

Process for Handling Code of Conduct Complaints against Council Members



Record number	D18/77105
Responsible Manager	Manager Governance & Policy
Other key internal stakeholders	NA
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Resolution number	138
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Legal requirement	<p>A Code of Conduct for Council Members is mandated by legislation and it is a requirement of the Code to have a process for the handling of alleged breaches of Part 2 of the Code.</p> <p>This process is required to be reviewed within 12 months of each general Local Government election.</p>
Due date next review	2023pr

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PURPOSE

The purpose of this document is to establish a process for handling complaints received against Council Members for alleged breaches of the Code of Conduct for Council Members, in order to provide a consistent, fair and equitable approach to the handling of these complaints. The Council has determined that the Code also applies to appointed independent members of City of Tea Tree Gully section 41 Committees (established under the Local Government Act 1999).

PROCESS

Introduction

The Code is made by regulation and applies to all Council members across Local Government in South Australia. Depending on the nature of an alleged breach of the Code, the matter may be the subject of an investigation by the Council, Ombudsman or Independent Commissioner Against Corruption (ICAC). This procedure also covers referral of complaints to other relevant authorities where appropriate and/or necessary.

Responsibilities

The Mayor will be responsible for implementing this procedure in relation to complaints received by the Council under the Code. The CEO will provide to the Mayor, or will arrange for the Mayor to be provided with, professional advice, expertise and administrative support as necessary for the implementation and administration of this procedure. Neither the Mayor nor the CEO will investigate any complaints.

If the complaint is about the Mayor, made by or on behalf of the Mayor or if the Mayor is referred to in the complaint as a witness or person able to provide information about the complaint, the Deputy Mayor will undertake the role of the Mayor in this procedure in respect of that complaint. In the event that the complaint is about, or made by or on behalf of both the Mayor and Deputy Mayor or the Mayor and Deputy Mayor are referred to in the complaint as witnesses or persons able to provide information about the complaint, then another Council Member, appointed by the CEO in the CEO's sole discretion, will undertake the role of Mayor in this procedure in respect of that complaint.

Appropriate legal and other support is available to assist the Mayor (and/or CEO) through all stages of handling a complaint.

The Council will not investigate any alleged breach of the Code in the absence of a written complaint lodged in accordance with this procedure unless required to do so by law. The Council will not knowingly assist any person to obtain evidence about a suspected breach of the Code unless required to do so by law.

A breach of this procedure or any part of this procedure will constitute a breach of the Code or the Code of Conduct for Council employees.

Confidentiality

All complaints must as far as possible be dealt with confidentially until such a time as they are required to be reported to Council in a public meeting in accordance with this procedure or are otherwise lawfully made public or disclosed.

Information about a complaint will only be disclosed to those persons directly involved in the complaint or the handling of the complaint. A person to whom information about a complaint, or information in relation to or connected with a complaint, or a matter that forms or is the subject of a complaint under the Code has been disclosed (including the complainant and the Responding Elected Member) must not directly, or indirectly disclose to any person (including to a Council member) that information except:

- For the purpose of making the complaint to the Council, the Mayor or CEO
- For the purpose of referring the matter to a relevant authority or External Investigator
- Where required by law
- For the purpose of obtaining legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor (including any support available under the Employee Assistance Program in accordance with the Elected Member Support Policy)
- Where the disclosure is made to an External Investigator, investigating the complaint, or mediator/conciliator engaged in accordance with this procedure or is otherwise made for the purpose of investigating or assessing the complaint in accordance with this procedure
- Where the disclosure is made to a close family member of the person (as defined in section 54(4) of the Independent Commissioner Against Corruption Act 2012)
- Where the information has been made public in accordance with this procedure or this procedure otherwise authorises or requires the disclosure of the information.

Where the complaint is made by a member of the public, their identification will be kept confidential as far as practicable unless the complainant consents to their identity being disclosed. Where keeping the identity of the complainant confidential will, based on legal advice or the opinion of the External Investigator, compromise the integrity of the investigation, the complaint will not be investigated and the complainant will be advised that the complaint cannot be investigated in the absence of their identity being disclosed.

Council Member Support

The Responding Elected Member may be provided with access to legal support at the Council's expense in accordance with the Elected Member Support Policy.

