



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

Local Government Standards Panel

2021-22 Annual Report



Local Government Standards Panel

2021-22 Annual Report

August 2022

Prepared by:

Department of Local Government, Sport and Cultural Industries

140 William Street

Perth WA 6000

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Responsible Minister

Hon John Carey BA MLA

Minister for Housing; Lands; Homelessness; Local Government



Message from the Presiding Member

**To the Hon John Carey BA MLA
Minister for Housing; Lands; Homelessness; Local Government**

The following is the annual report of the Local Government Standards Panel (the Standards Panel) for the period from 1 July 2021 to 30 June 2022.

The minor breach system is part of the disciplinary framework for council members in Western Australia under the *Local Government Act 1995* (the Act). The minor breach provisions were introduced into the Act in 2007 to address conduct by individual council members, with the aim of responding to disruptive or inappropriate conduct.

The system responds to and deters conduct by council members that disrupts the effective functioning of their local government.

The Standards Panel convened 11 meetings in 2021-22 compared to 25 meetings in 2020-21, with fewer complaints received (down 29 per cent) and changes to processes resulting in the Standards Panel being able to consider more matters at each meeting.

The Standards Panel considered 130 allegations in the 98 complaints finalised in 2021-22, with 64 findings of no breach and 28 findings that a breach had occurred. Seven matters were suspended as the respondent was no longer an elected member and one matter was withdrawn. The panel also refused to deal with 30 complaints.

These numbers reflect that the Standards Panel averaged hearing nine complaints per meeting with a third of their considerations resulting in breaches of the legislation.

Changes made to the pre-meeting process resulted in a significant reduction in turnaround times. Adjustments to the post-meeting process will be made in 2022-23 to further streamline decision timelines, however, it should be noted that some delays are due to the panel providing extensions for respondents to ensure procedural fairness.

The Standards Panel composition changed from the previous financial year with former deputy, Mr Gordon MacMile, replaced by Ms Darrelle Merritt.

I acknowledge the sad passing of the Standards Panel member Councillor Deborah Hopper in December 2021. Councillor Hopper was a valuable contributor to the panel and a highly regarded member of the community.

I would also like to thank Councillor Peter Rogers for his ongoing commitment for the year. We also welcome Councillor Renee McLennan of the Town of Bassendean, who will join as the new deputy Local Government member for 2022-23.

I would like to thank our legal members, Ms Emma Power and Ms Elanor Rowe for their support and the timeliness in providing what are sometimes quite complex reports and welcome their extension in the roles to ensure consistency across all panel decisions.

I would like to take this opportunity to thank staff at the Department of Local Government, Sport and Cultural Industries for their continued work in providing administrative and executive support to the Standards Panel.

Tim Fraser
Presiding Member, Local Government Standards Panel
31 August 2022

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Overview

The Local Government Standards Panel (the Standards Panel) is the primary complaints panel established under Part 5 Division 9 and Schedule 5.1 of the *Local Government Act 1995* (the Act). It provides for a complaints system whereby certain alleged misconduct by council members can be reviewed.

The Standards Panel's function is to receive and deal with complaints, made by any person, of alleged minor breaches by a council member of any rule of conduct in the *Local Government (Model Code of Conduct) Regulations 2021* or a provision of a local government's code of conduct.

Administration and support services for the Standards Panel are provided by the Department of Local Government, Sport and Cultural Industries (DLGSC).

Requirement for annual report

Clause 11 of Schedule 5.1 of the Act requires that:

- “(1) By 31 August in each year, the primary standards panel is to prepare and provide to the Minister a report on the complaints dealt with by all standards panels during the previous financial year.*
- “(2) The annual report must not include information that identifies or enables the identification of a council member against whom a complaint was made if the complaint was not dealt with under section 5.110(6)(b) or (c).”*

Members of the Standards Panel

The Standards Panel comprises three members and three deputy members, all of whom are appointed by the Minister.

At the conclusion of the 2021-22 financial year the members and their deputies were:

Presiding Member:

Mr Tim Fraser, Executive Director, DLGSC

Deputy:

Ms Darrelle Merritt, A/Executive Director – Regulatory Reform, DLGSC

Local Government Member:

Cr Peter Rogers, elected member of the City of Mandurah

Deputy:

Vacant*

Legal Member:

Ms Emma Power

Deputy:

Ms Elanor Rowe

* Councillor Renee McLennan (Town of Bassendean) will join the panel for 2022-23.

Complaints received and finalised

In the 2021-22 financial year, the Standards Panel received **109** new minor breach complaints and finalised **98** complaints. Note that finalised matters include complaints received in the previous financial year that had not been finalised during the previous reporting period.

