice is observed.

3.3.3 Membership of the Panel and its Perceived Independence

One interviewee believes that public confidence in the independence of the Panel requires that no Panel members should be from the Department or WALGA, while another holds the view that it is appropriate for a departmental representative to be on the Panel.

One interviewee raised the issue of the principle of fairness possibly being compromised because of the departmental position held by the current Presiding Member of the Panel:

• There [is] the concern for the principle of fairness being compromised where the current departmental representative may also be responsible for investigating previous and other complaints about the same person, including allegations of serious breaches.

Some suggested that the process of appointing Panel members needs to be more efficient and simple because, as noted previously, Schedule 5.1 (clause 4) of the Local Government Act requires the Minister for Local Government to first invite WALGA to submit a list of nine names of people who have experience as a council member.

3.3.4 Multiple Panels

Regarding the possibility of having multiple panels, some interviewees believe there is merit in having multiple panels because it could increase the efficiency of the dispute resolution process, however, like some survey respondents one concern raised was whether having multiple panels would impede the consistency of panel decisions. One interviewee remarked:

• This possibility [of multiple panels] is worth exploring. If more efficient outcomes can be achieved then it would be good. The Panel always meeting in Perth seems to be an issue. It was originally envisaged that the Panel would travel to the local council to deal with the complaint in a timely way and in a way which takes into account local circumstances.
3.3.5 Local Government Conduct Committees

After the review commenced, the Department undertook on its own initiative to examine the possibility of establishing local conduct committees throughout the sector and is in the process of trialling the model at the City of Wanneroo. The role of local conduct committees would be to attempt to resolve matters at the local government level prior to any formal complaint being lodged with the Panel. As the concept of local conduct committees would likely impact on the efficiency and effectiveness of the dispute resolution system, the Review Committee decided to raise it with relevant interviewees to obtain their views. Some interviewees support the concept of establishing local government conduct committees. One interviewee remarked:

- A local committee could be the first step in dealing with all types of complaints and act as a “filter” to identify and dismiss trivial complaints.

Another interviewee made the following point:

- Local government council members adjudicating on their peers could be a problem. If local committees were comprised of skills-based, knowledge-based, independent people like conciliators and arbiters then it may be beneficial. The local committees would need to be able to make decisions in a timely manner and the process would need to be transparent.

3.3.6 The Funding Arrangement

Interviewees support the shared funding arrangement that currently exists between the Department and local governments whereby the Department pays for the support staff costs and local governments pay for Panel member costs, as one interviewee remarked:

- Apportioning Panel costs entirely onto local governments [should] make them more accountable and encourage them to do the right thing.

3.3.7 The Jurisdiction of the Panel

There were diametrically opposed views expressed by interviewees on the issue of the jurisdiction of the Panel. One interviewee questioned whether the Panel should continue to exist because SAT may be a more appropriate body to deal with complaints alleging minor breaches of conduct:

- Should we have a Panel in the first place? Perhaps it should be disbanded and replaced by a more independent body like SAT. SAT specialises in complaint handling, as such it has the processes and systems in place to perform the role.

In contrast, another interviewee suggested the possibility of extending the Panel’s jurisdiction to deal with allegations of serious breaches of conduct:

- Extending the mandate of the Panel to deal with allegations of serious breaches is something worthy of consideration. Under such circumstances, SAT would only be involved in reviews of Panel decisions rather than deal with the allegations of serious breaches.
4.0 Audit of Complaints Lodged Between 2007/08 and 2009/10

Between 30 November 2010 and early February 2011, an audit of the minor breach complaints data was undertaken. The complaints data was sourced from departmental files, a report from the Department’s complaints database, annual reports and records maintained by departmental staff who support the Panel. Prior to conducting the audit, permission to access the data was obtained from the Presiding Member of the Panel. Two compliance officers from PSC assisted in conducting the audit of documents on relevant departmental files. All officers who accessed departmental files as part of the audit signed confidentiality agreements. The primary purpose of the audit was to obtain an understanding as to how long it takes for a complaint to be resolved. In addition, the audit also examined the sources of complaints, Panel decisions and the outcomes of reviews by SAT of Panel decisions.

In undertaking the audit, it became apparent that greater clarity is required in reporting on the Panel’s activities. One way by which greater clarity can be achieved is by reporting on the two levels of data with which the Panel is concerned, namely: allegations of minor breaches of conduct and complaint projects undertaken by the Panel (where one project equates to a valid complaint form received, one of which can consist of multiple allegations). The Review Committee notes that for the first time both the number (and types) of allegations and complaints were reported in the Panel’s 2009/10 Annual Report. Figure 22 shows that while the number of complaint projects undertaken rose by 17 in 2009/10 (representing an increase of 51%) as compared to the previous year; the number of allegations rose by 67 (representing an increase of 113%) compared to the previous year. As each allegation requires investigation by departmental staff, the more than doubling of allegations made in 2009/10 represents a significant increase in workload. To the end of the March quarter for the current financial year, the number of complaints received (48) was almost equal to the total received for the entire previous financial year, although the number of allegations has fallen markedly.

Figure 22 also shows that while the numbers of completed complaints has risen each financial year, so has the numbers of outstanding complaints¹. By the end of March in the current financial year, there was already almost the same number of outstanding complaints (45) as there were complaints received in the whole of 2009/10.

¹ The number of outstanding complaints in 2009/10 is 19 because the Panel had no power to deal with 4 complaints that were against persons who were not council members at the time of the alleged offences.
FIGURE 22: ALLEGATIONS MADE AND COMPLAINT PROJECTS UNDERTAKEN - COMPLETED AND OUTSTANDING.
THERE WAS A SHARP RISE IN THE NUMBER OF COMPLAINTS LODGED IN 2009/10 AND AN EVEN SHARPER RISE IN THE NUMBER OF ALLEGATIONS.

Figure 23 shows that there have been consistently more complaint projects undertaken relating to rural councils as compared to metropolitan councils. In the first year of the Panel’s operation there was almost three times the number of complaints associated with rural councils as compared to metropolitan councils. It is, however, important to note that the high representation of rural councils in the complaints data is indicative of the fact that there are currently 110 rural councils in the State, more than three times the number of metropolitan councils, of which there are 29. Also noteworthy, is that only 4% of all council members have been the subject of complaints alleging a minor breach of conduct between 2007/08 and 2009/10.\(^m\)

Figure 24 shows there has not been a significant difference in numbers between complaints lodged by local government CEOs/complaint officers in comparison to those lodged by council members over the past three financial years, and most complaints have been lodged by people in the local government sector rather than the general public. However, in 2009/10, there were 23 complaints lodged by members of the public representing an increase of 18 (360%) as compared to the previous year. One primary reason for this increase is one individual lodged 10 complaints against multiple members of the same council.

The most frequent complainants (i.e. those who lodged more than three complaints over the past three financial years) is shown in figure 25, revealing that almost half the complaints lodged in 2009/10 were from only two people – one a CEO and one a member of the public. Over the previous three financial years, only three people – two CEOs and one member of the public have lodged more than three complaints.

\(^m\) 53 council members have had complaints lodged against them out of a total of 1273 council members.
FIGURE 23: TOTAL COMPLAINTS LODGED – RURAL VERSUS METROPOLITAN COUNCILS.
There has been consistently more complaints related to rural councils than metropolitan councils, reflecting the greater number of rural councils in the State.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Complaint Projects</th>
<th>Metropolitan Council</th>
<th>Rural Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007/08</td>
<td>29</td>
<td>8</td>
<td>21</td>
</tr>
<tr>
<td>2008/09</td>
<td>33</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>2009/10</td>
<td>50</td>
<td>22</td>
<td>28</td>
</tr>
</tbody>
</table>

FIGURE 24: SOURCES OF COMPLAINTS LODGED.
Most complaints have been lodged by people within the local government sector rather than the general public.
FIGURE 25: MOST FREQUENT COMPLAINANTS.

A total of 26 out of 139 local government councils (19%) have been implicated in complaints lodged between 2007/08 and 2009/10, as shown in figure 26. Two rural councils, the Shire of Shark Bay and the City of Albany are the most prominent with 24 complaints and 17 complaints being lodged against their council members respectively over that period. Some council members at the Town of Bassendean have been the subject of 15 complaints alleging minor breaches of conduct during the same period.

COUNCIL MEMBERS AT THE SHIRE OF SHARK BAY AND THE CITY OF ALBANY HAVE BEEN THE SUBJECT OF THE MOST COMPLAINTS.
Consequently, as one would expect, figure 27 shows that the most number of complaints have been lodged against council members at the Shire of Shark Bay and at the City of Albany, where three council members were the subject of between 6 and 8 complaints in 2009/10 (some complaints were made against multiple council members). One Shire of Shark Bay council member was the subject of 21 complaints or 18% of all complaints over the previous three financial years – the most against any council member.

**Figure 27: Most Complaints Against Individual Council Members.**
One council member at the Shire of Shark Bay has been the subject of the most number of complaints.

The Panel can only consider an allegation of misconduct if the allegation is captured by the Rules of Conduct regulations. The Rules of Conduct regulations cover:

- certain local laws relating to behaviour at council or committee meetings (regulation 4);
- the use of confidential information (regulation 6);
- matters relating to the personal advantage or disadvantage of others (regulation 7);
- the misuse of local government resources (regulation 8);
- the prohibition of involvement in local government administration without the authority of the CEO (regulation 9);
- inappropriate working relationships with local government employees (regulation 10);
- appropriate disclosure of interests that are non-financial in nature (regulation 11); and
- receipt of appropriate gifts (regulation 12).

Figure 28 shows that between 2007/08 and 2009/10, most allegations made against council members related to obtaining personal advantage or acting to the disadvantage of others (99); inappropriate working relationships with local government staff (60); and transgressions of local laws (44). Indeed, compared to 2008/09, in 2009/10 there was more than a 100% increase in the number of allegations in the areas of obtaining personal advantage or causing the disadvantage of others; and almost a 300% increase in inappropriate working relationships with local government staff.
FIGURE 28: TYPES OF ALLEGATIONS MADE AGAINST COUNCIL MEMBERS.  
MOST ALLEGATIONS MADE AGAINST COUNCIL MEMBERS RELATE TO OBTAINING PERSONAL ADVANTAGE OR ACTING TO THE DISADVANTAGE OF OTHERS.

However, it is interesting to note that in each of the previous three financial years there have been significantly more Panel findings of no minor breach of conduct as compared to findings of a breach, as is shown in figure 29. To the end of the March quarter in the current financial year, there were 73 Panel decisions that no minor breach had occurred while only 32 Panel decisions that a breach had occurred. The implication of this is that departmental staff who support the Panel spend time undertaking all the pre-hearing investigations and procedures before the Panel actually meets to make a determination and in more cases than not the council member who is the subject of the complaint is found to have not committed a breach. Indeed, in 2009/10, there were almost six times more complaints that resulted in a Panel finding of no minor breach of conduct than of a breach finding. The 2010/11 financial year may be an exception because as at 31 March there were 11 minor breach outcomes and 11 non-breach outcomes for the 22 complaint projects completed.
FIGURE 29: BREACH VERSUS NO BREACH FINDINGS.
THERE HAVE BEEN SIGNIFICANTLY MORE PANEL FINDINGS OF NO BREACH COMPARED TO THOSE OF A BREACH FINDING IN PREVIOUS FINANCIAL YEARS.

4.1 The Timeliness of Complaint Handling

To gauge the timeliness of the complaints handling process, for each of the three previous financial years, three cases that resulted in a breach finding by the Panel and three cases that resulted in a no breach finding were selected for detailed examination. The cases selected pertained to both metropolitan and rural councils, as is shown in table 3.

<table>
<thead>
<tr>
<th>Year</th>
<th>Metropolitan Councils</th>
<th>Rural Councils</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007/08</td>
<td>29</td>
<td>6</td>
</tr>
<tr>
<td>2008/09</td>
<td>33</td>
<td>6</td>
</tr>
<tr>
<td>2009/10</td>
<td>50</td>
<td>6</td>
</tr>
</tbody>
</table>

TABLE 4: NUMBERS OF COMPLAINTS AUDITED FOR TIMELINESS.
COMPLAINTS PERTAINING TO METROPOLITAN AND RURAL COUNCILS WERE AUDITED AS WERE THOSE THAT RESULTED IN BREACH AND NON–BREACH OUTCOMES.

The audit was conducted by obtaining complaint documentation on the relevant departmental file and recording the following dates for each of the selected complaints, the:

- date of the complaint (i.e. the date when Complaint Form was signed by the complainant);
- date the local government complaints officer sent the form to the Panel;
- date staff who support the Panel received the Complaint Form (based on the departmental date stamp);
• date that the Notice of Complaint letter acknowledging receipt of the complaint was issued to relevant parties;
• date of the covering memorandum attached to the Summary Report signifying the completion of the pre-hearing procedures;
• date of the letter to relevant parties outlining the Panel’s reasons for its finding;
• date of the letter requesting a submission from the council member found to have committed a minor breach of conduct (usually done through the letter outlining the Panel’s reasons for its finding);
• date the submission from the council member was received by the Department (based on the departmental date stamp); and
• date of the letter to relevant parties outlining the Panel’s reasons for its decision as to how the Panel had decided to deal with the breach of conduct.

Once the relevant dates were obtained, the number of working days was calculated to determine the time taken to complete key stages in the administrative processes. The time taken for the local government complaints officer to send the Complaint Form to the Department was calculated by determining the number of working days between the date the form was signed and the date of the cover letter from the complaints officer. The time taken to complete the different stages in the processing of complaints was calculated from the date that Department received the complaint. In some cases, the date when the Department received the complaint could not be determined because the relevant receipt date was not recorded on the departmental file. In such instances, it was not always possible to select another complaint to audit without compromising the balance of breach as compared to non-breach outcomes and metropolitan as compared to rural councils.

### 4.1.8 Time Taken to Conclude the Pre-hearing Procedures

Based on the sample of complaints audited, figures 30, 31 and 32 covering each of the previous three financial years respectively show the minimum, maximum and average number of working days for:

• the local government complaints officer to send the Complaint Form to the Department;
• departmental staff to issue the Notice of Complaint letter; and
• departmental staff to complete the pre-hearing procedures and prepare the Summary Report for the Panel.

In 2007/08 (figure 30), based on the sample of complaints audited, it was taking an average of 38.8 working days to complete the pre-hearing procedures, and in one case it took approximately three months (66 working days). The fact that this was the Panel’s first year of operation could be one reason for the long investigatory and processing time delay as departmental staff would have been endeavouring to familiarize themselves with the new administrative processes.
Another noteworthy statistic from 2007/08 is that the average time to notify parties to a complaint that the Panel was dealing with it was 11 working days. In 2008/09, this figure had risen to 13.4 working days and the time taken to complete the pre-hearing procedures had increased to 132.83 working days (over six months) because in three of the complaints audited the pre-hearing procedures were completed in 133, 247 and 309 working days respectively (figure 31). Interestingly, in the case with the longest elapsed time (approximately 15 months), the Panel subsequently determined that no breach of conduct had occurred.

Another important statistic is that the average time taken for local government complaints officers to send complaints to the Panel had risen markedly to 17.5 working days in 2008/09 – in one case it appears to have taken 24 working days and in another case 68 working days (assuming that the complainant forwarded the Complaint Form to the complaints officer shortly after the form was signed). As noted previously, section 5.107(3) of the Local Government Act requires complaints officers to forward the complaint to the Panel within 14 days (being calendar days not working days) after receiving it.

In 2009/10, (when there was a significant rise in the number of allegations of minor breaches of conduct) there was a fall in the average time taken to complete pre-hearing procedures to 87.8 working days, however, even the minimum delay was 67 working days and in one case it took 199 working days (figure 32). Although there was also a fall in the average time before complaints officers forwarded the Complaint Form to the Department, in one case it seems that this did not happen until 17 working days had elapsed. In another case audited, it took 19 working days before the Notice of Complaint letter was sent to the relevant parties to the complaint.