Managing a Council Member Code of Conduct Complaint

Receiving a complaint

A complaint about an alleged breach of the Code needs to:

- Be in writing (marked as confidential, and addressed to the Mayor or CEO)
- Be specific (including identifying the provisions of the Code which the complainant alleges have been breached)
- Provide as much supporting evidence as possible to assist an investigation (including the grounds and circumstances of the complaint)
- Provide the name of the Council Member who has allegedly breached the Code, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint.
- Be lodged within three (3) months of the alleged conduct occurring (where the behaviour falls under Part 2 of the Code) on the basis that it is important to address alleged breaches of conduct in a timely manner (with discretion provided to the Mayor to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis).

Anonymous complaints will not be investigated by the Council unless required by law.

Complainants can, at any time, take the alternative option of lodging their complaint with the Ombudsman or Office for Public Integrity (OPI), which will direct the complaint in accordance with relevant legislation. This may result in the matter being referred back to Council to consider and then the complaints will follow this procedure, unless directed otherwise by the relevant authority.

If more information is required to progress the handling of a complaint at any stage, the complainant may be contacted by the Mayor, CEO, External Investigator or other person acting on behalf of the Council.

All parties to a complaint are required to cooperate with and assist the Council with the management and investigation of a complaint. The Mayor may determine not to progress the handling of a complaint including not referring a complaint for investigation or discontinuing an investigation of a complaint if the complainant unreasonably fails to cooperate or assist the Council in the management of the complaint.

Refer to the Caretaker Policy regarding how a complaint may be treated during an Election Period (as defined under that Policy), which may differ from the process defined in this procedure.

Initial Assessment

An initial assessment of a complaint will be undertaken by the Mayor to determine which part of the Code, if any, is alleged to have been breached and accordingly how a complaint is to be dealt with in accordance with this procedure. An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at that stage.

Upon receipt of a complaint under the Code, the Mayor will be provided with the complaint. The Mayor will undertake an initial assessment of the complaint and determine whether the complaint relates to one or more of the types of behaviour set out below. Following the initial assessment the Mayor will cause the complaint to be progressed in accordance with the action set out below for each type of behaviour as relevant to the allegations contained:

- **Criminal or Corrupt behaviour** – including but not limited to those matters within the Appendix to the Code for which a criminal penalty attaches. The complainant will be advised that the Council will not take any action in relation to the complaint as the complaint cannot be investigated by the Council and that the complainant may make their complaint to the relevant authority.
- Behaviour which falls under **Part 3 of the Code - Misconduct** - if the complaint is made by a member of the public, the complaint must be referred by the Mayor or CEO to the relevant authority as soon as possible (eg. Ombudsman, OPI, Electoral Commissioner). Where the complaint is referred by the CEO or Mayor to the OPI, guidance and/or approval will be sought from the OPI or ICAC as to whether the complainant may be advised that the complaint has been referred to the OPI. The Council will not investigate any such complaints. If the complaint is made by a Council Member or Council employee, the complainant will be advised that they need to refer their complaint or make a report themselves to the relevant authority and that Council will take no further action.
- Behaviour which falls under **Part 2 of the Code - Behavioural Code** – the complaint will be dealt with by Council and the process set out in this procedure will be followed.

Where a complaint relates to an alleged breach of Part 2 of the Code and other alleged behaviour which cannot be investigated by the Council, and the allegations relating to Part 2 of the Code can be dealt with separately to the other allegations, the allegations relating to Part 2 of the Code will be dealt with by the Council in accordance with this procedure and other allegations will be dealt with by the Council as set out above unless a relevant authority directs or advised the Council otherwise.

The CEO or Mayor will as far as reasonably practicable, provide written acknowledgement to the complainant of receipt of the complaint within 5 business days from the receipt of the complaint.

The Mayor will as far as reasonably practicable undertake an initial assessment of a complaint and advise the complainant of the outcome of the initial assessment within 10 business days of receipt of the complaint.

Part 2 of the Code – Behavioural Code

Council generally 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.

Resolving the matter between the parties (including Mediation or Conciliation)

All parties to a complaint will be offered the opportunity to resolve the matter between themselves (internally) with or without the assistance of a facilitator agreed to by the parties or by mediation or conciliation (with or without the assistance of a mediator or conciliator agreed to by the parties) at the point that they are made aware of the complaint and advised of the process. If the matter is resolved to the satisfaction of all the parties, the matter will be closed and no further action will be taken. All the parties will be advised by the Mayor in writing confirming that the matter has been resolved.