The lodgement of **109** new complaints in 2021-22, compared to **154** in 2020-21, represents a **29 per cent** decrease in complaints referred to the Standards Panel.

A single complaint can allege multiple breaches of one or more regulations relating to several different incidents. As illustrated in **Table 1**, there were **130** allegations of breaches of the regulations within the **98** complaints finalised in 2021-22. This data does not include instances where a complaint may allege multiple breaches of the same regulation.

Table 2 (page 15) provides details of the sanctions imposed, by regulation, for each of the complaints where a breach was found.

Chart 1 provides a comparison of complaints received and finalised for the last five years.

Chart 2 provides details of the number of allegations against each of the regulations.

Chart 3 indicates the time that the Standards Panel has taken to finalise complaints compared to previous financial years and shows that a further reduction in the number of days taken to finalise complaints was achieved in 2021-22.

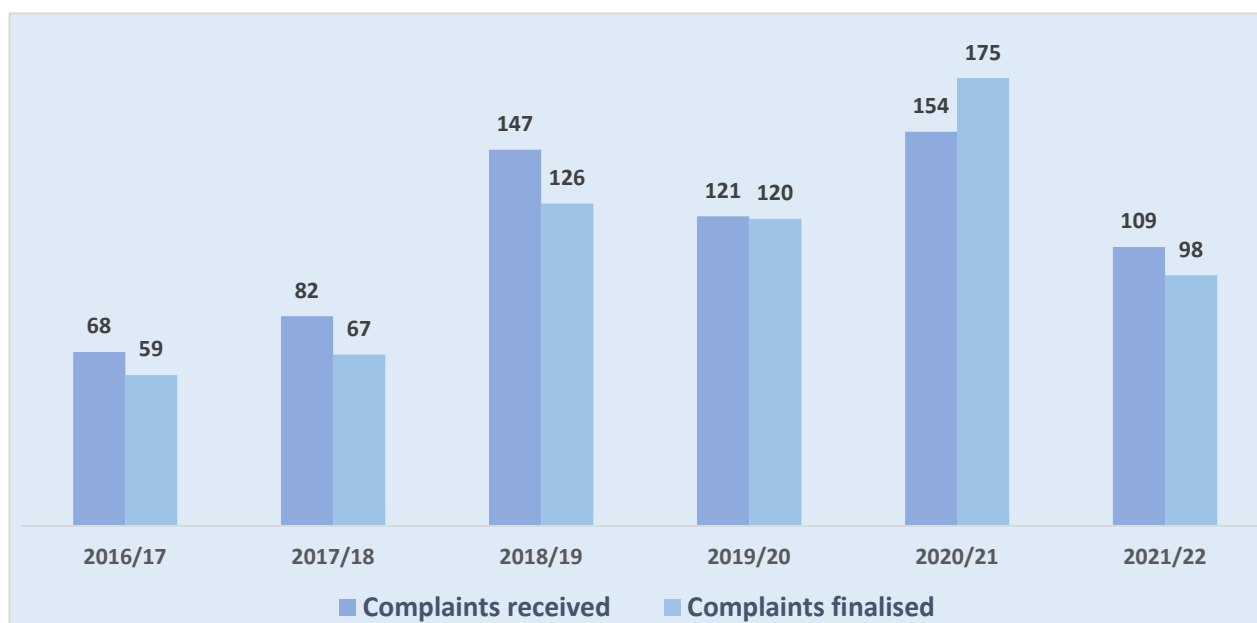
Chart 4 shows which local governments were subject to complaints and the number of complaints lodged.

Chart 5 provides details of the findings for complaints finalised in 2021-22.

Chart 6 provides details of the findings for each regulation.

Chart 7 provides details of the sanctions imposed for complaints finalised.