<table>
<thead>
<tr>
<th>Days to Send Complaint Form to Department</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.00</td>
<td>5.00</td>
<td>2.00</td>
</tr>
<tr>
<td>Days to Issue Notice of Complaint</td>
<td>8.00</td>
<td>14.00</td>
<td>11.00</td>
</tr>
<tr>
<td>Days to Complete Pre-hearing Procedures</td>
<td>16.00</td>
<td>66.00</td>
<td>38.80</td>
</tr>
</tbody>
</table>

**Figure 30: Working Days to Lodge Complaints with the Panel and to Complete Pre-hearing Procedures in 2007/08.**

Long delays were already evident in the time taken to complete the pre-hearing procedures and in issuing Notice of Complaint letters.
FIGURE 31: **WORKING DAYS TO LODGE COMPLAINTS WITH THE PANEL AND TO COMPLETE PRE-HEARING PROCEDURES IN 2008/09.**

*Increases in delays to issue the Notice of Complaint letter, complete the pre-hearing procedures, and for complaints officers to forward Complaint Forms to the Department.*

<table>
<thead>
<tr>
<th></th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days to Send Complaint Form to Department</td>
<td>1.00</td>
<td>68.00</td>
<td>17.50</td>
</tr>
<tr>
<td>Days to Issue Notice of Complaint</td>
<td>2.00</td>
<td>32.00</td>
<td>13.40</td>
</tr>
<tr>
<td>Days to Complete Pre-hearing Procedures</td>
<td>15.00</td>
<td>309.00</td>
<td>132.83</td>
</tr>
</tbody>
</table>

FIGURE 32: **WORKING DAYS TO LODGE COMPLAINTS WITH THE PANEL AND TO COMPLETE PRE-HEARING PROCEDURES IN 2009/10.**

*Decreases in delays to issue Notice of Complaint letters, complete the pre-hearing procedures, and for complaints officers to forward Complaint Forms to the Department, however, timeliness still an issue.*

<table>
<thead>
<tr>
<th></th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days to Send Complaint Form to Department</td>
<td>0.00</td>
<td>17.00</td>
<td>5.83</td>
</tr>
<tr>
<td>Days to Issue Notice of Complaint</td>
<td>4.00</td>
<td>19.00</td>
<td>8.40</td>
</tr>
<tr>
<td>Days to Complete Pre-hearing Procedures</td>
<td>67.00</td>
<td>119.00</td>
<td>87.80</td>
</tr>
</tbody>
</table>
4.1.9 Time Taken to Conclude Complaints Resulting in No Breach Outcomes

Figures 33, 34 and 35 show the time taken in the past three financial years respectively for complaints to be concluded by the Panel with a no breach outcome. Based on the selected complaints, in 2007/08 it was taking an average of 98.67 working days for a complaint to be processed and for the Panel to conclude that no minor breach of conduct had occurred (figure 33). This rose sharply in 2008/09 to 154.67 working days with one complaint taking 378 working days (over one year) to be concluded (figure 34). While the average fell in 2009/10 to 123.5 working days (figure 35), of the selected complaints audited, the minimum time take to reach a no breach conclusion was 120 working days (approximately six months).
FIGURE 35: TIME TAKEN TO CONCLUDE COMPLAINTS RESULTING IN NO BREACH OUTCOMES IN 2009/10.
THERE WAS A DECREASE IN THE AVERAGE TIME TAKEN FOR COMPLAINTS TO BE CONCLUDED AND A NO BREACH OUTCOME TO BE DETERMINED, HOWEVER, TIMELINESS REMAINED AN ISSUE.

4.1.10 Time Taken to Conclude Complaints Resulting in Breach Outcomes

Figures 36, 37 and 38 show the time taken in the past three financial years respectively for complaints to be concluded where the Panel determined that a breach had occurred. In such cases, section 5.110(5) of the Local Government Act requires the Panel to give the council member found to have committed a minor breach of conduct the opportunity to make submissions as to how the Panel should deal with the matter. Usually, in its letter outlining the reasons for its findings to the council member in question, the Panel invites submissions within 21 days after the date of the letter. Hence, the number of working days to receive any submission that a council member may choose to make has been calculated separately. It is interesting to note that not all council members found to have committed a breach accept the invitation to make submissions as to how the Panel should deal with the matter.

Based on the selected complaints, in 2007/08 it was taking an average of 134 working days (approximately six months) for a complaint to be concluded and for the Panel to determine what penalties (if any) to which the council member should be subjected (figure 36). As was the situation with complaints that resulted in no breach outcomes, the time rose significantly in 2008/09 (figure 37), however in this case to 202.33 working days (approximately ten months). Although in 2009/10 the average fell significantly to 112.33 working days (figure 38), based on the complaints audited, the minimum time taken to conclude a complaint in which a breach was found to have occurred remained high at 100 working days (approximately five months).

\[n\]
In 2009/10, two complaints selected for the audit that resulted in breach outcomes were processed together by staff because the complaints involved the same allegations against the one council member.
**FIGURE 36: TIME TAKEN TO CONCLUDE COMPLAINTS RESULTING IN BREACH OUTCOMES IN 2007/08.**

On average, it was initially taking approximately six months to conclude complaints that resulted in breach outcomes being determined.

<table>
<thead>
<tr>
<th>Days to Issue Reasons for Finding</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>52.00</td>
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<td>61.50</td>
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<table>
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<tr>
<th>Days to Receive Submission from Council Member</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>12.00</td>
<td>12.00</td>
<td>12.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Days to Issue Reasons for Decision</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>105.00</td>
<td>163.00</td>
<td>134.00</td>
</tr>
</tbody>
</table>

**FIGURE 37: TIME TAKEN TO CONCLUDE COMPLAINTS RESULTING IN BREACH OUTCOMES IN 2008/09.**

There was a significant increase in the average time taken to conclude complaints that resulted in breach outcomes to approximately ten months.

<table>
<thead>
<tr>
<th>Days to Issue Reasons for Finding</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>43.00</td>
<td>266.00</td>
<td>163.33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Days to Receive Submission from Council Member</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13.00</td>
<td>24.00</td>
<td>18.33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Days to Issue Reasons for Decision</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>86.00</td>
<td>312.00</td>
<td>202.33</td>
</tr>
</tbody>
</table>
Review of the Local Government Standards Panel

4.1.11 Comparison of Breach and Non-breach Complaint Outcomes

As one would expect, figure 39 shows that based on the complaints audited, it generally takes longer for complaints to be concluded where the Panel determines that a breach has occurred compared to those where a determination of no breach is reached. However, in 2009/10 this was reversed and on average a no breach determination took 11 working days longer to be reached by the Panel compared to a breach determination. One reason for this is that two of the breach complaints audited were dealt with by the Panel together and concluded in 100 working days, markedly less time than two non-breach complaints audited that were concluded separately in 120 and 127 working days respectively. However, in both breach and non-breach cases, in 2009/10, based on the complaints audited, it was taking approximately six months on average for complaints to be concluded.

FIGURE 38: TIME TAKEN TO CONCLUDE COMPLAINTS RESULTING IN BREACH OUTCOMES IN 2009/10. A DECREASE IN THE AVERAGE TIME TAKEN FOR COMPLAINTS TO BE CONCLUDED AND A BREACH OUTCOME TO BE DETERMINED, HOWEVER, TIMELINESS REMAINS AN ISSUE.

FIGURE 39: TIME TAKEN TO CONCLUDE COMPLAINTS FOR BREACH AND NON-BREACH OUTCOMES. IN 2009/10 IT WAS TAKING THE PANEL APPROXIMATELY SIX MONTHS TO DEAL WITH EACH COMPLAINT RECEIVED.
4.2 SAT Reviews of Panel Decisions

Section 5.125 of the Local Government Act permits any party to a complaint lodged with the Panel to apply to SAT for a review of a Panel decision where a breach finding was determined. Figure 40 shows that the percentage of total complaints that resulted in SAT applications has been small and declining significantly over the past three financial years. Figure 41 shows for each of the previous three financial years, the numbers of SAT applications, the numbers of SAT decisions and the nature of those decisions (i.e. whether SAT affirmed, varied or set aside the Panel decision). Between 2007/08 and 2009/10, there were eight SAT applications made\(^\circ\), of which five SAT decisions were handed down and in all cases the Panel's decisions were affirmed.

\(^\circ\) In 2007/08, one SAT application was for an extension of time to make an application and this was subsequently dismissed by SAT.
5.0 Disciplinary Frameworks in other Jurisdictions

The Review Committee examined how other Australian jurisdictions and United Kingdom deal with allegations of misconduct against local government elected members. The United Kingdom was chosen for examination because the original disciplinary framework established in Western Australia was largely based on the system operating in there at the time. The Review Committee found that with the exception of South Australia, all Australian jurisdictions have a disciplinary framework built on a panel/tribunal model, although the appointment of members, powers and jurisdictions of the panels/tribunals varies between the States and Territories.

Importantly, all Australian jurisdictions and United Kingdom have a model or uniform code of conduct whereby local government councils can, to varying degrees, amend the code before adopting it.

Also noteworthy is that with the exception of Western Australia and the Northern Territory, all Australian jurisdictions have mechanisms in place to attempt to deal with allegations of low-level misconduct at the local government level before a higher authority becomes involved.

5.1 Queensland

In Queensland, there is a three-tiered approach to misconduct that corresponds to three levels of misbehaviour depending on the seriousness (or lack thereof) of the allegations. At the lowest level of misconduct is what is termed “inappropriate behaviour” by a council member and such matters are dealt with by the mayor of the relevant council (if the allegations of inappropriate behaviour concern the mayor the matter is referred to the Department of Local Government and Planning). The next level of misconduct, which would be equivalent to minor breaches as defined in Western Australia, is dealt with by a Regional Conduct Review Panel. The more serious forms of misbehaviour are dealt with by a body called the Local Government Remuneration and Discipline Tribunal. What is interesting about the Queensland disciplinary framework is that it clearly defines terms like “misconduct” and “inappropriate behaviour”, as well as articulates that “official misconduct” (which is also defined) by a council member must be dealt with by the Crime and Misconduct Commission, which is the equivalent of the CCC in Western Australia.

In assessing an allegation of misconduct, the CEO of the local government or the Department of Local Government and Planning can dismiss a complaint considered to be frivolous or made vexatiously. It is an offence under the local government legislation for a person to make an allegation of misconduct that is substantially the same as one previously assessed as being frivolous or vexatious.

Both Regional Conduct Review Panels (which are established for CEO-designated regions in the State) and the Local Government Remuneration and Discipline Tribunal consist of three members and are established through legislation. The Department’s CEO appoints the members for a review panel from a pool of suitably knowledgeable and experienced people for each region. The members of the Local Government Remuneration and Discipline Tribunal are appointed by the Queensland Governor in Executive Council.
A Regional Conduct Review Panel may make one or more of the following orders:

- the council member found to have committed a breach of conduct participate in counselling;
- the council member issue an apology/emission of error;
- the parties participate in mediation; and
- the council member be monitored by the local government CEO for future compliance.

In addition to the penalty powers of a Regional Conduct Review Panel, the Local Government Remuneration and Discipline Tribunal can issue one or more of the following orders against the council member in question:

- forfeit an allowance, benefit, payment or privilege afforded by the local government;
- reimburse the local government for any allowance, benefit, payment or privilege received;
- suspend from council for a specified period time; and
- dismiss from council.

The Local Government Remuneration and Discipline Tribunal can also directly refer matters to the Crime and Misconduct Commission or the Commissioner of Police.

5.2 New South Wales

Similar to Queensland, although not as structured, New South Wales also has a three-tiered approach to dealing with allegations of misconduct against local government council members. Local government councils deal with allegations of minor breaches through their codes of conduct. The CEO of the Division of Local Government (a State Government agency) can make determinations regarding the allegations of behaviour sufficiently serious that may warrant the suspension of council members. The Pecuniary Interest and Disciplinary Tribunal is a one-member body established under legislation to deal with matters referred by the CEO of the Division of Local Government, as well as any appeals against suspension orders. The member of the tribunal must be an Australian lawyer eligible for appointment as a District or Supreme Court judge or who is a retired District or Supreme Court judge.

Through their codes of conduct, local government councils have the power to make public their findings following an investigation and censure a council member found to have committed a minor breach. Local councils can also require a council member to:

- make an apology; and
- participate in counselling.

The CEO of the Division of Local Government may suspend a councillor from civic office for a period not exceeding one month.

The Pecuniary Interest and Disciplinary Tribunal may confirm, quash or amend an order issued by the CEO of the Division of Local Government. In addition, the tribunal may order:

- a council member undergo counselling; and
• reprimand and/or suspend a council member for a period not exceeding six months or suspend their right to be paid any fee or other remuneration for a period not exceeding six months.

5.3 Victoria

Victoria has a two-stage disciplinary framework whereby councillor conduct panels at each local government are administered by the Municipal Association of Victoria, and the Victorian Civil and Administrative Tribunal (which is the equivalent of SAT in Western Australia) operates at the State-wide level. Councillor conduct panels deal with allegations of minor breaches of conduct whereas the Victorian Civil and Administrative Tribunal deals with allegations of serious breaches of misconduct.

Councillor conduct panels consist of two members both of whom are selected and appointed by the Municipal Association of Victoria. If it is not possible for the Municipal Association of Victoria to select and appoint the members, one or both members must be approved by the relevant Minister. Under the legislation, the Municipal Association of Victoria is required to establish and maintain two lists of suitable members for councillor conduct panels. One list consists of local legal practitioners and the second list consists of people with experience in municipal government.

Councillor conduct panels are established (and the membership changes) whenever an application is made to the relevant local government to deal with a misconduct matter. Each local government CEO must appoint a staff member as a registrar to support a local councillor conduct panel. Interestingly, only a local government council, council member or group of council members can make an application to form councillor conduct panels. Councillor conduct panels can dismiss allegations of misconduct if the allegations are considered to be vexatious, frivolous, misconceived, lacking in substance or when insufficient reasons are given as to why internal dispute resolution mechanisms cannot resolve the matter.

A councillor conduct panel has the following powers following its examination of the allegation of misconduct by a council member:

• dismiss the allegation;
• authorise a complainant to make an application to the Victorian Civil and Administrative Tribunal when the misconduct allegation is considered to be of a serious nature;
• direct the council member who has been found to have committed a breach of conduct to attend mediation, counselling or training;
• reprimand the council member;
• direct the council member to make an apology; and
• direct the council member to take leave of absence from office for a period not exceeding two months.

Appeals against decisions made by councillor conduct panels can be lodged with the Victorian Civil and Administrative Tribunal. In cases of allegations of serious misconduct by council members, the tribunal has the power to:

• suspend the council member found to have committed the breach from office for up to six months;
• order the council member ineligible to hold the office of mayor for a period of up to four years; and
• order the council member ineligible to chair a special committee of the local government council for a period up to four years.

5.4 Northern Territory

In the Northern Territory, no distinction is made between minor and serious breaches of conduct. All allegations of breaches of the uniform code of conduct are sent to the Department of Housing, Local Government and Regional Services, which can refer matters to a statutory disciplinary committee, any number of which can be established by the relevant Territory Minister. A disciplinary committee must consist of three members - a legal practitioner nominated by the Attorney General, a nominee of the Minister, and a nominee of the Local Government Association of the Northern Territory.

Disciplinary Committees can reject complaints considered to be vexatious, frivolous or lacking in substance, and have the power to:

• take no action against the council member found guilty of a breach of conduct;
• issue a reprimand to the council member;
• impose a fine against the council member not exceeding $ 2660; and
• recommend to the relevant Minister that the council member be removed from office.

Appeals against a decision made by a disciplinary committee can be lodged with the Local Government Tribunal, of which all Northern Territory magistrates are members. A Tribunal proceeding is heard by one magistrate and deals with a wide range of local government matters beyond misconduct issues.

5.5 Tasmania

As is the case in the Northern Territory, in Tasmania no distinction is made between minor and serious misconduct. Complaints alleging misconduct by council members must be lodged with the local government mayor within 90 days of the alleged misconduct occurring. The council member who is the subject of the complaint is given the option by the mayor of the matter being dealt with by the local government’s Code of Conduct Panel or a State-wide Standards Panel that is administered by the Local Government Association of Tasmania.