Where the matter cannot be resolved internally, through mediation/conciliation or the parties are not all agreeable to the matter being so resolved the matter will be referred to an External Investigator (where appropriate in the process, if relevant).

Preliminary assessment

Where an initial assessment of a complaint is that the complaint relates to a breach of Part 2 of the Code, the Mayor will as far as reasonably practicable within 10 business days of the initial assessment (either with or without advice of an External Investigator) undertake a preliminary assessment of the complaint and determine whether it be investigated or not investigated accordance with the requirements of the Code and other relevant legislation (which may be as a result of the complaint being considered within this process to be Trivial, Vexatious or Frivolous) :

The Mayor or CEO will advise the complainant and Responding Elected Member accordingly and provide the Responding Elected Member with a copy of the complaint relating to the alleged breach of Part 2 of the Code within 5 business days of the completion of the preliminary assessment and determination by the Mayor.

Where a complaint alleges a breach of Part 3 of the Code and other alleged behaviour which cannot be investigated by the Council, the Responding Elected Member will only be provided with that part of the complaint relating to the alleged breach of Part 2 of the Code, unless otherwise determined by a relevant authority.

External Investigation

Where a complaint is to be investigated and cannot be resolved internally or through mediation or conciliation, the Mayor must refer the complaint to an External Investigator who may be the same External Investigator that provided advice about the preliminary assessment of the complaint. The External Investigator will conduct a full investigation (including interviewing relevant persons where appropriate).

The principles of natural justice and procedural fairness must be observed throughout the investigation of the complaint. The External Investigator will prepare and provide to the complainant and Responding Elected Member a draft report containing their findings, and recommendations for action under the Code, and all relevant evidence relied on by the External Investigator in making their findings (with a copy to be provided to the Mayor and CEO for information and record management purposes). The complainant and Responding Elected Member will be provided with a minimum of 7 business days to provide the External Investigator with their views and submissions on the draft report.

The External Investigator will prepare and provide to the Mayor and CEO a final report having regard to the views and submissions, if any, made by the complainant and Responding Elected Member to the draft report.

Where the External Investigator makes a recommendation for action under clause 2.25 of the Code (and the External Investigator is not a legal practitioner), the report and evidence may be provided to a legal practitioner as determined by the CEO (not being the appointed External Investigator) to consider the allegations, complaint, evidence, report of the External Investigator and the Code and advise or comment on the suitability of any recommendations for action.

The complainant and Responding Elected Member will be provided with the final report of the External Investigator which report and its contents must continue to be kept confidential as required by this procedure (until such a time that the report may be presented to a public meeting of Council as required under this procedure).

Part 3 of the Code – Misconduct

A failure of a Council Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code, including failure to comply with a determination adopted by Council, may be referred for investigation under Part 3 of the Code.

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.

A Council Member who is of the opinion that a breach of Part 3 of the Code (Misconduct) has occurred, or is currently occurring, must report the breach to the relevant authority. A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 (Behavioural Code).

All investigations of Part 3 of the Code will be undertaken by the relevant authority, unless the relevant authority directs that the Council undertake the investigation, in which case this process will be followed where possible.

Reporting to Council

Part 2 of the Code – Behavioural Code

In accordance with the Code, breaches of the Behavioural Code must be the subject of a report to a public meeting of the Council (clause 2.24 of the Code). Accordingly a final report of an External Investigator finding there has been a breach of Part 2 of the Code will be presented to a public meeting of the Council.

Where a final report of an External Investigator finds no breach of the Code or the complaint has been resolved internally between the parties prior to being referred to an External Investigator, the outcome or final report will not be presented to a public meeting of the Council and the obligations of confidentiality set out in this procedure regarding, amongst other things the complaint and the draft and final report continue to apply to all persons, unless otherwise determined by Council.

Any report that is the subject of a report to a public meeting of the Council in accordance with this procedure should include:

- Allegations made in the complaint
- Summary of evidence to which the investigation had regard
- Findings
- Conclusions
- Investigation report, including recommendations arising from the investigation report, and associated lawyer's advice (if relevant).
- Mediation/conciliation outcomes (if relevant)

Where a report to Council includes findings of an External Investigator of a breach of the Behavioural Code, Council will make a preliminary finding at the meeting the final report is presented to, and will then request the Responding Elected Member to comment on the preliminary findings within 5 business days (or such other longer period as determined by Council).