Chart 2: Number of complaints received and finalised

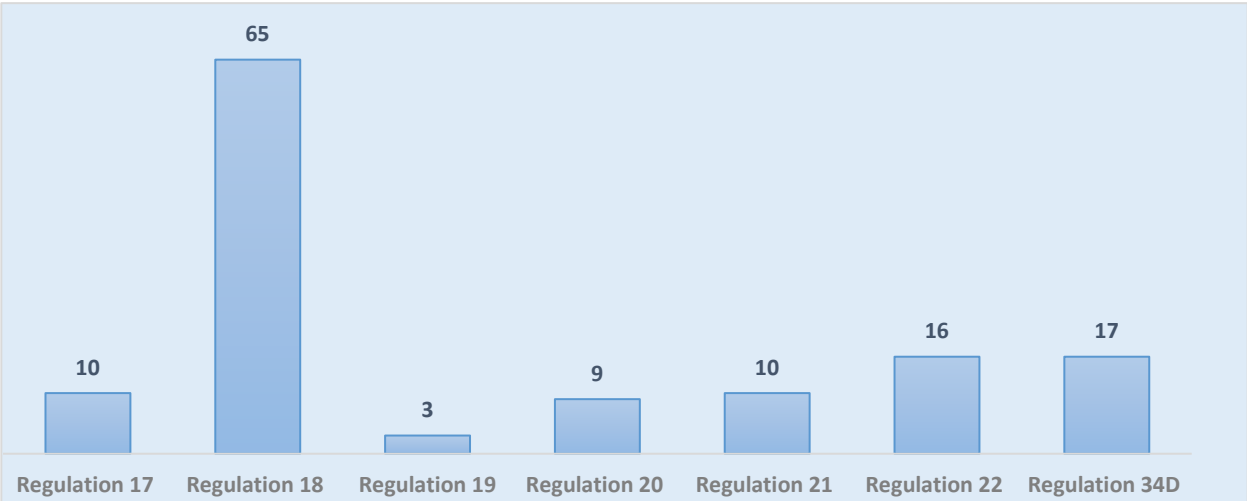


Metropolitan and regional breakdown

Of the **109** complaints received by the Standards Panel during 2021-22, **99** relate to metropolitan local governments while **10** relate to regional local governments.

Allegations by regulation

Chart 2: Number of allegations by regulation*



*Local Government (Model Code of Conduct) Regulations 2021 and 34D Local Government (Administration) Regulations 1996

Of the 130 allegations made in 2021-22, the majority were for breaches of regulation 18 of the Local Government (Model Code of Conduct) Regulations 2021:

Securing personal advantage or disadvantaging others

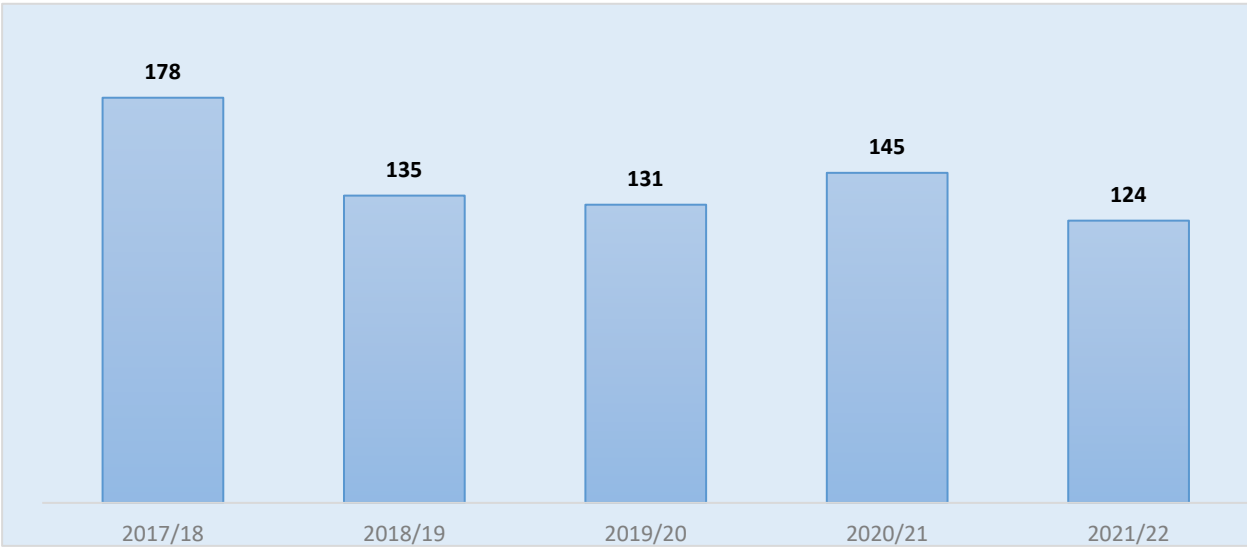
“(1) A council member must not make improper use of their office —
 (a) to gain, directly or indirectly, an advantage for the council member or any other person;
 (b) to cause detriment to the local government or any other person.”

Time taken to finalise complaints in 2021-22

Changes were made to pre-meeting processes which has resulted in an average saving of nearly three weeks in turnaround per complaint. Changes to the post-meeting process will be made in 2022-23 to further streamline and improve timeliness of decisions.

The chart below indicates the average time taken for the Standards Panel to finalise complaints during 2021-22 compared to previous financial years.