Code of conduct panels consist of two members. One member must be a person of good-standing within the local community and not a council member nor have been a council member during the previous five years. This person performs the role of chairperson of code of conduct panels. The chairperson selects the second member of the panel from a list of three council members nominated by the local council. Code of conduct panels have the power to dismiss complaints considered to be vexatious or frivolous. Code of conduct panels can impose the following sanctions on a council member found to have breached the code of conduct:
- a caution;
- a reprimand;
- an order to apologies to any person affected by the misconduct; and
- a requirement to attend counselling or a training course.

A council member can appeal a sanction imposed by a code of conduct panel to the Standards Panel. Code of conduct panels can also refer a complaint to the Standards Panel.

The Standards Panel consists of two or three members appointed by the Local Government Association of Tasmania. The chairperson of the Standards Panel must have local government experience. The second member must be an Australian lawyer, and the Local Government Association of Tasmania may appoint a suitable third member. The Standards Panel has the same penalty powers as code of conduct panels. Unlike code of conduct panels, the Standards Panel must deal with all complaints that are lodged with it.

5.6 United Kingdom

As is the case in Western Australia, in the United Kingdom a distinction is made between minor and serious breaches of conduct by local government council members. Minor breaches are dealt with by a Local Authority Standards Committee – there are 351 local authorities in United Kingdom. However, unlike Australia the types of local authorities vary in terms of their operational jurisdictions and responsibilities. For example, local authorities in United Kingdom encompass entities like: district, metropolitan and county councils; English police authorities; fire and rescue authorities; national park authorities; and passenger transport authorities amongst others. All types of local authorities are required to adopt a code of conduct. The minimum requirements of a code of conduct are established by a statutory model code.

As of May 2008, a new local standards framework was established that gives local authorities the responsibility for upholding the ethical behaviour of their council members by giving authorities the powers to investigate those members whose behaviour may be in breach of the code of conduct. Previously, the conduct of council members was the responsibility of a central body known as the Standards Board for England. It seems that the United Kingdom’s centralised approach was adopted in Western Australia when the legislation for the current disciplinary framework here was being developed.

Under the new United Kingdom disciplinary framework, a non-departmental public body called Standards for England performs the role of a “strategic regulator”, which is described as formally evaluating the framework, providing independent oversight and deciding how it should work in practice. Standards for England is funded by a grant-in-aid from the Department of Communities and Local Government.

Complaints that the code of conduct has been breached can be made to a Local Authority Standards Committee or an Ethical Standards Officer at Standards for England. The Ethical Standards Officer investigates the matter and prepares a report. One outcome of such an investigation can be a referral to the Local Authority Standards Committee (if the alleged breach of conduct is considered minor) or the First-tier Tribunal (for allegations of serious breaches). The First-tier Tribunal operates like a formal court and was established in January 2010.
The First-tier Tribunal also considers appeals made by council members deemed to have breached the code of conduct by a Local Authority Standards Committee. Appeals can be considered only if the tribunal gives permission. If permission is granted then a tribunal is appointed to consider the appeal. The tribunal can decide to suspend a council member from office for up to one year, and disqualify them from standing or acting as a council member for up to five years.

The main role of a Local Authority Standards Committee is to promote and maintain high standards of conduct throughout its local council jurisdiction. Specific functions of standards committees are far-reaching and include to:

- give the local council advice on adopting a local code of conduct;
- monitor the effectiveness of the code of conduct;
- train and arrange for the training of council members on the code of conduct;
- assess and review complaints about council members;
- conduct hearings into complaints and make determinations;
- grant dispensation to council members with prejudicial interests; and
- grant exemptions for politically restricted posts at the local authority.

The average size of standards committees across the United Kingdom is ten members. Members do not need to have any specific experience or qualifications, however the committee must be comprised of at least 25 percent of independent members. The remaining members are from the local council. The chairpersons of standards committees must be independent members.

Under the United Kingdom legislation, the role of standards committees can be extended, highlighting the government’s drive to further empower local authorities. While this is a worthy objective, it is apparent that the disciplinary framework is also highly bureaucratised. For example, the standards committee must establish a sub-committee (the assessment sub-committee) which is responsible for assessing allegations that a member may have breached the code of conduct. A complainant may make a request for a review of the standards committee’s decision where it decides to take no further action on a complaint. Under such circumstances, the standards committee must establish a review sub-committee. A standards committee is also required to appoint a sub-committee (the consideration and hearing sub-committee) to consider a monitoring officer’s investigation report and to hold determination hearings.

As is the case in Western Australia, standards committees conduct pre-hearing procedures. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. Unlike, the Western Australian model, hearings in United Kingdom can involve legal representatives. Standards committees can dismiss complaints deemed to be vexatious.

If at a hearing, a standards committee finds that a council member has breached the code of conduct and that they should be sanctioned, it may impose any one or a combination of the following orders:

- censure the council member;
- under certain circumstances, restrict for a period not exceeding six months the council member’s access to the local authority’s premises and use of the authority’s resources;
• partial or full suspension of the council member for a period not exceeding six months;
• that the council member submits a written apology in a form specified by the standards committee;
• that the council member undertakes such training as the standards committee specifies; and
• that the council member participates in such conciliation as the standards committee specifies.
6.0 Disciplinary Frameworks at other Levels of Government

The Review Committee examined the disciplinary frameworks at the State and federal levels of government to determine how the current disciplinary framework for local government council members compares with the frameworks for elected members of parliaments. It is apparent that unlike the State and federal levels of government, the local government tier is not based on the Westminster convention that is characterised by political party structures, leaders with executive authority and speakers of parliamentary chambers, which combine to make managing behaviour less problematic. In the local government sector, the mayor or president is the leader of council members, who are often elected on the basis of individual platforms, and the council is the decision-making body that is accountable to its stakeholders.

6.1 Western Australian State Members of Parliament

Western Australia has a two-chamber Parliament – the Legislative Assembly (or Lower House) and the Legislative Council (or Upper House). A code of conduct was adopted by the Legislative Assembly on 28 August 2003. The code of conduct covers the following matters: disclosure of conflict of interests; bribery; gifts; use of public resources; use of confidential information; proper relations with ministers and the public service; freedom of speech; misleading the Parliament or the public; participation in political parties; and parliamentary behaviour. Specific penalties for breaches of the code of conduct are handled by the Legislative Assembly’s Procedure and Privileges Committee.

The Legislative Council does not have a code of conduct for its members and is currently in the process of drafting one. Like the Legislative Assembly, the Legislative Council also has a Procedure and Privileges Committee. Both Procedure and Privileges Committees are responsible for dealing with allegations of a "breach of parliamentary privilege" or "otherwise unparliamentary conduct" against its members or anyone who has any dealings with Parliament. For the Upper House, the Procedure and Privileges Committee consists of the President of the House, the Chairperson of Committees, the Deputy Chairperson of Committees, and co-opted members of the Upper House. Currently there are nine members of the Upper House on the Procedure and Privileges Committee. In relation to the Lower House, the Procedure and Privileges Committee consists of the Speaker of the House and four appointed members.

Both Procedure and Privileges Committees can investigate allegations made against members of Parliament, report their findings and make recommendations to the respective House of Parliament for a determination. Once the respective House of Parliament has considered the Procedure and Privileges Committee’s recommendations and determined how the alleged misconduct is to be dealt with the matter is concluded. There is no avenue of appeal.
As the types of matters that both Procedure and Privileges Committees can deal with range from minor to serious and encompass misconduct by Members of Parliament and contempt by non-parliamentarians, the penalties that can be recommended to a House, include:

- a requirement to apologise;
- a reprimand or censure;
- the imposition of a fine;
- suspension of a Member of Parliament from the respective House of Parliament;
- expulsion of a Member of Parliament from Parliament;
- exclusion of a Member of Parliament from parliamentary precincts; and
- imprisonment.

Section 15 of the *Parliamentary Privileges Act 1891* also allows for both Houses to direct the Attorney General to prosecute a person for contempt against the House.

In addition, there is a Ministerial Code of Conduct that was developed in response to widespread public concern about the conduct and accountability of public officials. The need for the development of such a code was highlighted in the 1992 Royal Commission into Commercial Activities of Government.iii

Since 2007, there has been a Contact with Lobbyists Code that requires all lobbyists who represent a third party to be registered prior to undertaking any lobbying activities targeting government representatives. For the purposes of the Contact with Lobbyists Code, the term “government representative” encompasses: State Government ministers; parliamentary secretaries; ministerial staff; and persons employed, contracted or engaged by a public sector agency. Local governments are not captured by the definition of a public sector agency under the *Public Sector Management Act 1994*, therefore, council members are not covered by the Contact with Lobbyists Code. The State Government intends to introduce in Parliament legislation to regulate lobbyists based upon the Contact with Lobbyists Code.

### 6.2 Federal Members of Parliament

As is the case at the State level of government, the federal level of government has a two-chamber Parliament consisting of the House of Representatives and the Senate. The Commonwealth has a guide called Standards on Ministerial Ethics, however, there is no code of conduct covering Members of Parliament generally in either of the two Houses. The Prime Minister administers the Standards on Ministerial Ethics, which takes a principled-based approach to ministerial conduct and covers areas like: integrity, fairness in decision-making, gifts, as well as the need for ministers to be accountable and responsible while undertaking their roles.

Similar to how the conduct of State Members of Parliament is managed by parliamentary committees, there are also committee structures at the federal level that fulfil similar roles. There is the Senate Standing Committee of Privileges and the Standing Committee of Privileges and Members’ Interest for the House of Representatives. Both committees comprise members from their respective Houses. Offences against either House can be dealt with through fines or imprisonment.
7.0 Conclusions and Recommendations

Although to-date only a small percentage of council members have been the subject of complaints alleging minor breaches of conduct, it is apparent from the data analysis that the number of complaints is growing, and from the stakeholders’ feedback that several issues have emerged for the local government sector and the Department following the establishment of the Panel in 2007. In summary, these issues are:

- a serious lack of timeliness of Panel decisions;
- the legalistic nature of the administrative processes (in part due to the way the legislation is currently framed);
- the two departmental staff who support the Panel have operated largely in isolation from the rest of the Department and its usual management and accountability protocols;
- departmental information technology resources are under-utilised in relation to the operation of the Panel;
- a low level of awareness within the local government sector and the wider community of the Panel, its objectives, how it operates, its decisions and its relationship with the Department;
- decisions by the Panel not being publicised has created the perception amongst stakeholders that the Panel operates behind a veil of secrecy with little or no accountability;
- a heavy reliance by the Panel on written evidence to make its decisions;
- the Panel has limited powers to meaningfully penalise council members found guilty of a minor breach of conduct;
- local governments lack the authority to promptly address low-level misconduct by council members;
- some complainants have engaged in apparent retaliatory behaviour draining departmental resources and monopolising Panel members’ time;
- the Panel has no power to dismiss vexatious or trivial complaints;
- a lack of clarity in some of the regulations that define the rules of conduct for council members;
- a more holistic approach for managing the risk of misconduct at all levels (i.e. minor, serious and criminal) in the sector is lacking; and
- the disciplinary framework in which the Panel is the central element has not been implemented in the way that was originally intended (for reasons unknown), particularly in relation to using mediation and/or conciliation as a preliminary step.
In light of the above issues, the Review Committee considered all options for improving the efficiency and effectiveness of the current disciplinary framework, including abolishing the Panel and requiring another body like SAT to deal with all minor and serious complaints against council members. SAT would be the most obvious choice if another body was to become responsible for handling minor misconduct matters because it already deals with serious misconduct matters. SAT also usually holds face-to-face hearings into matters, for which a number of submissions to this review have suggested. However, proceedings through SAT are more complex and expensive for the parties to a complaint compared with the Panel. Consequently, SAT is more suited to deal with relatively more serious rather than lower level minor misconduct matters. Further, although SAT does hear disciplinary complaints initiated by various vocational bodies against members of the relevant vocation, SAT tends to not deal with allegations of minor breaches of conduct. Matters regarding minor misconduct breaches are usually handled by the relevant vocational body.

Importantly, the Review Committee considers that the principles underpinning the Panel model are sound. This view is confirmed by the inter-jurisdictional comparison which reveals that this model is applicable in various forms in a number of other States and in the United Kingdom.

Therefore, notwithstanding the range of issues that currently prevail with the existing disciplinary framework, in light of SAT’s operational jurisdiction and the fact that the framework was not established as it was originally intended, the Review Committee has concluded that it would be unwise and premature to abolish the Panel without the original model first being implemented and evaluated. In particular, as noted previously, the original model anticipated introducing a mediation and/or conciliation function as a preliminary step to attempt to resolve low-level misconduct complaints locally.

The Review Committee has formed the view that many of the issues that have been identified can be addressed administratively and relatively promptly within the short-term without the need to establish multiple panels or make legislative amendments (although to complement the short-term recommendations the Department could consider in the long-term recommendations to amend the legislation). Further, and provided that timeliness can be improved, the low level of complaints that have been lodged historically does not justify multiple panels being established, although the possibility could be considered if in the future there is a significant rise in the numbers of complaints being lodged.

7.1 Short-term Recommendations

7.1.12 Empowering Local Governments to Manage the Risk of Misconduct

In light of the Department’s strategic goals, including its responsibility to assist the Minister for Local Government to administer the Local Government Act, and the autonomy by which all local governments function, there seems to be some tension between the Department and certain local government stakeholders in managing the risk of misconduct. The tension is apparent in some comments made by respondents to the survey. Some respondents seem to perceive the Department as being too involved in the disciplinary process while others believe the Department should be taking more responsibility, including for funding all Panel costs.
The Review Committee recognises that the responsibility for managing the risk of misconduct within the local government sector is an important issue. For local governments, misconduct by council members risks tarnishing the councils’ reputations and that of the local government sector. It can also impact on the delivery of services to the local community and increase the financial burden on ratepayers. For the Department, the risks are that resources, primarily financial, are diverted from other functions to undertake often lengthy inquiries into the misconduct issue.

The CCC plays an important role within the wider context of the local government sector’s misconduct management framework. The CCC is of the view that managing the risk of misconduct should be a core function of organisations, including local governments, requiring mechanisms to prevent, identify, record and deal with misconduct. The CCC places considerable responsibility on local governments for managing the risk of misconduct within their own organisations. Such a view is reflected in a 2005 report by CPA Australia that examined governance (in the broadest sense rather than merely from an accounting perspective) in local government sectors across Australia. In the report, CPA Australia argues that local governments should have an overall risk management strategy that includes relevant plans and priorities. Importantly, the report explains how risk management is related to good governance and involves all aspects of the organisation, including its cultural norms that are shaped in part by ethical behaviour and codes of conduct:

> Risk management is a key part of excellence in governance. It is broader than having safe footpaths and gutters. It actually involves consideration of all the activities of the organisation – that is, all processes, structures, culture and parts of the organisation.iv

Consequently, the Review Committee has formed the view that local governments should bear appropriate responsibility for managing the risk of misconduct by council members as much as possible at the local level by being empowered to deal with low-level behavioural issues promptly before the Panel and the Department are required to become involved. Empowering local governments to deal with low-level behavioural issues should result in fewer complaints being lodged with the Panel, and in improved timeliness in the resolution of low-level issues. Empowerment can be achieved without any legislative amendments by establishing, at the local government level, a voluntary mediation and/or conciliation policy, rather than creating local conduct committees.

As noted previously, the Department is trialling the local conduct committee model at the City of Wanneroo whereby a three-member committee of independent persons would determine if a breach of minor misconduct had occurred as alleged. The model that is being trialled is a four-stage process with its own set of forms and procedures. An assessment officer would need to be employed by the local government to support the conduct committee and conduct committee members would likely be paid a fee for their services. The local conduct committee model is largely based on the highly bureaucratic disciplinary framework in the United Kingdom and the Review Committee has identified the following issues with such an approach:

- local governments’ staff costs would increase;
- early resolution should be the primary objective of the preliminary stage, however, the bureaucracy associated with local conduct committees could be an impediment to this objective;
some local governments may have difficulty sourcing three suitable conduct committee members (although it would be possible for multiple local governments to share one conduct committee);
the availability of committee members at short notice for meetings; and
the effectiveness and efficiency of the model has yet to be evaluated on the basis of the costs/benefits and any unintended consequences that may emerge.