At the following Council meeting, the Council will consider any comments from the Responding Elected Member and then make a final determination on the matter.

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

- Take no action
- Pass a censure motion in respect of the Council Member
- Request a public apology, whether written or verbal
- Request the Council Member to attend training on the specific topic found to have been breached
- Resolve to remove or suspend the Council Member from a position or positions within the Council (not including the Member's elected position on Council), including from a position as Council representative on an outside body where Council has resolved their appointment
- Request the member to repay monies to the Council
- Any combination of the above

The complainant will be advised of the outcome of any report to Council.

Part 3 of the Code – Misconduct

A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code must be the subject of a report to a public meeting of the Council.

A report from the Ombudsman that finds a Council Member has not breached Part 3 of the Code will not be the subject of a report to a public meeting of the Council unless directed by the Ombudsman.

The Council must pass a resolution within two ordinary meetings of the Council, to give effect to any recommendations received from the Ombudsman, relating to an Ombudsman's investigation for an alleged breach of the Code.

In the case of a matter reported to the OPI or matters investigated by the ICAC or SA Police, the reporting of this matter will remain confidential unless guided by the relevant authority.

Summary Code of Conduct Register

In the interests of transparency and accountability and to deter vexatious, frivolous and trivial complaints, a register of Code of Conduct complaints made during the current Council term under Part 2-Behavioural Code (from the date of this process variation adoption) will be made available on Council's website detailing the following information (unless disclosure is prevented in accordance with law):

- Date complaint was lodged
- Nature of complaint
- Complainant's name (if complaint was made by a Council Member) or noted as member of the public or Council employee
- Responding Elected Member (only where a breach has been found by resolution of the Council)
- Determination on outcome of complaint
- Cost of complaint investigation (and associated training if relevant), excluding internal resources

No further information will be provided outside of this register to members of the public or other Council Members not a party to the complaint (unless provided under section 61 of the *Local Government Act 1999* or *Freedom of Information Act 1991*).

LEGISLATIVE FRAMEWORK

Sub-heading

[Local Government Act 1999](#)

Section 62 of the *Local Government Act 1999* sets out the general duties of a Council member and section 63 of the Act requires Council members to comply with the Code as prescribed by regulation.

[Local Government \(General\) Regulations 2013](#)

Regulation 7 of the *Local Government (General) Regulations 2013* provides that the *Code of Conduct for Council Members* published by the Minister in the Gazette on 29 August 2013 is adopted as a code of conduct to be observed by the members of all councils.

[Government Gazette – Code of Conduct for Council Members](#)

The Minister published the Government Gazette on 22 August 2013 (page 3536) and republished on 29 August 2013 ([page 3598](#)) a code of conduct that must be observed by Council members. Part 2 of the Code also requires councils to adopt a process for handling alleged breaches of Part 2 of the Code comprises the Behavioural Code.

This procedure will in accordance with the Code be reviewed within 12 months of a periodic local government election.

[Independent Commissioner Against Corruption Act 2012](#)

This Act defines misconduct in public administration as a breach of a code of conduct by a public officer while acting in his or her capacity as a public office that constitutes grounds for disciplinary action against the officer or other misconduct of the public officer while acting in his or her capacity as a public officer. The Code states that a failure by a Council member to comply with Part 3 of the Code constitutes misconduct.

Other references

Council's documents including:

- [Caretaker Policy](#)
- [Fees and Charges Register](#)
- [Fraud and Corruption Prevention Policy](#)
- [Elected Member Support Policy](#)

This document is based on a model procedure developed by the Local Government Association.

STRATEGIC PLAN/POLICY

Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. One of these themes is Governance, which deals with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government.

DEFINITIONS

For the purposes of this policy the following definitions apply:

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

Code

Code of Conduct for Council Members.

Council Member(s)

The members of Council, including the Mayor and ward councillors

External Investigator

An external individual, business or body/panel appointed to carry out an investigation. This can include the Local Government Governance Panel, a regional governance panel, lawyer or other suitably qualified person or organisation.

Frivolous

Of little or no weight, worth or importance

Responding Elected Member

The Council Member who is the subject of the complaint.

Trivial

Of little importance; trifling; insignificant

Vexatious

To irritate, harass or annoy, provide or make angry and are instituted:

- To cause delay
- For an ulterior purpose; or
- Without reasonable ground(s).

POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

ACCESSIBILITY

This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.cttg.gov.au

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.