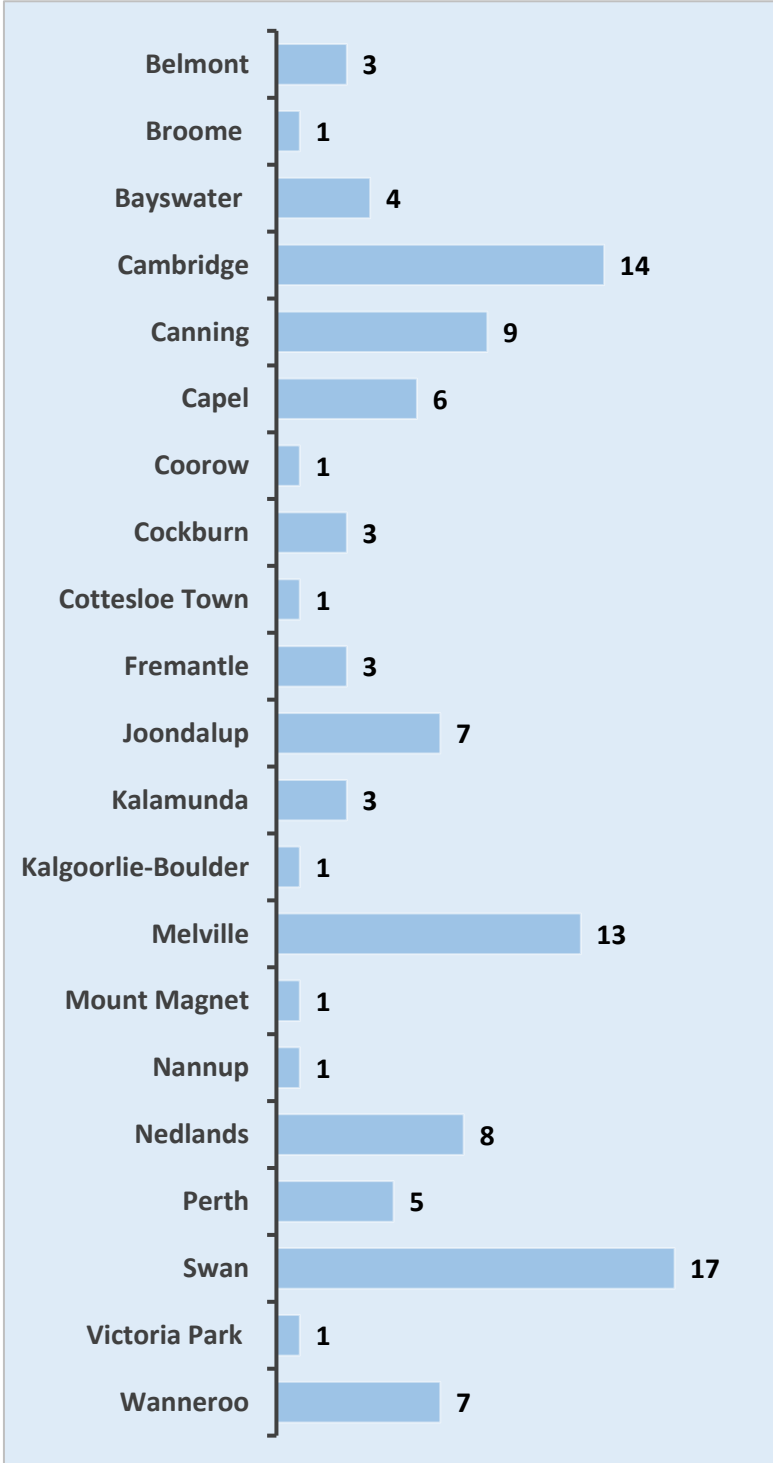
Chart 3: Average working days taken to process complaints



Complaints for each local government

The **109** complaints received by the Standards Panel during 2021-22 were related to **21** local governments as indicated in the table below.

Chart 4: Number of complaints for each local government



Findings

Under section 5.110(2) of the Act the Standards Panel is required to make a finding as to whether the alleged breach occurred. The Standards Panel does not possess investigative or supervisory powers and makes decisions about complaints regarding minor breaches solely upon the evidence presented to it.

It is the responsibility of both complainants and respondents to provide the Standards Panel with all the relevant information they want the panel to consider when making its determination. The panel must also have regard to the general interests of local government in Western Australia.

In relation to the **98** complaints (**130** breaches) finalised in 2021-22:

- The Standards Panel made **28** findings that a breach occurred.
- The Standards Panel made **64** findings of no breach.
- **1** complaint was withdrawn.
- **7** were suspended as the respondent was no longer an elected member due to resignation.
- The Standards Panel refused to deal with **30** complaints.