In contrast, a voluntary mediation/conciliation model can in most cases be quickly implemented through policy adoption; it can result in matters being resolved swiftly because it is not bureaucratic; and it does not require local governments to employ additional staff. The only additional cost to local governments would be for engaging a trained mediator/conciliator, as and when required. The use of mediation and/or conciliation would be optional for the parties to a complaint. If both parties to a complaint did not agree to participate in mediation and/or conciliation the complaint would be dealt with by the Panel as is currently the case. Schematically, the proposed disciplinary framework would operate as shown in figure 42.

**FIGURE 42: REVISED DISCIPLINARY FRAMEWORK FOR DEALING WITH MINOR MISCONDUCT.**

Importantly, there is strong support amongst survey respondents, those who lodged written submissions and from key stakeholders who were interviewed for mediation to be a preliminary stage in the dispute resolution process. As noted previously, mediation and/or conciliation at the local government level was envisaged to be a preliminary stage in the dispute resolution system when the Panel model was initially formulated.

**Recommendation 1**

*The Department advise and assist all local governments to develop a policy for providing a mediation and/or conciliation service through qualified and independent persons.*

The Mediator Standards Board was officially launched in 2010 to support and promote high standards by mediators and to enhance the quality of mediation services throughout Australia. The Mediator Standards Board is an incorporated body with the responsibility for the ongoing development and maintenance of the National Mediator Accreditation System that was introduced in 2008. Should the

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^p The Mediator Standards Board is a national non-government organisation comprising bodies from the private, public and not-for-profit sectors (see http://www.msb.org.au/)
recommendation be adopted, prior to local governments establishing polices for mediation and/or conciliation services, the Mediator Standards Board should be consulted. WALGA should also be consulted because the association may be prepared to play a role in accessing mediation and/or conciliation services by establishing an agreement on behalf of all local governments with bodies that provide such services. Local governments may also derive benefits from utilising mediation and/or conciliation services in other areas of their operations beyond minor misconduct matters.

If recommendation 1 is adopted, it is important for the Department to monitor the implementation of the mediation and/or conciliation services policy to ensure all local governments have ready access to such services should the need arise. It would also be useful for the Department to be advised by local governments how often mediators/conciliators are utilised and their success-rates as a means to assess the effectiveness of the policy.

**Recommendation 2**

*All local governments advise the Department when the mediation and/or conciliation services policy is initially adopted and, thereafter, whenever someone is engaged to mediate/conciliate a matter involving a council member.*

The audit of complaints data showed that a large proportion of complaints alleging minor breaches of conduct were lodged by council members (see figure 24), suggesting that oftentimes issues are likely arising during council and committee meetings. Mayors and presidents play critical role in establishing a culture of good governance and in ensuring sound decision-making is undertaken by councils. In its report on local government governance, CPA Australia observes:

> The mayor's [or president's] role as chair of council...is very important for creating the atmosphere for excellence in governance to occur. Well-chaired meetings facilitate good decision-making.

The Review Committee recognises training as an effective mechanism for empowerment. Appropriate training for mayors and presidents in managing conflicts during council meetings will facilitate the empowering of local governments and should result in fewer issues escalating to a formal complaint.

**Recommendation 3**

*Local Government CEOs and the Department encourage all mayors and presidents to complete training offered by WALGA on how to manage conflicts, particularly during council and committee meetings.*
7.1.13 Managing the Risk of Misconduct Holistically

The CCC is of the view that the risk of misconduct, at all levels, in the local government sector is high given the complex issues local governments deal with, the nature of the services local governments provide, and the degree of engagement that local governments have with the public and business community.

The Review Committee notes that allegations of minor breaches can constitute misconduct, albeit at the low level, under the Corruption and Crime Commission Act 2003. For this reason, although more as a courtesy, the Department notifies the CCC of all complaints alleging minor breaches of conduct against council members. As the allegations relate to low-level misconduct, the CCC usually takes no action when it receives the notification from the Department. However, as even minor breaches of conduct can constitute misconduct under the Corruption and Crime Commission Act 2003, the Review Committee has concluded that a holistic approach to managing the risk of misconduct is prudent for the local government sector.

In light of the high risk of misconduct in the local government sector, in 2010 the CCC through its Corruption Prevention Directorate, commenced a long-term misconduct management review of the sector. Although the CCC review will not be completed for several months, one of the preliminary issues that has been identified is the general level of awareness of managing misconduct and misconduct risk in the sector. The Review Committee is also cognizant of the fact that one of the two primary functions of the CCC is the prevention of misconduct through education. Consequently, the CCC can play an important role in facilitating a more holistic approach to managing the risk of misconduct within the local government sector and building the capacity within the sector to better manage the risk.

Recommendation 4

The Department liaise more closely with the CCC through its Corruption Prevention Directorate with the aim of building the capacity within the local government sector to better manage the risk of misconduct at all levels (i.e. minor, serious and criminal).

To support a more holistic approach to managing the risk of misconduct within the local government sector, a mandatory uniform code of conduct would be an important element. A significant majority of survey respondents (see figure 11) support a uniform code of conduct being developed for the sector. The Review Committee notes that section 5.103(1) of the Local Government Act requires every local government to prepare or adopt a code of conduct for council members, committee members and employees. Section 5.103(3) of the Local Government Act provides for a uniform code of conduct to be prescribed as regulations and for such a code to be part of the local government’s code of conduct.
Recommendation 5

The Department, in consultation with the local government sector, establish a uniform code of conduct for council members that would be mandatory for all local governments.

Any uniform code should encompass the Rules of Conduct regulations for simplicity and to avoid confusion that may arise if there are multiple mandatory codes. Local governments would be able to add to the uniform code (providing no additional clauses would be inconsistent with the uniform code or the Rules of Conduct regulations), however, there should be no capacity to delete any clauses. Aside from the principles that should guide the behaviour of council members, which are currently in the Rules of Conduct regulations (see recommendation 32), the uniform code could also outline appropriate behaviours for council members and others when dealing with lobbyists.

Establishing a uniform code of conduct would be facilitated if, as is the case in the WA Public Sector, there was an accountability framework established for the local government sector. In the WA Public Sector, the former Office of the Public Sector Standards Commissioner developed a Conduct Guide to assist public sector agencies to develop their own codes of conduct (Appendix G). The Conduct Guide is being updated by PSC which now has responsibility for it following the abolition of the Office of the Public Sector Standards Commissioner on 1 December 2010.

The Conduct Guide outlines six categories of behaviour that WA Public Sector employees must follow and that need to be reflected in an agency-specific code of conduct. The Conduct Guide is structured into two sections. Section one lists the legislation and sector-wide compliance instruments that are mandatory for all WA Public Sector agencies. Section two outlines the types of issues and behaviours that agency-specific codes of conduct should address.

A similar accountability framework, tailored specifically for the local government sector, would assist local governments that choose to establish their own codes of behaviour over and above the recommended uniform code of conduct and the Rules of Conduct regulations, as depicted in figure 43. An accountability framework would also facilitate a more holistic approach to managing the risk of misconduct in the local government sector because it could apply to local government CEOs and their employees.
Recommendation 6

The Department establish an accountability framework for the local government sector for all levels of misconduct (i.e. minor, serious and criminal) modelled on the Conduct Guide established by the former Office of the Public Sector Standards Commissioner for the WA Public Sector.

7.1.14 Improving Organisational Support and Management Oversight

It is apparent that the two departmental staff who currently support the Panel have operated largely independently of the Department for most of the time since the Panel was established because there is no direct reporting relationship to a departmental manager. The reasons for this arrangement are unclear, however, one factor seems to have been the need for the Panel to be seen to be functionally independent of the Department and for the principle of fairness to be observed. This resulted in little or no management oversight of the administrative processes undertaken by staff who support the Panel either by the Department (for the reasons mentioned) or by the Panel (because the Panel is a decision-making tribunal and not a governance board with employment or management functions).

The Review Committee notes that following recent management intervention, staff who support the Panel have begun working more closely with Governance Branch investigators, primarily to deal with a large backlog of complaints alleging minor breaches of conduct. In addition, management is endeavouring to reduce the time taken to complete the pre-hearing procedures by making it easier for council members who are the subject of complaints to provide clear and concise information in template form within 14 days of the Department’s request to do so.
The Review Committee is of the view that greater management oversight to assist departmental staff who support the Panel is required and there is no apparent reason why this would impede in any way the independence of the Panel itself nor diminish the adherence to the principle of fairness. While the Panel is an independent statutory body, the administrative support is provided by officers employed by the Department rather than the Panel. Therefore, as departmental officers, there is no apparent reason why the staff who support the Panel should work outside of the usual departmental management processes and protocols.

The key role of departmental staff who support the Panel is to conduct the pre-hearing procedures and present to the Panel members evidence of facts in relation to allegations made of minor misconduct breaches. It is the responsibility of Panel members (not departmental staff) to decide whether or not, based on the evidence presented and on the balance of probabilities, a breach has occurred. There are many instances throughout the WA Public Sector of statutory bodies relying on departmental support staff to fulfil their independent functions. For instance, the Department of the Attorney General provides staffing and administrative support for courts and tribunals. Further, the Commonwealth Ombudsman’s *Better Practice Guide to Complaint Handling*, identifies internal integration as one of the principles that should underpin all complaint handling systems and that such commitment from all levels of the organisation is essential. Organisational integration will facilitate the promotion of strong internal networks within the Department, thereby enabling those staff who support the Panel to work closely with, and be supported by, other departmental officers.

**Recommendation 7**

*The departmental staff who support the Panel be fully supported by the systems and resources of the Department’s Governance Branch and a regular reporting regime be established with management.*

In light of the high number of complaints outstanding (45 as at the end of March 2011), the Review Committee suggests that staff who support the Panel initially report to the Manager of the Governance Branch on a monthly basis. When efficiencies in the system are realised and the number of outstanding complaints reduces significantly, the reporting regime could become less frequent.

Greater management oversight would ensure that departmental staff who support the Panel can benefit from accessing resources within the Governance Branch and the broader Department to fulfil their roles. Great management oversight would also allow for the required efficiencies in the complaints handling process, as well as the necessary effectiveness of the system, to be achieved swiftly.

**Recommendation 8**

*The Manager of the Department’s Governance Branch monitor the complaint handling processes undertaken by departmental staff who support the Panel to manage the efficiency and effectiveness of the complaints handling processes.*
The fact that there is no current formalised reporting regime between the Department and the Panel regarding the efficiency and effectiveness of the current complaints handling system means that Panel members can only rely on anecdotal evidence regarding administrative issues. A formalised reporting regime between the Department and the Panel would also provide an opportunity for Panel members to have input into improving the efficiency and effectiveness of the complaints handling system.

**Recommendation 9**

*The Manager of the Department’s Governance Branch report, no less frequently than on a quarterly basis, to the Panel on the efficiency and effectiveness of the complaints handling processes.*

It is evident from the consultation with stakeholders that a lack of timeliness of Panel decisions and the legal nature of the processes that are undertaken during the pre-hearing procedures are contradictions to the principal objectives of the Panel. Consequently, the Review Committee has concluded that these objectives have yet to be achieved.

However, it must be acknowledged that compliance with basic elements of natural justice is unavoidable in order to maintain a fair and equitable system for dealing with complaints that can affect people’s reputations and occupations.

Further, it is apparent that the primary objectives of the Panel are not well-known, even amongst current Panel members and by those who have acted in the role of deputy members. The Review Committee believes that by making all key stakeholders, including Panel members (and their deputies), aware of what are the primary objectives of the Panel will greatly assist in the achievement of those objectives and facilitate a higher level of openness and accountability.

**Recommendation 10**

*The Department prepare an induction manual for all current and for any new Panel members, including deputy members.*

The Panel was established to target low-level misconduct by individual council members and for sound reasons it was not intended to operate like a quasi-court. Consequently, all stakeholders should be aware that the Panel's fundamental role is to:

- make determinations on the balance of probabilities in light of the evidence presented rather than the strict rule of law to ensure the process is not legalistic; and
- administer justice and resolve complaints relatively quickly.

As a minimum, the induction manual should consist of the following information: a clear statement of the Panel’s objectives; the role of the Department; the complaint handling procedures followed by staff who support the Panel; how and when Panel meetings are conducted; an overview of the dispute resolution framework; a
schedule of Panel members’ fees; and a copy of the most recent Panel Annual Report. As Panel members can be considered to be an external client of the Department, it may be appropriate for the Communications Branch to be involved in the preparation of the induction manual.

**Recommendation 11**

*As soon as is practicable after their appointments, all new Panel members and deputy members undergo a brief induction session with the Manager of the Department’s Governance Branch, the Presiding Member of the Panel and departmental staff who support the Panel.*

The Department may also consider it appropriate for the Director General to play a role in such induction sessions. Participation of the Director General would convey to new Panel members that the Department fully supports the work of the Panel as an independent statutory body. It could also be an opportunity for the Director General to emphasise the objectives of the Panel and the important role that it plays in dealing with misconduct within the local government sector.

While induction sessions for Panel members and their deputies is expected to improve the operation of the Panel, an issue is that deputy members would find it difficult to deputise for a member following a long period of little or no involvement with the Panel’s operation. This issue can be addressed by deputy members receiving regular briefings to keep them abreast of the Panel’s operation.

**Recommendation 12**

*The Presiding Member of the Panel conduct at least annual briefings for all deputy members to ensure that they remain informed about all aspects of the Panel’s operation should they be required to deputise for a member at any time.*

### 7.1.15 Improving Communication with Stakeholders

A significant issue identified throughout the consultation phase of the review is the dearth of information currently available about the Panel and the broader disciplinary framework in general. The low level of awareness of the Panel and the limited understanding of what constitutes a minor breach of conduct, as is evidenced through the survey responses, requires significant effort to remedy – both at a micro and macro level. At the micro level, improvements can be made in the design of forms and in the drafting of correspondence. At the macro level, which encompasses the local government sector and the wider community, a strategic approach is required.
One of the guiding principles outlined in the Australian Standard on complaint handling in organisations is accessibility. Accessibility encompasses the need for easy-to-understand and easy-to-use information about the complaint handling process to be available to people who may wish to lodge complaints. Currently, information relevant to a complaint alleging a minor breach of conduct must be recorded on three forms and some information, as an example, the council member’s details, are duplicated across forms. A draft set of guidelines outlining the complaint handling process and the Panel’s procedures is unnecessarily long (22 pages), legalistic in tone and subsequently user-unfriendly. The document also requires updating to reflect the revised procedures that the Department is already implementing (see section 7.1.5 on streamlining administrative processes).

**Recommendation 13**

*Departmental staff who support the Panel work closely with the Department’s Communications Branch to create a simplified and more user-friendly Complaint Form, as well as create brief and easy-to-read guidelines about how complaints should be lodged and the revised complaint handling processes.*

The revised Complaint Form should include a question on what outcome(s) the complainant seeks to achieve for a resolution. This information will assist departmental staff in managing complainants’ expectations and could be taken into account by Panel members when deciding an appropriate order should they subsequently determine that a minor breach of conduct by a council member did occur as alleged.

The Review Committee believes it is imperative that there be a feedback mechanism in place to ensure that the communication with the parties to complaints is a two-way process. Feedback from the parties to complaints will assist the Department to monitor the effectiveness and efficiency of its administrative processes and assess how the performances of the Panel, as well as the Department, are perceived by those parties.

