



## ELECTED MEMBERS CODE OF CONDUCT COMPLAINTS HANDLING PROCEDURE

First Approved	January 2012
Review Frequency	4 yearly and within 6 months following Council election
Last Reviewed	November 2018 (16 March 2020 ACM20528)
Next Review Due	November 2022
File Number	18.63.001/ PC202040
Responsible Division	Leadership
Related Documents	Elected Members Code of Conduct Elected Members – Allowances, Benefits, Support and Facilities Policy Elected Members Training & Development Policy Internal Review of a Council Decision Policy & Procedure Fraud & Corruption Prevention Policy Caretaker Policy Caretaker Guidelines Communications Policy Elected Members - <i>Directions and Guidelines</i> issued by ICAC
Applicable Legislation	<i>Local Government Act 1999, s.59 – 63</i> <i>Local Government (General) Variation Regulation 2013</i> <i>Independent Commissioner Against Corruption (ICAC) Act 2012</i>

### Introduction

The *Code of Conduct for Elected Members* is made by Regulation. The Code of Conduct applies to all Elected Members across the Local Government sector and may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue. The Code of Conduct also contains sanctions which may be imposed by Council on an Elected Member where a breach of the Code is found to be sustained.

### Purpose and Scope

This procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Elected Members as gazetted on 29 August 2013.

### Breaches the Code of Conduct

Breaches of the Code of Conduct may relate to behaviour (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 Elected Members* but are referred to in the appendix. This procedure covers referral of these types of complaints to other agencies.

### Alleged breach

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

- be specific
- provide as much supporting evidence as possible to assist an investigation
- provide the name of the Member who has allegedly breached the Code.

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*.

The CEO will be responsible for receiving and managing the referral of a complaint to the Principal Member and will advise the Principal Member (or if it relates to the Principal Member, to his/her deputy) of receipt of a complaint. The Principal Member (or deputy) will determine whether the complaint relates to:

- behavior which falls under Part 2 of the Code
- misconduct which triggers action under Part 3 of the Code
- criminal or corrupt behaviour (see Criminal Matters below).

Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.

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 Elected Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this Part.

Having regard to the seriousness of the allegation and information provided, the Principal Member may:

- seek to resolve the matter internally, including through conciliation or mediation
- refer the complaint to the Local Government Governance Panel
- dismiss the allegation.

Within three days of receipt of an allegation, the Member who is the subject of the complaint will be advised by the Principal Member of the complaint and provided with a copy of the complaint. The Member and the complainant will be advised of the manner in which the Principal Member intends to deal with the complaint.

#### **Alleged Breach of Part 2 - Internal response**

- 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 Elected Member, and may seek professional mediation or 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 an Elected Member.
- The Principal Member must ensure that the principles of natural justice and/or procedural fairness are observed.
- Where the matter is resolved by the Principal Member to the satisfaction of all 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 may provide a report to a public meeting of the Council if appropriate.
- Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel or alternative independent investigator. Neither the Principal Member nor the CEO will investigate a complaint.

#### **Part 2 – Referral to the Local Government Governance Panel**

Where there has been an allegation that an Elected Member has breached Part 2 of the Code, the complaint may be referred to the independent Local Government Governance Panel by the Principal Member under this procedure, without further reference to Council.

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](http://www.lga.sa.gov.au). ([www.lga.sa.gov.au](http://www.lga.sa.gov.au))

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.

A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. 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 will accept the views of the Panel Manager and take no further action.

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 (see below).

- A breach of Part 2 of the Code must be the subject of a report to a public meeting of the Council (clause 2.24 of the Code). The report of the Panel 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. The outcome of the item will be minuted.

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

- Take no action
  - Pass a censure motion in respect of the Elected Member
  - Request a public apology, whether written or verbal
  - Request the Elected Member to attend training on the specific topic found to have been breached
  - Resolve to remove or suspend the Elected Member from a position within the Council (not including the Member's elected position on Council)
  - Request the member to repay monies to the Council.
- Where a report finds no breach of the Code, the report will not be made public, except at the request of the Elected 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 that are of broader application.
  - 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.

## Appeals

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

### **Part 3 - Mandatory Code (Misconduct)**

- Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or the OPI. Alleged breaches of this Part made to Council or to the OPI may be referred to the Ombudsman for investigation.
- Under the Code of Conduct, an Elected 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 OPI.
- 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.
- A failure of an Elected 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.
- A failure of an Elected 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.
- Repeated or sustained breaches of Part 2 of the Code by the same Elected Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- A report from the Ombudsman that finds an Elected Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council.

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.

### **Criminal Matters – Appendix to the Code of Conduct**

- 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 OPI. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act* must also be reported to the OPI. (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).
- In compliance with the *Independent Commissioner Against Corruption (ICAC) Act 2012*, referral of such complaints to the OPI will remain confidential.

### **Availability of Procedure**

This procedure will be available for inspection at Council's principal office during normal business hours and on the Council's website [www.alexandrina.sa.gov.au](http://www.alexandrina.sa.gov.au). Hard copies will also be provided to interested members of the community upon payment of a fee in accordance with Council's Schedule of Fees and Charges.