Section 5.110(3A) of the Act provides that the Standards Panel can, at any stage of its proceedings, refuse to deal with a complaint if it is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.

Of the 30 complaints that the Standards Panel refused to deal with in 2021-22:

- two were deemed misconceived
- twelve were deemed vexatious
- thirteen were deemed to be without substance
- one was deemed to be trivial
- two were found to be frivolous.

The Standards Panel relied on the following definitions in making these findings:

- “*Vexatious*” means “an action that has no reasonable prospects of success. The term has also been used to describe an action which is a sham and which cannot possibly succeed.”
- “*Misconceived*” means to “fail to understand (something) correctly.”
- “*Without substance*” means lacking the quality of “having a solid basis in reality or fact.”

An example from a Standards Panel finding is provided below:

- *The complaint was misconceived due to the Complainant’s lack of understanding regarding impartiality interests; and was vexatious as:*
 - *there was no reasonable prospect of success of the complaint on the basis claimed by the Complainant; and*
 - *the complaint was brought for the predominant collateral motive of unjustifiably annoying and harassing the Councillor rather than a genuine concern about the Councillor’s conduct.*

Chart 5: Findings for complaints finalised

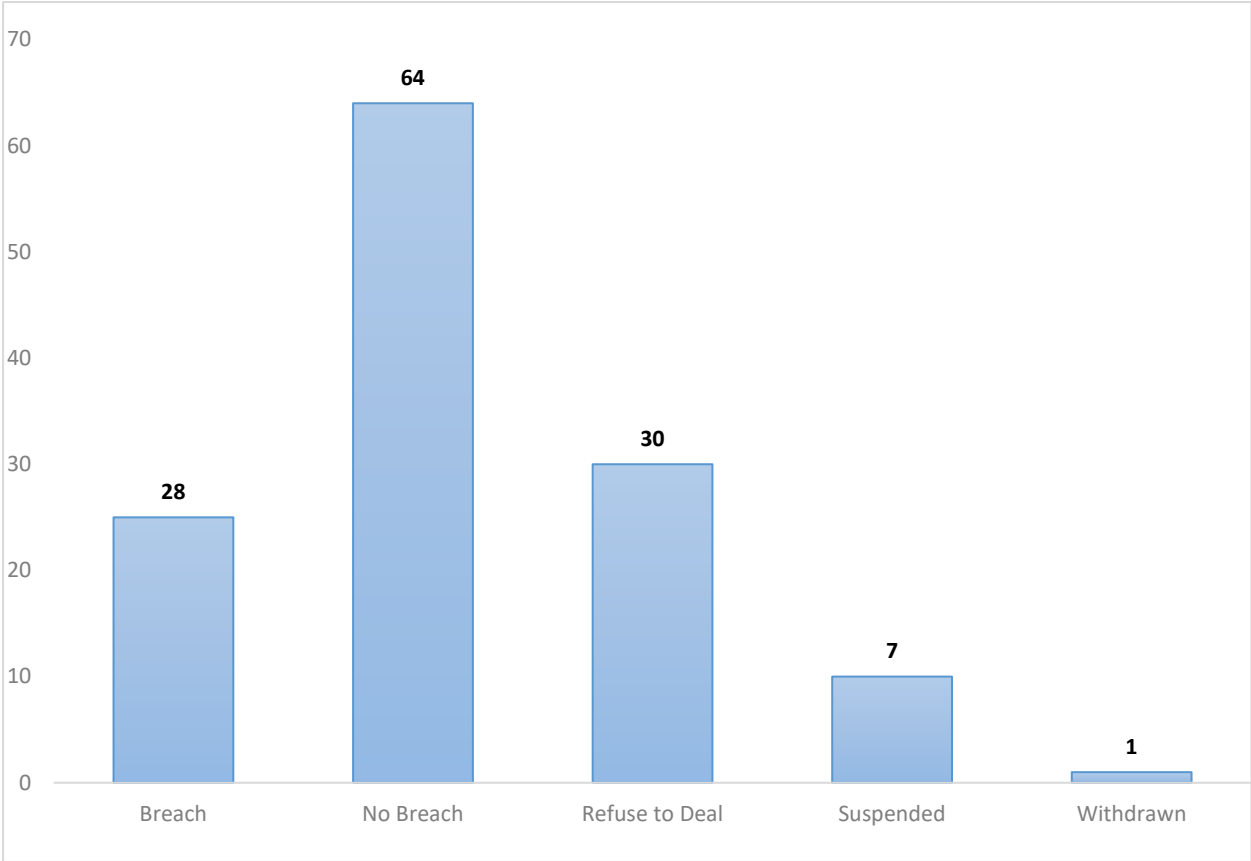
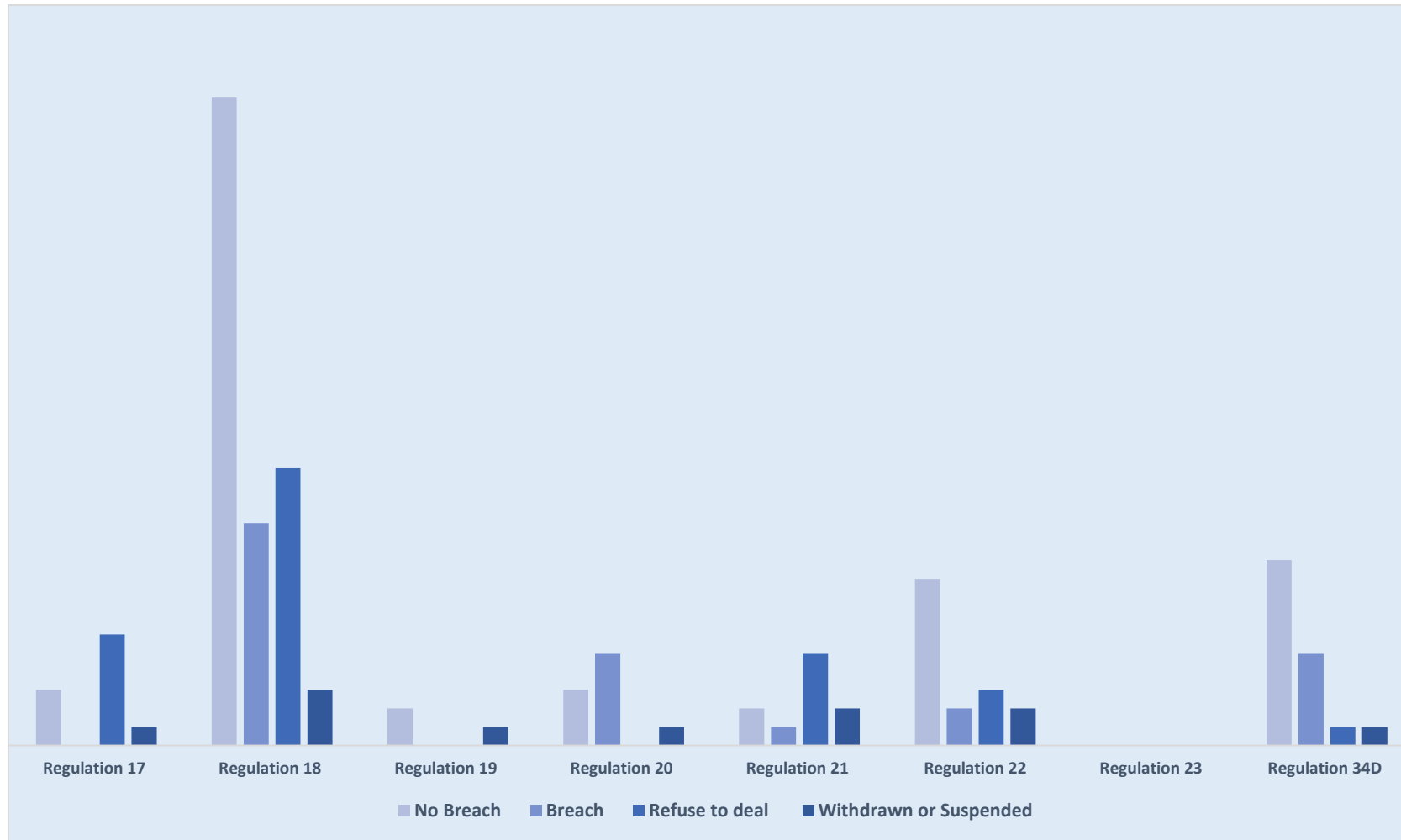


Chart 6: Findings for each regulation*



*Local Government (Model Code of Conduct) Regulations 2021. For Regulation 34D, Local Government (Administration) Regulations 1996. For detailed description see page 14, "Types of Allegations."

Decisions

Section 5.110(6) of the Act provides for the Standards Panel to deal with a minor breach by ordering:

- that no sanction be imposed under section 5.110(6)(a); or
- a sanction under section 5.110(6)(b); or
- a combination of sanctions under section 5.110(6)(c).