**Recommendation 14**

*Departmental staff who support the Panel work closely with the Department’s Communications Branch to develop a feedback form that should be sent to each party to a complaint following the conclusion of the dispute resolution process.*
Involvement of the Department’s Communications Branch should ensure that the relevant forms are drafted using easy-to-understand and non-legalistic language. The tone, language and quality of an organisation’s forms and correspondence shapes to a large extent how that organisation (or in this case the Panel) is perceived. The defamation caution, which is included in Panel correspondence conveying its findings and decisions, could be interpreted by some as threatening and would be further evidence to those who hold the view that the Panel operates too legalistically. The need for a defamation caution appears questionable, disproportionate to the nature of the complaints with which the Panel deals, and inconsistent with its role.

**Recommendation 15**

*The Department seek legal advice from the State Solicitor’s Office to clarify whether amendments to the Local Government Act are required to protect individuals against potential defamation action in relation to the retention and dissemination of Panel findings and decisions.*

The Review Committee notes that correspondence outlining a Panel decision can sometimes be unnecessarily long, which is likely to support the perception within the local government sector that the Panel is a quasi-court. One council member survey respondent made the remark that a Panel decision they received was 20 pages long. It is the view of the Review Committee that legal formality should be avoided in Panel correspondence wherever this is feasible. All Panel correspondence, including its decisions and orders in response to a minor breach of conduct finding, should be easy-to-read and brief by avoiding, wherever possible, unnecessary legal formality. The objective, which is commonplace in many administrative law settings, of conducting proceedings with as little formality and technicality, and as much expedition as the requirements of the law and a proper consideration permit, should always be to the fore.

Beyond individual forms and correspondence, the consultation undertaken has clearly shown there is a lack of information about the Panel and its process available within the local government sector and the wider community. This lack of information has resulted in a low level of awareness of what constitutes a minor breach of conduct by council members and of the broader disciplinary process. It seems that within this information vacuum, a distrust of the Panel to be able to operate independently of the Department has germinated amongst stakeholders within the local government sector. This is evidenced by the fact that less than half of all survey respondents reported having confidence in the Panel and its processes (see figure 12). Also, less than half of all survey respondents believe there is adequate information available about the Panel (see figure 7). The Review Committee has formed the view that it is critical for the Department to fill this information vacuum with factual messages to strategically and effectively manage the perceptions of stakeholders.
**Recommendation 16**

**Departmental staff who support the Panel work closely with the Department's Communications Branch to develop a complaints management communications strategy for the purpose of raising awareness of the Panel, its members, processes, powers and its decisions (and misconduct generally).**

The complaints management communications strategy could be formulated on the basis of the Department taking a more holistic approach to managing misconduct within the sector (see recommendations 4 to 6).

As part of the recommended communications strategy, key tactics and messages should be articulated for target groups like: council members; local government CEOs and complaint officers; the media; and members of the public. The strategy should set realistic goals that can be evaluated after an appropriate period of time to establish whether or not the strategy has been successful and, if necessary, tactical changes should be made to achieve the goals. The Department's Advice and Support Branch could play an important role in the development and implementation of the communications strategy.

The Review Committee believes that placing relevant information on the Internet about the Panel and the Department’s role in supporting the disciplinary framework should be an important element of the recommended communications strategy.

**Recommendation 17**

**The Department establish a separate and easily accessible webpage on its website for information on lodging complaints with the Panel and allowing for the downloading of copies of the recommended revised Complaint Form.**

Information on the new webpage on the Department’s website should clearly explain the process for lodging complaints against council members, including relevant timeframes for key stages in the process; the Panel’s statutory independence; the support the Department provides to Panel members; and the cost-sharing arrangement between the Department and local governments.

As each local government is required to have a complaints officer, and the Review Committee can see no reason why this policy should change, information about the role that local governments play in the management of complaints should be available on each local government website.
Recommendation 18

The Department encourage each local government to have an easily accessible, separate page on their websites outlining how complaints are handled, who is the complaints officer and how that person can be contacted.

The local government webpage should also include a hyperlink to the Department’s webpage about the Panel’s complaints handling and dispute resolution process, as well as a hyperlink to the recommended revised Complaint Form.

7.1.16 Streamlining Administrative Processes and Improving Timeliness

The administrative processes undertaken by the Department to support the work of the Panel is a critical area for addressing the issue of a lack of timeliness in Panel decisions. As noted previously in this report, the Review Committee acknowledges that the Department, of its own volition, is already revising its administrative processes to reduce the time taken to conduct the pre-hearings procedures. However, it is the view of the Review Committee that these procedures should be aligned with best-practice guidelines for complaint handling.

Recommendation 19

The Department’s revised pre-hearings procedures for handling complaints alleging minor breaches of conduct be aligned with the best-practice guidelines published by the Commonwealth Ombudsman, which are consistent with the Australian Standard on complaint handling.

The issue of a lack of timeliness in Panel decisions can also be addressed by the Panel relying less on written evidence to make its determinations and instead allowing the Department to conduct telephone and face-to-face interviews to ascertain the necessary facts of a case. Based upon the best-practice guidelines published by the Commonwealth Ombudsman, the Department’s procedures should consist of the following steps:

- acknowledge to all parties promptly receipt of the complaint and how long it is likely to be before the Panel will make a decision;
- assess each complaint and assign a priority based on the nature and number of allegations;
- plan how the complaint is to be investigated and assign appropriate resources.
- investigate the complaint to determine the facts in the most expeditious manner (e.g. by telephone and/or face-to-face interviews with parties and relevant witnesses) regarding the allegations;
- update the parties to the complaint promptly should the time taken to resolve the matter be longer than was originally planned, including the reason(s) for the delay;
- advise the parties to the complaint using brief, easy-to-understand and non-legalistic language of the Panel’s findings and reasons for its decision, as well as
(when applicable) of the option for applying to SAT to review the Panel’s decision; and
- consider (initially after the first six months) if there are any procedural issues that may warrant a subsequent revision of the procedures.

In addition to ensuring that the Department’s administrative procedures are aligned with best-practice guidelines, it is also important that time benchmarks be established for appropriate administrative stages and made widely known.

**Recommendation 20**

*Time benchmarks be established and published for key stages of the pre-hearing procedures.*

The types of time benchmarks that could be established include the maximum elapsed time:

- before which acknowledgement letters are issued after receipt of the complaint to the parties to a complaint;
- to undertake an assessment of a complaint and plan how it is to be investigated; and
- to issue correspondence to the parties of a complaint after the Panel’s decision regarding the allegations.

While time benchmarks for the investigative phase of the pre-hearing procedures are impractical to set because much depends upon the number and specific nature of the allegations made, aspirational percentage targets can be established for total complaints completed. Establishing aspirational percentage targets are consistent with the way the Department (and indeed other accountability agencies like the Office of the Ombudsman) report the percentage of complaint projects completed within a certain timeframe. For example, for general and serious complaints received, the Department's 2009/10 Annual Report shows that 63% of allegations pertaining to complaints (excluding those related to the Panel) were completed within 90 working days. Therefore, an aspirational target could be established for departmental staff who support the Panel to complete a percentage of complaint projects within three months of receiving the complaints. That target and whether or not it is achieved could be reported in the Panel’s annual reports (see recommendation 18).

There is strong support amongst survey respondents for the Panel to conduct face-to-face hearings (see figure 18). Further, almost half of all written submissions received support the possibility of the parties to a complaint putting their cases to the Panel in person.
The Review Committee notes that the Panel’s current Procedures and Practice Guidelines allow for evidence to be presented by the parties to a complaint through face-to-face hearings. The Review Committee sees the value of face-to-face hearings in making the complaints handling process more transparent and accountable. In theory, face-to-face hearings should also allow the Panel to make a better assessment of the creditability of the evidence presented. Holding face-to-face hearings at local governments, if conducted without undue formality, is likely to make the parties to complaints more comfortable when providing their evidence and could provide the Panel with insights into the nature of the allegations that would otherwise remain unknown.

The Review Committee expects that if some face-to-face hearings were conducted, the Panel would, in some cases, be able to make its determination as to whether or not a minor breach of conduct was committed and convey its decision to the respective council member at the time of the hearing. If so, this practice would enable the Panel to invite council members to make their submission as to how the breach should be dealt with at the same time (as the legislation currently requires). Consequently, if face-to-face hearings are scheduled promptly, considerable time could be saved in resolving some complaints.

**Recommendation 21**

*The Panel conduct hearings face-to-face within the relevant local government region whenever convenient and practical to do so. When not practical to do so, the Panel should conduct the hearing via teleconference or videoconference when appropriate.*

The Department currently has teleconferencing and videoconferencing facilities that the Panel could utilise should at any one time it not be convenient or practical to travel to a local government to conduct a face-to-face hearing. The Community Resource Network (formerly known as the Telecentre Network), administered by the Department of Regional Development and Lands, could be used by council members and complainants to videoconference with Panel members in Perth. There are currently 107 Community Resource Centres (which are all incorporated not-for-profit bodies) throughout the State and many have videoconferencing facilities at reasonable hourly rates (payment of which would be the responsibility of the relevant local government to be consistent with the current cost-sharing arrangement).

Legal representation at Panel hearings should not be encouraged because this would be inconsistent with the Panel’s objective of operating informally and non-legalistically.

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*The Review Committee was advised by Mr Rob Leicester, Business Development Manager, Department of Regional Development and Lands, that the agency will have a dedicated videoconferencing room at 140 William Street and the Department of Local Government will be permitted to use it without any charge when it relocates there.*
7.1.17 Utilising Information Technology Assets Effectively

Effective management requires easily accessible and high quality information through an organisation’s information technology assets to facilitate appropriate data analysis, thereby enabling the establishment of robust, evidence-based decision-support and reporting systems. The Review Committee notes that departmental staff who support the Panel under-utilise the Department’s complaints database, limiting the effectiveness of the Department’s decision-support and reporting systems in this regard.

In conducting the audit of complaints data, it was found that use of the Department’s complaints database was limited to only at the commencement and at the conclusion of the complaint handling process (although recent management intervention is apparently seeking to address this). For the most part, departmental staff who support the Panel have relied on their own manual records in Microsoft Word documents to keep track of complaints.

**Recommendation 22**

*Departmental staff who support the Panel fully utilise the Department's complaints database to record on a regular and ongoing basis all key documents and stages of the complaint handling process, as well as when preparing the Panel’s annual reports.*

The Review Committee acknowledges that one reason why the complaints database is under-utilised by staff who support the Panel is that it currently does not meet their specific needs.

**Recommendation 23**

*The Department's Information Technology Branch tailor the complaints database in consultation with the Manager of the Governance Branch to better reflect the Panel’s administrative processes by creating task profiles for complaint projects and enabling time benchmarks to be assigned to key stages within the complaints handling process.*

Where appropriate, costs for each task profile could also be recorded on the complaints database. It may also be deemed useful to establish a task profile for each Panel member to enable the costs associated with each member to be recorded on the database.
7.1.18 Improving the Panel's Reporting

As a consequence of the under-utilisation of the complaints database by Departmental staff who support the Panel, there is a lack of clarity in the way some aspects of complaints data have been reported in the Panel’s annual reports. One area where this is most evident is in SAT applications and reviews. As an example, one complaint (No. 26 of 2008) was reported in the Panel’s 2008/09 Annual Report (as it should have been) with the SAT decision following a review. However, the SAT decision was actually delivered in 2009/10 and as a result it was also reported in the annual report for that year with an addendum about certain compliance outcomes.

Greater openness and transparency within the complaints handling process can be significantly increased by improving the quality of what the Panel reports and extending the range of information of what is currently reported. The difference in the quality of content between the Department’s and the Panel’s annual reports is clearly discernible. By enhancing the Department’s decision-support systems (see recommendation 23) and improving the Panel’s annual reporting framework, greater openness and transparency can be achieved.

**Recommendation 24**

*Future Panel annual reports be used as a mechanism for greater openness and transparency by including additional performance and comparative data.*

The suggested reporting framework below is based on what is presented for the audit of complaints data in this report. Therefore, as a minimum, the Panel’s future annual reports should include:

- the metropolitan and rural council split for all complaints lodged;
- the numbers of complaints from the different potential sources (see figure 24);
- which councils are implicated in the most numbers of complaints;
- the most numbers of complaints against individual council members;
- separately the number of SAT applications made in the financial year, the number of SAT decisions delivered in that year, and a summary of those decisions (e.g. how many Panel decisions were upheld, varied and set aside);
- the minimum, maximum and average numbers of working days to conclude complaints and the proportion of complaints that are concluded within certain periods (e.g. three months, six months, nine months) for breach and non-breach outcomes;
- the costs to local governments of Panel member fees (and other potential costs like videoconferencing and teleconferencing – see recommendation 21) and the costs to the Department of Panel support staff salaries; and
- aspirational percentage targets for completing complaints and whether or not these targets are achieved could also be reported (see recommendation 20).

Future Panel annual reports should also show more clearly:

- the nature of the allegations made against all council members;
the number of Panel decisions that resulted in breach and non-breach outcomes; and
how the prevailing year compares with previous years on the statistics reported to identify any trends and potential emerging issues.

Survey respondents strongly support the idea of all panel decisions being made public, primarily on the grounds of greater openness and transparency. The Review Committee shares this view.

**Recommendation 25**

The Panel publish (on its own separate webpage – see recommendation 17) on the Department’s website easy-to-read summaries of all its decisions as soon as is practicable following the making of its determinations.

For ease of access, similar to how SAT judgements are available on its website, as a minimum the list of decisions should be searchable on the year the decision was made; the name of the relevant local government council; and (where considered appropriate and within the current confidentiality provisions of the Local Government Act) the names of the parties to complaints.

The issue of confidentiality was discussed in Parliament when the Local Government (Official Conduct) Amendment Bill was debated in 2007. The former Government decided to limit the confidentiality provisions of the Bill to complaints lodged within a local government election campaign period for the purpose of facilitating openness and accountability. The then Minister for Local Government also argued that if all complaints were to be confidential until the Panel made its decision it would be inconsistent with how even the CCC operates. The Review Committee also notes that the principle of confidentiality in the Australian Standard on complaint handing focuses on the complainant rather than the person who is the subject of the complaint. ix Therefore, the Review Committee does not see any reason why the current confidentiality provision in the Local Government Act should be changed.

**7.1.19 Establishing a Pro-active Complaints Management Culture**

The analysis and evaluation of complaints data is an important element of the effectively maintaining any complaints handling and dispute resolution system. Regularly analysing and evaluating complaints data would also facilitate the establishment of a pro-active governance culture within the local government sector because emerging systemic issues could be identified and addressed promptly, minimising the risk of a council becoming dysfunctional and the situation becoming critical.
When the situation at a local government council does becomes critical, the Local Government Act currently provides the Minister for Local Government with the powers to appoint an inquiry panel and suspend a local government council. Inquiry panels are required to report to the Minister within six months of the council being suspended, therefore, the current arrangement has been found to be time consuming and costly. The Department estimates that an inquiry panel, which can recommend to the Minister the dismissal of a council, costs approximately $11.5 million.  

The Local Government Act also provides for the Department to conduct an authorised inquiry to deal with systemic issues at a council. Although less time consuming and not as costly as an inquiry panel, an authorised inquiry does not allow for an immediate response by the Minister in situations where it may be necessary.

To establish greater flexibility in the way systemic issues at a dysfunctional council can be addressed, the Department has proposed that the Local Government Act be amended to provide the Minister with alternative powers to suspend a council and appoint a commissioner to act on behalf of the council for a maximum period of six months. Under the proposal, prior to the six months expiring, the Minister would decide whether to reinstate the council if the systemic problems have been adequately resolved or continue the suspension and establish an inquiry panel.

In light of the current inquiry powers under the Local Government Act and the new powers that are to be proposed, there is a need for the Department’s information systems to have mechanisms that enable systemic issues to be identified and acted upon promptly.

