

Policy Section:	1. Corporate Governance
Procedure Name:	Complaints Handling Procedure Under the Code of Conduct for Council Members'
Classification:	Mandatory
Adopted:	24 November 2015
Frequency of Review:	Biennial and within 12 months of a Council Election
Last Review:	September 2017
Next Review Due:	September 2019
Responsible Officer(s):	Governance Officer and Chief Executive Officer
Procedure Manual File Ref:	CC14/407
Council File Reference:	CR17/44304
Legislation Authority:	Local Government Act 1999 Local Government (General) Variation Regulations 2013 Independent Commissioner Against Corruption Act 2012
Related Policies:	Caretaker (Elections) Whistleblower
Related Procedures:	N/A

1. INTRODUCTION

- 1.1 On 29 August 2013, a new Code of Conduct for Council Members was made by Regulation.
- 1.2 The Code of Conduct applies to all Council Members across South Australia. Alleged breaches of the Code of Conduct may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue.
- 1.3 The Code of Conduct also contains sanctions which may be imposed by Council on a Council Member where a breach of the Code is found to be sustained.

2. PURPOSE AND SCOPE

This procedure applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members.

3. BREACHES OF THE CODE OF CONDUCT

Breaches of the Code of Conduct may relate to less serious behavioural issues (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Council Members. This procedure covers referral of these types of complaints to other agencies.

4. ALLEGED BREACH

4.1 Where an alleged breach occurs the complainant should report the allegation, in writing, to the Council, addressed to the Chief Executive Officer. The allegation should:

4.1.1 be specific;

4.1.2 be provided in writing;

4.1.3 identify the provision/s of the Code which is/are alleged to have been breached;

4.1.4 provide as much supporting evidence as possible to assist an investigation; and

4.1.5 provide the name of the Council Member(s) who has allegedly breached the Code.

4.2 Complainants can, at any time, take the alternative option of lodging the complaint with the Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act or directly to the South Australian Ombudsman who can deal with complaints under the Ombudsman Act 1972.

4.3 The Chief Executive Officer will be responsible for receiving the referral of a complaint and will refer the complaint to the Principal Member (or if it relates to the Principal Member, his/her deputy) within 3 working days of receipt of a complaint.

4.4 The Principal Member (or deputy) will determine whether the complaint relates to:

4.4.1 behaviour which falls under Part 2 of the Code;

4.4.2 misconduct which triggers action under Part 3 of the Code; or

4.4.3 criminal or corrupt behaviour.

4.5 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately. (See below at clauses 9 and 10)

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- 4.6 Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Council Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this Part.
- 4.7 For the remainder of this policy, where the deputy Principal Member is handling a complaint, the policy is to be read such that the “Principal Member” is the deputy Principal Member.
- 4.8 In relation to a complaint determined to be one of which falls under Part 2 of the Code, having regard to the seriousness of the allegation and information provided, the Principal Member may:
- 4.8.1 seek to resolve the matter internally;
 - 4.8.2 refer the complaint to a mediator or conciliator, the Local Government Governance Panel, an independent investigator or other option provided by Council. Council will from time to time determine which of these options are available; and
 - 4.8.3 dismiss the allegation on the basis that it is, trivial, vexatious or frivolous or not related to matters covered by the Code, or that a complaint dealing with the same matter has already been decided (unless significant new information is provided).
- 4.9 Within three (3) days of receipt of an allegation, the complainant will receive acknowledgement from the Principal Member of the complaint received and the Council Member who is the subject of the complaint will be advised by the Principal Member of the complaint and its substance. The Council Member will also be advised of the manner in which the Principal Member intends to deal with the complaint.
- 4.10 The Council at its discretion and as far as possible, will endeavour to keep the identity of the person making the complaint (the Complainant) confidential.
- 4.11 The Complainant will not be victimised for making the complaint.
- 4.12 The Principal Member may in their absolute discretion decide not to investigate an anonymous complaint.
- 4.13 The Principal Member may in their absolute discretion not investigate or discontinue investigating a complaint if the Complainant fails to assist the Council in the investigation of the complaint.