The Standards Panel determined that **28** breaches of the regulations occurred in **20** complaints and imposed the following sanctions:

- **11** orders that the elected member make a public apology
- **1** order that the elected member be publicly censured
- **3** orders that the elected member undertake training
- **No** orders that the elected member make a monetary payment to the local government
- **13** complaints where no sanction was imposed

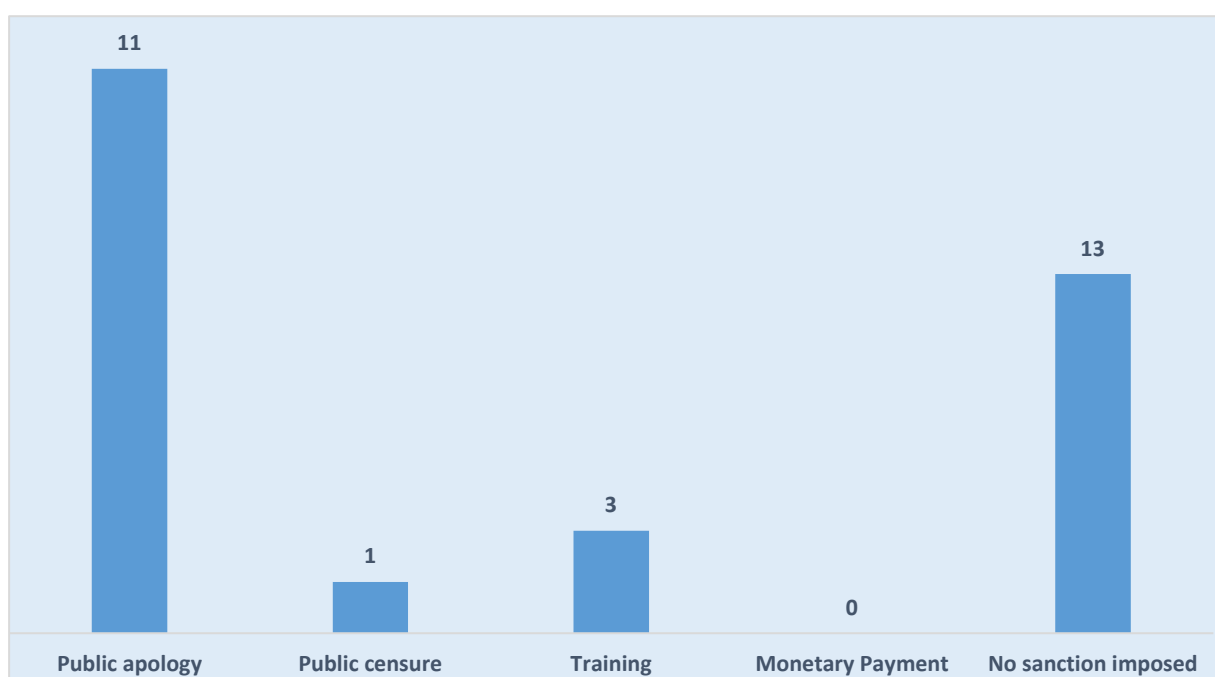
Note: A single complaint can allege multiple breaches of one or more regulations. This can subsequently result in a number of sanctions being imposed for each complaint.

Where a breach is found, parties to a complaint can seek a review of the Standards Panel's decision by the State Administrative Tribunal (SAT) within 28 days of notification. The matters reported here may be subject to review by the SAT and findings or decisions may be overturned.

In **2021-22**, **10** complaints were appealed to SAT. Of the **six** cases heard, the Standards Panel decision was upheld in one case, set aside in **four** cases and reaffirmed with penalty amended in **one** case. The remaining **four** are yet to be heard.

The Standards Panel's decisions relating to matters that result in a finding that a breach has occurred are published on the DLGSC [website](#). Decisions that are the subject of a successful review by the SAT, or where the SAT has set aside the Standards Panel decision, are not published on the website.

Chart 7: Sanctions imposed for complaints finalised



Types of allegations

Table 1: Outcome of allegations for each regulation

Note: A single complaint can allege multiple breaches of one or more regulations relating to several different incidents.