**Recommendation 26**

*The data stored on the Department’s complaints database be analysed by the Manager of the Governance Branch on a quarterly basis to identify, in consultation with the Panel, any systemic conduct issues within local governments. Any systemic issues identified may warrant prompt attention at a departmental level or ministerial level (through the Director General of the Department).*

Most survey respondents believe there is insufficient pro-active work being undertaken to raise awareness of what constitutes a minor breach of conduct and what is considered acceptable behaviour (see figure 6). Also significant is that less than half of all survey respondents, and only 39% of council member respondents, know what constitutes a minor breach of conduct (see figure 5). The Review Committee notes that the Department’s Advice and Support Branch provides information to elected members, local government staff and the general public on the local government legislation and the role of local governments. The information is provided through publications; phone and email hotlines (for council members and local government staff); and a proactive compliance program that includes assessing the financial health of local governments. The Advice and Support Branch also does work targeting indigenous communities, women and multicultural groups.

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7 Information sheet produced by the Department on proposed legislative changes (updated February 2011), p. 3.
In addition, the Advice and Support Branch:

- regularly receives enquiries by phone from the sector about the Rules of Conduct regulations and about how the Panel operates;
- issues complaint forms and advises complainants as to how to complete the form; and
- conducts election year induction workshops for new council members and incorporates information on the Rules of Conduct regulations.

Recommendation 27

The Manager of the Department’s Governance Branch liaise, no less frequently than on a quarterly basis, with the Manager of the Advice and Support Branch to convey any trends and systemic issues identified through the level and nature of complaints being lodged, as well as the local councils that have been implicated.

The information would assist the Advice and Support Branch in planning visits to local councils and tailoring the messages that its staff convey during such visits; in its publications; when conducting workshops; as well as when providing telephone and email advice to stakeholders.

Clearly, any systemic issues that become apparent outside of the recommended quarterly monitoring cycle would need to be addressed accordingly, either at the departmental or ministerial level.

7.2 Long-term Recommendations – Legislative Amendments

To complement and enhance the efficiencies and effectiveness of the dispute resolution system that are expected through the implementation of the short-term recommendations, the Department could consider making amendments to the Local Government Act and the Rules of Conduct regulations. The legislative amendments that are recommended would also address some of the other issues identified through the consultation with stakeholders. The proposals are considered long-term recommendations because amending legislation usually requires considerable time and much depends upon the Government’s legislative priorities. Proposals to amend primary legislation (i.e. an Act) must first be examined and approved by the Regulatory Gatekeeping Unit, Cabinet approval is required, the Parliamentary Counsel’s Office drafts the amendments as a Bill and the Bill must be passed by both Houses of Parliament before Executive Council approval is sought. Although the process to amend subsidiary legislation (i.e. regulations) does not require Cabinet approval (however ministerial approval is required), the Regulatory Gatekeeping Unit and the Parliamentary Counsel’s Office remain involved before Executive Council approval is required.
7.2.1 Empowering Mayors and Presidents to Manage Low-level Misconduct

In light of the leadership role that mayors and presidents play at local governments in the pursuit and demonstration of good governance, the Review Committee has formed the view that they should be empowered to manage the lowest level of misconduct – as defined by recommendation 29. A role for mayors and presidents in managing misconduct is consistent with the philosophy of empowering local governments (see recommendations 1 to 3) and is aligned with relevant legislation in Queensland.

**Recommendation 28**

*The Local Government Act be amended to give the mayor or president of the local council the authority to make limited conduct orders against a council member who engages in local misconduct regardless of whether the misconduct occurs at a council or committee meeting.*

This recommendation would only apply to breaches of any local laws and allow such relatively trivial matters to be dealt with promptly and “on-the-spot”. If local misconduct is not resolved satisfactorily at the local government level, a complaint could be lodged with the Panel. If the misconduct takes place at a council or committee meeting, the mayor/president should have the authority to order that the:

- misconduct be noted in the minutes of the meeting;
- council member retract inappropriate statements and apologise to the party or parties concerned; and/or
- council member be expelled from the meeting being held.

If the local misconduct occurs outside of a council or committee meeting, the mayor or president should have the authority to:

- issue a reprimand to the council member; and/or
- require the council member to retract any inappropriate statements found to have been made and to apologise to the party or parties concerned.

Even if the mayor or president makes an order against a council member, it should be possible for a complaint to subsequently be lodged with the Panel about the alleged misconduct and the Panel could take into account any such order when making its determination.

7.2.2 Managing the Risk of Misconduct Holistically

There are legislative amendments that should be considered if a more holistic approach to managing misconduct in the local government sector is adopted through the implementation of recommendations 4 to 6. Queensland provides a good example of managing misconduct holistically because its local government legislation is aligned with the legislation administered by the Crime and Misconduct Commission, which is the equivalent of the CCC here in WA. In Queensland, the lowest level of misconduct is termed “inappropriate conduct” and can be dealt with promptly by the local government mayor or president.
Recommendation 29

The Local Government Act be amended to include a new class of breach called "inappropriate conduct" (as is the case in Queensland) or "local misconduct" that could be dealt with by the local mayor or president.

Similar to Queensland's Local Government Act 2009 (section 176(4)), the definition of "local misconduct" should encompass inappropriate conduct by a council member, including a failure to comply with local government procedures, and offensive or disorderly conduct at a local government council or committee meeting.

For consistency and to further a more holistic approach to dealing with misconduct in the local government sector, the Review Committee sees value in renaming the concept of “minor breach” to “minor misconduct”. Including the concept of local misconduct within the definition of minor misconduct addresses the issue raised by some stakeholders of the Panel being unable to penalise a council member for inappropriate behaviour outside of a council or committee meeting.

Recommendation 30

The Local Government Act be amended by renaming the term "minor breach" to "minor misconduct" and the definition encompass the concept of "local misconduct".

The Review Committee observes that Division 9 of the Local Government Act, which deals with the conduct of certain officials, only defines minor and serious breaches, yet there is no mention of criminal or official misconduct. As is the case in Queensland, official misconduct is referred to in its local government legislation in which it is clear that such misconduct is the jurisdiction of the Crime and Misconduct Commission. A similar approach, if adopted here in WA would enshrine into legislation a holistic approach to managing the risk of misconduct because there would be four levels of potential misconduct, ranging from the lowest level to the highest: local misconduct (that could be dealt with principally by the local government mayor/president); minor misconduct (dealt with by the Panel); serious misconduct (as defined under the Local Government Act and adjudicated by SAT); and official misconduct (which would be dealt with by the CCC).

Recommendation 31

The Local Government Act be amended by adding a definition for "official misconduct", which should be consistent with the Corruption and Crime Commission Act 2003 definition of “serious misconduct”, and if committed by a council member would be dealt with under that Act. The term "serious breach" under the Local Government Act should be renamed "serious misconduct".
A holistic approach to managing the risk of misconduct would be facilitated if the general principles that should guide the behaviour of council members (as outlined in regulation 3 of the Rules of Conduct regulations) were aligned with the general principles that are apparent in the definition of misconduct in section 4 of the Corruption and Crime Commission Act 2003. Although the general principles are included in the Rules of Conduct regulations, they are not part of the rules of conduct. As general principles of good behaviour, the recommended uniform code of conduct (see recommendation 5) would seem a more suitable location for such principles.

**Recommendation 32**

*The Rules of Conduct regulation 3 be revised to align the general principles with the principles underpinning the definition of misconduct in the Corruption and Crime Commission Act 2003, and that the principles be included within the recommended uniform code of conduct.*

If endorsed, the proposed principle-based uniform code of conduct would have a similar prominence and functionality as the principle-based Code of Ethics for the WA Public Sector. The Panel would continue to deal only with allegations of minor misconduct, as redefined in recommendation 30.

### 7.2.3 Enhancing the Perceived Independence of the Panel

The perceived independence of the Panel is an issue raised by some survey respondents, a few who lodged written submissions and by some stakeholders who were interviewed. Some stakeholders regard the independence of the Panel as being compromised because a departmental officer is a member of the Panel or because there is a WALGA nominee on the Panel. The Review Committee supports having a WALGA nominee on the Panel because it ensures that an industry perspective is considered in Panel decisions. This policy is also consistent with membership criteria for similar disciplinary forums adopted by most other jurisdictions in Australia.

The Review Committee is of the view that the Department being represented on the Panel is consistent with its strategic role in the local government sector and its responsibility in supporting the Minister for Local Government, although the fact that the departmental officer is also the Presiding Member appears to heighten the concerns of stakeholders. Therefore, such concerns should be addressed by having the legal member become the Presiding Member of the Panel rather than the departmental member.

**Recommendation 33**

*The Local Government Act be amended to provide for the member with legal experience to fulfil the role of the Presiding Member of the Panel rather than the departmental member.*

The Review Committee acknowledges there is a risk, if this recommendation is implemented and the legal member becomes the Presiding Member, that the Panel’s processes could become more influenced by legalistic processes.
However, assuming that there are to be induction sessions for all Panel Members (recommendation 11); the objectives of the Panel system are kept always in mind; the pre-hearing procedures are to be streamlined (recommendations 19 to 21); and other legislative amendments are made to simplify administrative procedures, the risk should be minimal.

7.2.4 Simplifying Administrative Procedures

One factor as to why the lack of timeliness of Panel decisions is a significant issue is because the legislation imposes a rigid process for how complaints are to be handled. Indeed, one government agency that lodged a written submission regards the relevant parts of the legislation as “...inefficient and confusing”.

Recommendation 34

The Local Government Act be amended to streamline and simplify the procedures that the Panel is currently required to follow in dealing with complaints.

The streamlining and simplification of procedures could be enshrined in the legislation by modifying sections 5.110(4-5), which require the Panel to give each party to a complaint written notice of its findings (prior to making a final decision), and to give council members the opportunity to make a submission as to how the Panel should deal with a breach finding. If the Panel conducts some face-to-face hearings (see recommendation 21) it should be able, in some if not the majority of cases, to make its decision as to whether or not a breach occurred at the time of the hearing and solicit the views of the council member regarding the Panel's subsequent order. There would be no requirement for the legislation to demand that this be done in writing. Section 5.110(7) of the Local Government Act should also be amended to require the Panel to give each party and the complaints officer notice of how it deals with all valid complaints made against council members (rather than only when a minor breach of conduct is determined to have occurred).

Currently there is no legislative provision for a complainant to withdraw a complaint, meaning that if someone lodges a complaint the Panel must make its determination regardless of whether the parties to the complaint resolve the matter through other means prior to that determination being made. Although it appears that such a scenario has not previously occurred, if mediation/conciliation is adopted as a preliminary stage in the dispute resolution process (see recommendation 1), the capacity for a complaint to be withdrawn will be particularly necessary. Theoretically, a complaint could be resolved through mediation/conciliation despite a complaint having being previously lodged with the Panel. Such a provision would also build flexibility into the system.

Recommendation 35

The Local Government Act be amended to allow a complainant to withdraw a complaint at any time prior to a hearing taking place.
Currently, the Local Government Act allows a complaint alleging a minor breach of conduct to be lodged no more than two years after the alleged offence is believed to have occurred. The Review Committee is concerned about the length of the period within which complaints can be lodged principally on the grounds that the longer the delay before a complaint is lodged, potentially the greater the problems for departmental staff in being able to ascertain relevant facts and conclude the complaint efficiently. The Review Committee has concluded that a delay in lodging a complaint of no more than six months is more reasonable in the context of the low-level types of allegations that can be made.

**Recommendation 36**

*The Local Government Act be amended to allow a person to lodge a complaint no later than six months after the alleged breach is believed to have occurred rather than two years.*

Another area of apparent inefficient administrative processes is the appointment of the Panel member with experience as a member of a local government council. The Review Committee regards the appointment of such a person as important to ensure that the Panel’s determinations take into account the perspective of someone with experience on a council. However, the current requirement for the Minister to invite WALGA to nominate nine suitable persons for appointment within 28 days is seen as being inefficient by key stakeholders interviewed.

As the Panel is established by legislation, the Cabinet Handbook, which is prepared by the Department of the Premier and Cabinet, requires the appointments of Panel members to be approved by Cabinet. Therefore, although the process can be more efficient by decreasing the number of nominations that WALGA is required to make and reducing the time within which those nominations must be made, it is appropriate that the Minister continue to appoint Panel members and have a choice from a range of nominees. The Review Committee considers three nominations from WALGA is more reasonable for appointing one person and 21 days should be sufficient time for WALGA to make its nominations.

**Recommendation 37**

*The Local Government Act be amended by requiring WALGA under clause 4.1 of Schedule 5.1 to submit to the Minister the names of three persons with experience as a member of council with 21 days.*
7.2.5 Widening the Panel’s Powers

The audit of complaints data revealed that some complaints have unnecessarily monopolised departmental resources and Panel members’ time. It is estimated by departmental officers that ten per cent of all complaints lodged are vexatious. However, the current legislation requires the Panel to make a finding as to whether or not a minor breach of conduct occurred as alleged, regardless of whether the complaint is vexatious or trivial. Therefore, departmental staff must to a degree sufficient for the Panel to make a decision, investigate all complaints lodged within the Panel’s jurisdiction, including those that are vexatious or trivial, diminishing the efficiency of the dispute resolution process. Many stakeholders who were interviewed or who lodged written submissions support the Panel having the power to dismiss vexatious complaints. This is a power common for bodies similar to the Panel in other jurisdictions.

To achieve efficiencies in the dispute resolution system, it is critical that the Panel has the power to dismiss vexatious or trivial complaints or that otherwise lack substance. In the interests of openness and transparency, the Review Committee holds the view that such a power should be accompanied with a requirement for the Panel to outline its reasons for dismissing such complaints. In light of the nature of vexatious or trivial complaints and the fact that the complainant could take the matter to another body like the Office of the Ombudsman, the Review Committee does not see a need for a Panel decision to dismiss a complaint to be reviewable by SAT.

**Recommendation 38**

The Local Government Act be amended to give the Panel the power to dismiss complaints considered vexatious, frivolous, unreasonable or lacking substance. In such cases, the Panel should be required to give the complainant its reasons for dismissing the complaint.

The Review Committee notes that there are legislative precedents in which decision-making bodies may dismiss complaints or refuse to deal with complaints without a right for the complainant to seek a review of the merits of that decision. Examples include section 67 of the Freedom of Information Act 1992 and section 18 of the Parliamentary Commissioner Act 1971.

Although to-date, there have been no complaints alleging a minor breach of conduct that have been considered as recurrent breaches, the process of dealing with recurrent breaches, as dictated by the legislation, seems inefficient and unnecessarily involves the Director General of the Department. Further, it is SAT that deals with recurrent breaches, rather than the Panel, even though recurrent breaches are simply repeated minor breaches. It is clear the reason that SAT deals with recurrent breaches is because SAT has wider penalty powers than the Panel.
The consultation phase revealed widespread support for the Panel to have greater penalty powers. The case for providing the Panel with powers over and above what it currently has is stronger if, as is recommended, the Panel was given the authority to deal with all allegations of minor misconduct, including recurrent breaches.

**Recommendation 39**

The Local Government Act be amended by giving the Panel the authority to deal with all minor misconduct allegations, including "recurrent breaches", and additional powers to issue punitive orders.

The following additional powers for the Panel are consistent with the penalties that similar bodies in other Australian jurisdictions can impose on local government council members:

- issue a reprimand to the council member;
- suspend the council member for up to two months;
- the council member forfeit an allowance or fee for no longer than two months;
- the council member repay to the relevant local government an allowance or fee that applies for no longer than two months; and
- other improvement measures, like for example, a requirement for the council member to engage in mediation or counselling, or any other action of similar nature and intent. The concept of improvement action is used in the Public Sector Management Act 1994 and defined in section 3 of that Act.

7.2.6 Clarifying and Improving the Rules of Conduct Regulations

Through the consultation, stakeholders identified specific areas of the Rules of Conduct regulations that require clarification and/or improvement. One such area is conflicts of interest (regulation 11). Conflicts of interest are a significant issue for local governments, as it is for the WA Public Sector. There is nothing inherently wrong or unethical in a conflict of interest situation because some are unavoidable, particularly in small communities. However, the key issues are that the conflict of interest should be openly declared and subsequently managed appropriately. Appropriately, managing conflicts of interest promotes ethical and responsible decision-making.