5. ALLEGED BREACH OF PART 2 – INTERNAL RESPONSE

- 5.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. The Principal Member may hold meetings with the complainant and the Council Member and may seek mediation and conciliation between the parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Council Member.

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- 5.2 The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.
- 5.3 Where the matter is resolved by the Principal Member to the satisfaction of all the parties, the matter will be closed and no further action will be taken. The Principal Member will send written confirmation to all the parties confirming that the matter has been resolved and provide a report to a meeting of the Council if a breach has occurred.
- 5.4 Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel or alternative independent investigator.

6. REFERRAL TO THE LOCAL GOVERNMENT GOVERNANCE PANEL

- 6.1 Where there has been an allegation that a Council Member has breached Part 2 of the Code the complaint may be referred to the Local Government Governance Panel by the Principal Member under this procedure.
- 6.2 Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel’s procedures is available on the Governance Panel webpage on the LGA’s website under *Rules of Engagement*: www.lga.sa.gov.au.
- 6.3 The matter will be assessed initially by the Panel Manager who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance. The Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding. In these circumstances, Council may accept the views of the Panel Manager and take no further action or, Council may consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.

Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Principal Member. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct (see below).

- 6.4 A breach of Part 2 of the Code must be the subject of a report to a meeting of the Council once the investigation has occurred.

7. REPORT AND SANCTIONS

- 7.1 If, following investigation by the Local Government Governance Panel or an independent investigator, a breach of the Part 2 of the Code is found, the breach must be the subject of a report to the Council (clause 2.24 of the Code). The report of the Panel or independent investigator may be tabled at the Council meeting. If the report is not tabled, a Council report of the breach will be made in writing and will include any recommendations made by the Panel or independent investigator. The outcome of the item will be minuted.

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The Council may, by resolution, take any of the following actions:

- 7.1.1 Take no action.
 - 7.1.2 Pass a censure motion in respect of the Council Member.
 - 7.1.3 Request a public apology, whether written or verbal.
 - 7.1.4 Request the Council Member to attend training on the specific topic found to have been breached.
 - 7.1.5 Resolve to remove or suspend the Council Member from a position within the Council (not including the Member’s elected position on Council).
 - 7.1.6 Request the member to repay monies to the Council.
- 7.2 Where a Panel or independent investigator report finds no breach of the Code, a report will not be presented to Council except at the request of the Council Member who was the subject of the complaint. If such a request is made, a copy of the report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken, although a summary report may be made to the Council regarding other observations or recommendations made by the Panel or independent investigator that are of broader application.
- 7.3 The complainant will be notified by letter of the outcome of the investigation. Where the full investigation report is to be tabled at a Council meeting, the complainant will be entitled to a copy of the report at, or following, the Council meeting which receives the report. If the full report is not presented at a Council meeting, the complainant will not be provided with a copy of the report as a matter of course.

8. APPEALS

Council will not enter into any process of appeal in relation to Part 2 of the Code.

9 PART 3 – MANDATORY CODE (MISCONDUCT)

- 9.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or the Office for Public Integrity. Alleged breaches of this Part made to Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation.
- 9.2 Under the Code of Conduct, a Council Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 9.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.

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- 9.4 A failure of a Council Member to co-operate with the Council’s process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 9.5 A failure of a Council Member to comply with a finding of an investigation under Part 2 of the Code, adopted by the Council, may be referred for investigation under Part 3.
- 9.6 Repeated or sustained breaches of Part 2 of the Code by the same Council Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 9.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a meeting of the Council.
- 9.8 The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

10. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT

- 10.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty attaches. These matters must be reported to the Office for Public Integrity.
- 10.2 In addition, allegations of a breach of any offence provisions in the Local Government Act 1999 must also be reported to the Office for Public Integrity (see Council’s Fraud and Corruption Prevention Policy for further information on reporting requirements or the Directions and Guidelines issued by the Independent Commissioner Against Corruption).
- 10.3 In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the Office for Public Integrity will remain confidential.

11. REVIEW AND EVALUATION

The effectiveness of this Procedure will be reviewed on a biennial basis and within 12 months of a Council Election to ensure that its commitment to the principles of good conduct and standards is being achieved.