Regulation	Breach	No breach	Refuse to deal	Withdrawn or suspended	Total
Regulation 17 Misuse of local government resources	0	3	6	1	10
Regulation 18 Securing personal advantage or disadvantaging others	12	35	15	3	65
Regulation 19 Prohibition against involvement in administration	0	2	0	1	3
Regulation 20 Relationship with local government employees	5	3	0	1	9
Regulation 21 Disclosure of information	1	2	5	2	10
Regulation 22 Disclosure of interests	2	9	3	2	16
Regulation 23 Compliance with plan requirement	0	0	0	0	0
Regulation 34D* Breach of local law relating to conduct at meetings	5	10	1	1	17
Total	25	64	30	11	130

* Local Government (Administration) Regulations 1996

Table 2: Sanctions imposed for breaches of each regulation

Note: Multiple sanctions can be imposed for a single complaint where a breach is found for example public apology and training; public apology and public censure.

Regulation	Public apology	Public censure	Training	Monetary payment	No sanction imposed	Total
Regulation 17 Misuse of local government resources	0	0	0	0	0	0
Regulation 18 Securing personal advantage or disadvantaging others	7	1	1	0	4	13
Regulation 19 Prohibition against involvement in administration	0	0	0	0	0	0
Regulation 20 Relationship with local government employees	1	0	0	0	5	6
Regulation 21 Disclosure of information	0	0	0	0	1	1
Regulation 22 Disclosure of interests	0	0	1	0	1	2
Regulation 23 Compliance with plan requirement	0	0	0	0	0	0
Regulation 34D* Breach of local law relating to conduct at meetings	3	0	1	0	2	6
Total	11	1	3	0	13	28

* Local Government (Administration) Regulations 1996

Meeting attendance 2021-22

Clause 9 of Schedule 5.1 of the Act relates to the remuneration of the Standards Panel members and their deputies and the ability to recover costs from the local governments concerned.

Under Schedule 5.1, clauses 2(a) and 3(2) of the Act, the presiding member and deputy are to be officers of the Department and clause 9(2) specifies that members who are officers of the public service are not entitled to any remuneration or allowances in their roles on the Standards Panel.

Councillor Peter Rogers was an officer of the public service for the relevant period and not entitled to any remuneration.

As recommended by the Public Sector Commissioner, sitting fees for the local government member are \$470 per part day meeting or \$720 per full day meeting and he or she may be reimbursed for travel expenses as set out in *Public Sector Commissioner's Circular 2009-20 – Reimbursement of Travel Expenses for Members of Government Boards and Committees*.

The legal members' sitting fees are \$480 per part day meeting or \$900 per full day meeting. In addition, the legal members are entitled to \$240 per hour (up to a maximum of \$900 per matter) for writing the Standards Panel's Reasons for Finding or Decision Reports.

Table 3: Fees payable to members for matters dealt during FY 2021-22

Panel member	Meeting attendance	Fees payable
Mr Tim Fraser	11	Nil
Ms Darelle Merritt	0	Nil
Councillor Peter Rogers	10	Nil
Councillor Deborah Hopper	1	\$470
Ms Emma Power	7	*\$30,486
Ms Elanor Rowe	4	*\$21,780

* Pending payments for 2021-2022

Costs to local governments

Under clause 9(3) and (4), members' remuneration is costed to the local government of the council member who is the subject of the complaint. Liability for the cost of multiple complaints dealt with by the Standards Panel at the same meeting is apportioned equally between the relevant local governments.

The average cost per finding or decision was **\$583** (including GST).

The costs for non-public service members' sitting fees and writing fees billed to each local government concerned for the period 1 July 2021 to 30 June 2022 are set out in the following table.

Note that the Standard Panel fees may have been incurred by the local government in this financial year for a complaint that was received in the previous financial year.

Table 4: Standard Panel fees recoverable from local governments within FY 2021-22

Local government	Amount (including GST)
Belmont	\$2,041.60
Broome	\$1,056.00
Bayswater	\$2,103.20
Cambridge	\$1,491.60
Canning	\$7,213.48
Capel	\$4,674.68
Coorow	\$1,025.20
Cockburn	\$2,134.00
Fremantle	\$2,050.40
Joondalup	\$3,758.23
Kalamunda	\$524.23
Kalgoorlie-Boulder	\$1,056.00
Mandurah	\$705.25
Melville	\$6,703.40
Mount Magnet	\$924.00
Nannup	\$633.60
Perth	\$3,080.00
Swan	\$8,783.03
Wanneroo	\$5,166.23
West Arthur	\$3,081.25

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For more information, please contact:

Department of Local Government, Sport and Cultural Industries
140 William Street
Perth WA 6000

PO Box 8349
PERTH BUSINESS CENTRE WA 6849

Telephone: (08) 6552 7300
Fax: (08) 8490 2351
Freecall: 1800 634 541 (Country Only)

Email: info@dlgsc.wa.gov.au
Web: www.dlgsc.wa.gov.au

Translating and Interpreting Service (TIS) – Tel: 13 14 50

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