Currently, regulation 11 requires a council member to declare a conflict of interest, however, the only way the conflict is managed is for the declaration to be noted in the council meeting minutes. The Review Committee has concluded that merely having the minutes of the council meeting include a declaration that a conflict of interest exists could be inappropriate in some cases. In some cases, a conflict of interest would be more appropriately managed if the council member with the conflict of interest was not involved in any discussion on the relevant subject and/or in the decision-making process.
Recommendation 40

The Rules of Conduct regulation 11 be amended to require a council member who has a declared conflict of interest to remove himself/herself from the meeting while the relevant matter is being discussed and/or voted on if the person chairing the meeting believes it is appropriate to do so. If the conflict of interest resides with the person chairing the meeting, the other members present are to decide how the conflict is to be managed.

Sub-regulation 4 contemplates a council member not knowing that they have a conflict of interest in a matter that is discussed at a council meeting and permits an exemption to the disclosure requirement in such circumstances. Such an exemption seems problematic because evidence to counter a claim of ignorance would be difficult to obtain if not impossible in some cases. In New South Wales and Queensland, the onus is on council members to be cognizant of any potential conflicts of interest and to take the appropriate steps to manage those conflicts in favour of their local government duties. Therefore, a test of whether the council member could reasonably be expected to know that they have a conflict of interest would seem to be more appropriate and allow enforcing this particular rule of conduct easier.

Regulation 6 deals with the use of information and currently requires council members not to disclose confidential information or information acquired at a closed meeting (other than non-confidential information). The Review Committee supports the view that non-disclosure is insufficient because the confidentiality of the information could potentially be compromised through the negligent, whether intentional or not, storage or handling of the information.

Recommendation 41

The Rules of Conduct regulation 6(2) be amended to also require council members to handle and store confidential information appropriately so that it is not easily available to those who should not access it.

Regulation 10 deals with the working relationships between council members and local government employees. Sub-regulation 3 prohibits a council member from stating that a local government employee is incompetent or dishonest, or from using offensive language in reference to an employee at a council/committee meeting or event where members of the public are present. The Review Committee regards the presence of members of the public as being secondary to the inappropriate behaviour, which would remain inappropriate even if only other council members were present.
Recommendation 42

The Rules of Conduct regulation 10(3) be amended to delete the reference to members of the public being present.

Although the issue of gifts given to council members did not attract many comments from stakeholders, the issue has emerged in the media on occasions, including in relation to WA Public Sector employees. The Review Committee regards the issue of gifts as significant because it is closely related to the issue of conflicts of interest. Currently, regulation 12 stipulates that a gift between the value of $50 and $300 that is received by a council member must be declared to the CEO of the local government. One of two or more gifts from the same person received within a six-month period that have a total value between $50 and $300 must also be declared to the CEO. Council members are prohibited from accepting a gift valued at $300 or more. The prohibition extends to one of two or more gifts offered by the same person with a six-month period that have a total value of $300 or more.

The Review Committee regards the use of dollar values in relation to thresholds for gifts that are notifiable and prohibited as being problematic because the approach ignores economic factors like inflation. The key issue should be the nature and intent of the gift rather than the dollar value. In New South Wales, rather than prescribing dollar values in relation to gifts, the concept of “token gifts and benefits” is used, thus allowing a reasonable degree of judgement to be made and personal responsibility to be accepted. Importantly, the Model Code of Conduct in New South Wales makes it clear that council members must not:

- seek or accept bribes or other type of improper inducement;
- seek gifts or benefits of any kind;
- accept any gift or benefit that may create a sense of obligation;
- accept a gift or benefit of more than token value; nor
- accept an offer of money, regardless of the amount.

Recommendation 43

The Rules of Conduct regulation 12 be amended to remove the dollar thresholds for gifts and adopt the approach taken in New South Wales which is based on the concept of acceptable "token gifts and benefits".

All token gifts and benefits would be notifiable. In New South Wales, token gifts and benefits are defined as:

- free or subsidised meals or refreshments provided at official discussions, conferences, meetings, council workshops and similar events;
- invitations and attendance at local cultural, social or sporting events;
- gifts of single bottles of reasonably priced alcohol to individual council members at end-of-year functions, public occasions or in appreciation of work done (e.g. delivering a lecture, training, presentation); and
- ties, tie pins, scarves, coasters, diaries, chocolates or flowers.
In New South Wales, the following are examples of gifts considered to have more than a token value and are therefore prohibited:

- tickets to major sporting events (like any national league game whether Australian rules football, cricket, soccer, rugby, basketball etc);
- corporate hospitality at major sport events;
- discounted products for personal use;
- frequent use of facilities such as gymnasiums;
- use of holiday homes; and
- free or discounted travel.

7.3 Potential Long-term Options

Should the implementation of the short and long-term recommendations result in increasing the efficiency and effectiveness of the disciplinary framework as expected, the Department could consider, in consultation with the local government sector, recommending expanding the role of the Panel. While the Review Committee sees no inherent flaw in the current model, if the revised disciplinary framework was to operate soundly there could be an argument for the Panel to deal with both minor and serious misconduct complaints. Under those circumstances, SAT would become the body for review-only of panel decisions. Such a model is similar to those operating in Tasmania and the Northern Territory where there is no distinction as to how minor and serious misconduct is handled.

However, if as a potential long-term option, expanding the role of the Panel was to be considered, there would likely be resource implications for the Department that would need to be taken into account. Although the Department currently undertakes the investigations into allegations of serious misconduct before the matter is taken to SAT to make its determination, additional departmental staff could likely be required to support the Panel in any expanded role. Further, the size and composition of the Panel would also require a re-evaluation if it was to be given the responsibility to examine alleged serious breaches of conduct. Such an option would also require significant legislative changes.

In contrast, if the recommendations are implemented and no significant efficiencies in the Panel model are realised within a reasonable period of time, the Department will have no alternative other than to consider recommending abolishing the Panel and formulating a new disciplinary framework. A model without a State-wide Panel could result in the Panel’s current responsibility being divested to each local government (as was considered when the current disciplinary framework was initially being formulated) or alternatively to SAT. Both alternatives would have significant policy hurdles to overcome because if local governments were required to manage and resource their own standards panels there would be potential duplications and obvious financial implications that could ultimately impact on ratepayers. Such a model could also have implications for SAT if it remained a body of review of each panel’s decisions.

Similarly, there would be resource implications for SAT if it was to deal with both minor and serious misconduct allegations, and its current operational jurisdiction would need to be expanded.

Therefore, if in the future a disciplinary framework without a State-wide Panel had to be considered because the revised system as framed by the recommendations had proven to be inefficient and ineffective, the Department would need to convince the local government sector as well as SAT of the merits of the new model.

The Department of Local Government 2009/10 Annual Report, p. 15.


ibid., p. 9.


Appendix A

Consultation Strategy Matrix
<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>On-line Survey</th>
<th>Phone Interview</th>
<th>Face-to-Face</th>
<th>Written Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Current Panel members</td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>2  Past Panel members</td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>3  Panel support staff</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>4  Office of the Minister for Local Government</td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>5  Members of Parliament</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>6  Director General of Department</td>
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<td>x</td>
</tr>
<tr>
<td>7  Departmental staff</td>
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<td>x</td>
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<tr>
<td>8  LGMA Board</td>
<td></td>
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<td>x</td>
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<tr>
<td>9  WALGA State Council</td>
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<td>x</td>
</tr>
<tr>
<td>10 Local government CEOs</td>
<td></td>
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<td>x</td>
</tr>
<tr>
<td>11 Local government complaint officers</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
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<tr>
<td>12 Elected council members</td>
<td></td>
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<td></td>
<td>x</td>
</tr>
<tr>
<td>13 Members of public who have lodged complaints</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>14 General public</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
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<tr>
<td>15 State Administrative Tribunal</td>
<td>x</td>
<td>x</td>
<td>x</td>
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</tr>
<tr>
<td>16 Office of the Ombudsman (WA)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
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<tr>
<td>17 Corruption and Crime Commission</td>
<td>x</td>
<td>x</td>
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<td>x</td>
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<tr>
<td>18 State Solicitor's Office</td>
<td>x</td>
<td>x</td>
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<td>x</td>
</tr>
<tr>
<td>19 Law Society of Western Australia</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Stakeholder</td>
<td>On-line Survey</td>
<td>Phone Interview</td>
<td>Face-to-Face</td>
<td>Written Submission</td>
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<tr>
<td>20 Public Sector Commission</td>
<td></td>
<td></td>
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<td>x</td>
</tr>
<tr>
<td>21 The Department of the Premier and Cabinet</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>
Appendix B

Display Advertisement Published in *The West Australian*
Notice of Review of the Local Government Standards Panel

The Minister for Local Government, Hon John Castrilli MLA, has requested the Department of Local Government to undertake a review of the Local Government Standards Panel and its supporting legislation. An independent Standards Panel Review Committee is overseeing the review.

The Standards Panel was established in October 2007 by the Local Government (Official Conduct) Amendment Act 2007 to deal with complaints of alleged or minor breaches of conduct against local government council members.

Interested members of the public can participate in an on-line survey that will be available between 21 February and 4 March 2011.

To register for the survey, please send an email no later than 17 February 2011 to lgsanreview@psc.wa.gov.au.

Alternatively, written submissions to the review can be posted or emailed as follows:

Post to: Local Government Standards Panel Review, Public Sector Commission (Level 7), Locked Bag 13, Cottesloe Square, PERTH WA 6850

Email to: lgsanreview@psc.wa.gov.au

The terms of reference for the review and a list of potential issues that may inform submissions can be found at: http://www.dlg.wa.gov.au/Content/Legislation/UnderReview/StandardsPanel.aspx

Submissions and enquiries can also be made by phoning (08) 9219 6450 and leaving a recorded message.

Written and phone submissions must be received no later than 5.00pm Friday, 11 March 2011.

Anyone who chooses to make a submission can request that the information provided be treated in confidence, however, submissions would in any event be subject to the Freedom of Information Act 1992.
Appendix C

Hard-copy Survey for People without Internet Access
Review of the Local Government Standards Panel Survey

Introduction

The purpose of this survey is to gauge the perception of key stakeholders about the Local Government Standards Panel (the Panel) and its processes; obtain information about the statutory framework within which the Panel operates; consider the standards of conduct expected of elected members; and ascertain as to what improvements (if any) could be made to the complaint handling and dispute resolution system.

As a key stakeholder in the operation of the Panel, you are encouraged to participate in this survey to ensure that the Standards Panel Review Committee obtains a broad cross-section of views. The survey should take no more than approximately 10-15 minutes to complete. Please note, ‘Don’t know’ is a valid response to some questions if you consider that to be your most appropriate answer. Also, some questions have comment boxes in which you can (if you choose to do so) briefly expand your answer (1-2 paragraphs).

All responses are completely confidential. Including your name and contact details at the end of this survey is optional. Only aggregate information will be reported, however, all individual submissions received would be subject to the Freedom of Information Act 1992.

In the Demographics section, depending on your answers, you will not need to respond to all the questions. Instructions will advise you as to what questions you should answer.

Please mark your answers clearly in pen with a cross (X).

When you have completed the survey, please post it to:

Local Government Standards Panel Review
Public Sector Commission (Level 27)
Locked Bag 13
Cloisters Square
PERTH WA 6850

Completed surveys must be received no later than 4 March 2011.
Demographics

1. Are you a WA local government CEO?
   - Yes
   - No

2. Are you a WA local government Complaints Officer?
   - Yes
   - No

*If you answered “No” to both questions 1 and 2, please answer question 3.*

3. Have you worked as a WA local government CEO and/or a Complaints Officer at any time since October 2007?
   - Yes
   - No

4. Are you (or were you at any time since October 2007) a WA local government council member?
   - Yes
   - No

5. Are you a Member of Parliament in WA?
   - Yes
   - No

*If you answered “No” to questions 1, 2, 4 and 5, please answer questions 6-8.*

6. Are you an interested member of the public (including an employee of a local government)?
   - Yes
   - No

7. Are you responding on behalf of a WA Public Sector agency?
   - Yes
   - No

8. Are you responding on behalf of an organisation outside of the WA Public Sector?
If you are (or have worked since October 2007) as a local government council member, CEO or Complaints Officer, please answer question 9.

9. Do you (or did you if you were a council member/CEO/Complaints Officer) work for a metropolitan or rural local government?

<table>
<thead>
<tr>
<th>Rural</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan</td>
<td>☐</td>
</tr>
<tr>
<td>Don't Know</td>
<td>☐</td>
</tr>
</tbody>
</table>

If you answered “Yes” to any questions 1-6, please answer question 10.

10. Since October 2007, have you ever lodged a complaint against a WA local government council member for an alleged minor breach of conduct?

☐ Yes
☐ No

If you answered “Yes” to question 4, please answer questions 11-13.

11. The local government actively encourages (or encouraged at the time you were a council member) ethical behaviour (i.e. proper conduct) by council members

☐ ☐ ☐ ☐ ☐ ☐ ☐

12. Are you (or were you aware at the time of being a council member) familiar with the local government's Code of Conduct?

☐ Yes
☐ No
13. Have you ever been the subject of a complaint lodged with the Panel alleging a minor breach of conduct?

☐ Yes  ☐ No

Information Availability and Awareness

1. What do you believe constitutes a "minor breach" by a local government council member?

☐ Any breach of the *Local Government Act 1995*

☐ Any breach of any WA or federal law

☐ A breach of the Local Government (Rules of Conduct) Regulations 2007 (but not any local laws)

☐ A breach of the Local Government (Rules of Conduct) Regulations 2007 (including certain local laws)

☐ Don’t Know

2. Is there adequate information available about the operation and processes of the Panel and how complaints must be lodged?

☐ Yes  ☐ No

☐ Don't know

2A. If you answered “No” or “Don’t know” what do you think should be done?
3. Is there sufficient pro-active work being undertaken to raise awareness of what constitutes a minor breach of conduct and what is considered acceptable behaviour for council members?
   - Yes
   - No
   - Don't Know

3A. If you answered “No” or “Don’t know” what do you think should be done?

4. Should it be an offence to disclose details of a complaint (regardless of whether or not a local government election campaign is underway) until the Panel makes a decision?
   - Yes
   - No
   - Don't Know

5. Should all Panel decisions be made public, including a summary of reasons, as to why specific decisions were made?
   - Yes
   - No
   - Don't Know

Optional Comments:
Codes of Conduct

1. Are the current Local Government (Rules of Conduct) Regulations 2007 adequate in terms of its scope and specificity?

- Yes
- No
- Don't Know

Optional Comments:

2. Should the Department of Local Government prepare a uniform code of conduct that applies to all local governments (and which could be added to by local governments)?

- Yes
- No
- Don't Know
# The Panel and its Processes

<table>
<thead>
<tr>
<th>1. You have confidence in the Panel and its processes to satisfactorily resolve complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AGREE STRONGLY</strong></td>
</tr>
</tbody>
</table>

2. Is the composition and size of the Panel appropriate?

- [ ] Yes
- [ ] No
- [ ] Don't Know

**Optional Comments:**

3. Should multiple standards panels be established (i.e. one for each designated area)?

- [ ] Yes
- [ ] No
- [ ] Don't Know

**Optional Comments:**
4. Is it appropriate that local government Complaints Officers and CEOs are permitted to make complaints against council members?

☐ Yes

☐ No

☐ Don't Know

Optional Comments:

5. Should there be a preliminary stage (e.g. mediation) built into the dispute resolution process ensuring the Panel only deals with matters unable to be resolved at the local government level?

☐ Yes

☐ No

☐ Don't Know

Optional Comments:
6. Should the Panel have greater flexibility (i.e. wider powers) in how it can deal with complaints of minor breaches?

☐ Yes
☐ No
☐ Don't Know

Optional Comments:

7. Should each party to a complaint be given the opportunity to put their case to the Panel in person?

☐ Yes
☐ No
☐ Don't Know

Optional Comments:

8. If the Panel finds that a council member has committed a minor breach should it be required to invite the person to submit as to how the Panel should deal with the breach (as the legislation currently requires)?
9. Is it more appropriate for another body to deal with complaints of alleged minor breaches of conduct?

☐ Yes

☐ No

☐ Don't Know

Optional Comments:

10. Is the current cost sharing arrangement between the Department of Local Government and local governments appropriate in relation to the operation of the Panel?

☐ Yes
☐ No

☐ Don't Know

Optional Comments:

11. Any general comments? (optional)

12. Name and contact details (optional)

Survey complete - thank you for your co-operation
Appendix D

Schematic Map of the Complaints Handling and Dispute Resolution Processes
COMPLAINT HANDLING PROCESS (ALLEGED MINOR BREACHES)

THE LOCAL GOVERNMENT STANDARDS PANEL

Phase 1 – Lodgement and Pre-hearing Procedures

**OPTION 1**
Person lodges complaint on approved form with complaints officer at local government

**OPTION 2**
Departmental CEO sends allegation of breach to complaints officer at local government

Complaints officer must acknowledge receipt of complaint, give copy to councillor and, send complaint to the Panel

Pre-hearing procedures undertaken, including the issuing of Notice of Complaint to complainant

Phase 2 – Panel Hearing Proceedings

**OPTION 3**
Complaints officer completes approved complaint form

Complaints officer gives copy of complaint to councillor and sends complaint to the Panel

Legend
- Critical points in the process
- Outside of the Panel process

Time 1 (within 14 days of receiving complaint for options 1 and 2)

Time 2

Time 3
Phase 2 – Panel Hearing Proceedings

**Time 4**
The Panel may adjourn proceedings, request complaints officer/Department for further information or deem the breach a recurrent breach

**Phase 3 – Recurrent Breach**

**Time 5**
Minor breach finding?

**No**
The Panel sends copy of Reasons for Findings to each party and the Department

**Yes**

**Time 6**
A party may apply to SAT for a review of the Panel decision within 28 days of the Panel’s decision

**Time 7**
The Panel gives the local government CEO and the departmental CEO (where applicable) copies of the Panel Order, Reasons for Findings and Reasons for Decision

Following receipt of submission, the Panel decides how to deal with the breach under s. 5.110(6)

The Panel gives each party and the complaints officer (where applicable) notice of how the matter was dealt with, copies of the Panel Order, Reasons for Findings and Reasons for Decision

Department ensures Panel orders are carried out by local government CEO

Local government CEO required to ensure Panel orders (where applicable) are carried out and reports to SAT any failures to comply
Phase 3 – Recurrent Breach

**Time 8**

The Panel treats the alleged minor breach as a potential recurrent breach

The Panel sends complaint to departmental CEO

The Panel notifies each party and complaints officer that allegation sent to departmental CEO

**Time 9**

The Panel notifies each party and complaint officer that Panel will deal with the matter

Complaint returned to the Panel

Departmental CEO makes decision and gives complaints officer and each party notice in writing of decision

**Time 10**

Phase 2 - Panel Hearing Proceeding

Allegation considered by SAT following departmental investigation

Departmental CEO arranges publication of any SAT orders and advises SAT of any failures to comply
Appendix E

Individuals and Organisations that Lodged Written Submissions
Three hard-copy surveys were returned anonymously and were treated as written submissions because they were received too late to be included in the analysis of survey responses. Email submissions were also received from two council members (Cr Roley Paver and Cr Tim Hargreaves) and these were considered as additional general comments to their respective survey responses rather than separate written submissions.
Appendix E

Individuals and Organisations that Lodged Written Submissions
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Appendix F

Formal Interviews Conducted
<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Role</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Brendan Peyton</td>
<td>Manager Governance, Department of Local Government</td>
<td>18 &amp; 23 February 2011</td>
</tr>
<tr>
<td>2 Hon John Castrilli MLA, Gary Brennan</td>
<td>Minister for Local Government, Chief of Staff</td>
<td>1 March 2011</td>
</tr>
<tr>
<td>3 Jenni Law</td>
<td>Manager, Advice and Support Branch, Department of Local Government</td>
<td>23 February 2011</td>
</tr>
<tr>
<td>4 Jennifer Mathews</td>
<td>Director General, Department of Local Government</td>
<td>22 February 2011</td>
</tr>
<tr>
<td>5 Rebecca Rosher, Katherine Iustini</td>
<td>A/Communications Manager, Office of Multicultural Interests, A/Coordinator, Public Affairs, Department of Local Government</td>
<td>22 February 2011</td>
</tr>
<tr>
<td>6 Tim Fowler</td>
<td>Special Advisor, Legislation and Reform Executive, Department of Local Government</td>
<td>18 February 2011</td>
</tr>
</tbody>
</table>
Appendix G

Conduct Guide for the WA Public Sector
Introduction

A respected and trusted public sector is a vital component of a robust community. If the community is to have confidence in the public sector then public sector employees must act and be seen to act with integrity. Codes of conduct can help agencies and their staff understand what is appropriate behaviour and help build respect and trust with the community.

Purpose

This Conduct Guide has been developed to assist you to prepare your own agency’s code of conduct to guide responsible and appropriate decision making, and to communicate appropriate standards of behaviour. It takes into account relevant legislation common to the sector: the Code of Ethics, many of the rules and requirements common across the sector (in particular those contained in Premier’s Circulars and Treasurer’s Instructions), and the need for each agency to incorporate specific requirements unique to their business.

How this guide works

This guide sets out six categories where a public sector employee needs to display the most appropriate behaviour and comply with the accountability framework established by the legislature and by Government. These areas need to be reflected in your agency’s code of conduct. The categories appear across the top of the matrix as column headings and they are:

- personal behaviour
- communication and official information
- fraudulent and corrupt behaviour
- use of public resources
- record keeping and use of information
- conflicts of interest

Section One of the matrix provides the detail of the accountability framework, broken down into legislation and across-government requirements such as Premier’s Circulars and Treasurer’s Instructions. These are common to all agencies and are mandatory. In addition to the Acts with general application across the public sector, agencies should include the details of their own enabling legislation and any agency specific requirements arising from that legislation.

Section Two describes the types of issues and behaviour that your code of conduct should define for employees to follow. It draws on the intent of various legislative provisions but in creating your code of conduct you should check the specific provisions to make sure your document reflects the standard intended by Parliament. Again you should also give regard to any legislation that applies specifically to your own agency as well as those Acts that have wider application. Think about the specific nature of the business your organisation conducts when framing the most appropriate standards of behaviour for your staff.
**Personal Behaviour**

- Equal Opportunity Act 1984
- Disability Services Act 1993
- Agency’s enabling legislation

**Communication and Official Information (internal/external)**

- Code of Practice Occupational Safety and Health in the Western Australian Public Sector - promotes strategies to help CEOs, managers and employees improve the work environment and ensure compliance with the Occupational Safety and Health Act 1984 (Commissioner’s Circular 2009-11)
- Coordination of Public Sector Labour Relations - compliance with the coordination framework for labour relations is required, including circulars issued by the Department of Commerce (Premier’s Circular 2009-09)
- State Government Access Guidelines for Information, Services and Facilities - agencies to fulfill social and legislative responsibilities by ensuring service accessibility by all customers, including people with a disability (Premier’s Circular 2003/08)
- Whole of Government Complaints Management Strategy - agencies’ complaints management systems must conform to Australian Standard 4269 (Commissioner’s Circular 2009-27)
- Commissioner’s Circular 2009-13
- Commissioner’s Circular 2009-25

**Fraudulent and Corrupt Behaviour**

- Frauds and corruption - all agencies must give specific consideration to the risk of corruption prevention in their risk management activities (Commissioner’s Circular 2009-13)
- Fraud and corruption* - all agencies must give specific consideration to the risk of corruption prevention in their risk management activities (Commissioner’s Circular 2009-13)
- Reporting breaches of codes of conduct

---

**Categories of Conduct**

**Legislation**

- Public Sector Management Act 1994 (PSM Act) - s.8 General principles of human resource management, s.9 Act with integrity when performing official duties, comply with ethical codes and the public sector standards in human resource management
- Criminal Code Chapter XII Corruption and Abuse of Office
- Equal Opportunity Act 1984
- Occupational Safety and Health Act 1984
- Industrial Relations Act 1979
- Working with Children (Criminal Record Checking) Act 2004
- Disability Services Act 1993
- Agency’s enabling legislation

**Instructions**

- Determining Remuneration - at attraction and Retention Benefits

---

**Across Government Requirements:**

- Premier’s Circular 2009-27
- Commissioner’s Circular 2009-13
- Commissioner’s Circular 2009-25
- Treasurer’s Instructions

---

**Issues which should be addressed in agency-specific codes**

- Harassment, bullying or discrimination against colleagues or members of the public
- Work habits, behaviour and personal and professional workplace relationships
- The need for a safe and productive work environment
- Treatment of members of the public and colleagues with respect, courtesy, honesty and fairness, and proper regard for their interests, rights, safety and welfare
- Decisions made fairly, impartially and promptly, giving consideration to all available information, legislation and agencies’ policies and procedures
- Serving the government of the day by providing timely, well-considered information and policy advice

**Fraud and corruption* - all agencies must give specific consideration to the risk of corruption prevention in their risk management activities (Commissioner’s Circular 2009-13)**

*Fraud is a dishonest activity that causes actual or potential financial loss to any person or agency and corrupt conduct occurs when an employee uses or attempts to use their position for personal advantage

**Agencies may wish to consider policies that support standards of behaviour and their business activities, such as:**

- equal opportunity and diversity and preventing discrimination and harassment
- occupational health and safety policy
- security policy
- police clearance and working with children policy, including what may occur if an employee offends during employment
- a customer service policy including customer service, handling difficult customers, response times, etc
- agency complaints policy
### Use of Public Resources

- Public Sector Management Act 1994 - s.9 acting with integrity when performing official duties, being scrupulous in the use of official information, equipment and facilities
- Financial Management Act 2006
- State Supply Commission Act 1991
- Industrial Awards and Agreements (meal and travel allowances)
- Criminal Code Chapter XIII Corruption and abuse of office
- Treasurer's instructions cover all areas of financial management, including asset management
- Agency's enabling legislation

### Record Keeping and Use of Information

- State Records Act 2000 (Record Keeping Plan)
- Freedom of Information Act 1992
- Public Sector Management Act 1994 - s.7 general principles of public administration and management
- Financial Management Act 2006
- State Supply Commission Act 1991
- Library Board of Western Australia 1951
- Criminal Code Chapter XIII s.85 falsification of records
- Treasurer's instructions
- Agency's enabling legislation

### Conflicts of Interest

- Public Sector Management Act 1994 - s.102 Employment unconnected with functions
- Electoral Act 1901
- Electoral Regulations 1996 - s.28(3) public employees standing for election
- Australian Constitution s.44 - Disqualification, officers of the crown standing for federal elections
- Financial Management Act 2006
- Criminal Code Chapter XIII Corruption and abuse of office - s.82 bribery of a public officer
- Treasurer's instructions cover all areas of financial management, including asset management
- Agency's enabling legislation

### Guidelines for Official air travel arrangements, includes information regarding frequent flyer programs (Premier's Circular 2009/04)

- Guidelines for Expenditure on Official Hospitality - establishes criteria for accountability of expenditure, defines official hospitality, working meals and outlines hospitality principles (Commissioner's Circular 2009-18)
- Eligibility of Government Officers for Payment of Fees for Government Boards and Committees - outlines payment of fees to government officers (Premier’s Circular 2010/02)
- Tenders and Public Notice Advertising Policy - ensures effective, best practice communication strategies (Commissioner's Circular 2009-07)
- Sustainability Code of Practice for Government Agencies - agencies are to comply with the sustainability code of practice (Premier’s Circular 2004/14)
- The Guidelines to Assist Agencies in Developing Email & Internet Use Policies www.epov/gipg.wa.gov.au
- Custody of Public Property - describes asset register requirements (Treasurer's Instruction 406)
- Motor Vehicles - describes use of government vehicles and record-keeping requirements (Treasurer's Instruction 411)
- Purchasing Cards - describes credit card use (Treasurer's Instruction 321)

### Policy Framework and Standards for Information Sharing Between Government Agencies - facilitates the structures for sharing of information www.crimeprevention.wa.gov.au

- Requirements for Western Australian Government Publications and Library Collections - Outlines requirements to lodge publications with State and National Libraries (Premier's Circular 2003/17)
- Employment Records - employment record maintenance (Treasurer's Instruction 501)
- Record of Attendance and Time Worked - maintenance of employee attendance records (Treasurer's Instruction 502)

### Recording of actions and decisions to ensure transparency

- Ensuring the secure storage of sensitive or confidential information

### Responsibility to ensure personal, financial or political interests do not conflict with employees’ performance, or their ability to perform in an impartial manner

- Armed with policies supporting standards of behaviour and their business activities, agencies may wish to consider:
  - identifying permitted private use; for example, limited phone use
  - The diligent and efficient use of publicly funded resources: includes office facilities and equipment, vehicles, cab charge vouchers, corporate credit cards and the purchase of goods and services
  - Inappropriateness of use of office time or resources for party political work or for private financial gain

Agencies may wish to consider policies that support standards of behaviour and their business activities such as:

- a computer use policy including permitted Internet sites
- when resources are not to be used; for example, for private business or political work
The Conduct Guide will be in draft from early 2008 until 31 December 2008 during which time we invite comments from your agency. Most importantly during this period we will be working closely with other Government agencies involved in the promotion of integrity in the public sector to ensure that cross-government expectations are consistent. Agencies are encouraged to use the 12 month consultation period to revise their agency code of conduct with regard to this guide.

This document aims to demonstrate the various elements that define the standards expected of public sector employees and to help agencies build those elements into their codes of conduct. There may be legislative or administrative requirements which we have not included or some which may no longer be current. Please send us your feedback by emailing admin@psc.wa.gov.au.

Implementing the Conduct Guide

Agencies are bound by the first section of this guide, and are required to develop the second section as relevant to their agency. Agencies are then required to promote their Code of Conduct actively within the workplace, and the following activities may be helpful for implementation:

- CEOs actively promote their code of conduct through their Corporate Executives
- Line managers can raise awareness of their code of conduct by including it as an agenda item at branch or team meetings
- CEOs can send an email and/or letter to colleagues introducing their code
- Line managers could promote the agency code as part of the induction process
- The agency could promote their code within agency publications
- Staff training sessions can focus on the code
- The agency could promote their code on the agency’s intranet
- The agency could promote their code within agency publications
- Staff training sessions can focus on the code

For information about developing, implementing and reviewing codes of conduct refer to Supporting Information for the Western Australian Public Sector’s Conduct Guide available at www.publicsector.wa.gov.au/publications.

All public sector employees must observe the Code of Ethics and their agency’s code of conduct.

The Western Australian Public Sector Code of Ethics

The Public Sector Commission has released a Code of Ethics that applies from 1 February 2008. The standards of conduct and integrity to be complied with by all public sector employees are expressed in the following principles.

Personal Integrity

We act with care and diligence and make decisions that are honest, fair, impartial, and timely, and consider all relevant information.

Relationships with others

We treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

Accountability

We use the resources of the state in a responsible and accountable manner that ensures the efficient, effective and appropriate use of human, natural, financial and physical resources, property and information.

Other resources

For the various categories of conduct, a number of additional resources are available.

Personal behaviour
- Information on the working with children check and legislation at www.checkwwc.wa.gov.au
- Political impartiality information sheets are available from www.publicsector.wa.gov.au

Use of public resources

Record keeping and use of information
- State Records Office www.sro.wa.gov.au
- Office of the Information Commissioner www.foi.wa.gov.au

Fraud and corruption
- Australian Standard Fraud and Corruption Control AS 8001 can be purchased at www.standards.com.au
- Australia/New Zealand Standard on risk management AS/NZS 4360 www.riskmanagement.com.au
- Integrity Coordinating Group www.publicsector.wa.gov.au
- Public interest disclosures www.publicsector.wa.gov.au

Circulars and instructions
- Department of Commerce Circulars http://www.commerce.wa.gov.au/LabourRelations/Content/Public%20Sector/Resources/index.html

Public Sector Commission

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