

Complaints Handling Procedure under Council Members' Code of Conduct

Reference Number:	Section 6 No. 14
Responsible Department:	Business and Governance
Related Policy/Procedure:	2.02 Code of Conduct for Council Members 6.10 Caretaker Policy
Date of Adoption:	17 December 2013
Current Review Date:	24 March 2020
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Version Number:	Amendment No. 2
Applicable Legislation:	Local Government Act, 1999, Local Government (General) Variation Regulations Independent Commissioner Against Corruption Act 2012
Next Review Date:	June 2023
Review Frequency:	Within 12 months of a Council election or when legislation changes

1. Introduction

The Code of Conduct for Council Members was made by Regulation. The Code of Conduct applies to all Council Members across the Local Government sector and issues which fall under the Code of Conduct may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue.

The Code of Conduct contains sanctions which may be imposed by Council on a Council Member where a breach of the Code is found to be substantiated.

In 2009 Light Regional Council established the Governance Advisory Panel as an independent body to deal with matters pertaining to issues related to the Code of Conduct for Council Members.

2. Purpose and Scope

This procedure applies when the Council receives a formal complaint against a Council Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. [A copy of the Code may be accessed on council's website www.light.sa.gov.au]

For the purpose of these procedures **the independent membership** of the Governance Advisory Panel is referred to herein as 'the Panel'.

3 Breaches of the Code of Conduct

Breaches of the Code of Conduct may relate to behaviour (refer Part 2 of the Code) or misconduct (refer 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 but are referred to in the appendix to that Code. This procedure covers referral of these types of complaints to other agencies.

3.1 Alleged breach

3.1.1 A person making a complaint that relates to an alleged breach of Part 2 of the Code of Conduct must;

- a. Submit the complaint, in writing, to the Panel who will be responsible for receiving and managing the complaint as the nominated delegate pursuant to clause 2.18 of the Code.

Complaints should be marked '**Confidential**' and addressed to:

The Independent Members

Light Regional Council Governance Advisory Panel

PO Box 72

KAPUNDA SA 5373

The Chief Executive Officer (CEO) may participate as an advisor if requested by the Panel.

The Panel will determine whether the complaint relates to:

- behaviour which falls under Part 2 of the Code
 - misconduct which triggers action under Part 3 of the Code or
 - criminal or corrupt behaviour
- b. Identify the provision(s) of the Code of Conduct that have allegedly been breached accompanied by any supporting material.
 - c. Observe strict confidentiality while the complaint is investigated.

3.1.2 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.

3.1.3 Having regard to the seriousness of the allegation and information provided, the Panel may:

- a) seek to resolve the matter internally, including through conciliation or mediation;
- b) investigate the complaint;
- c) refer the complaint for independent investigation;
- d) refer the complaint to the Local Government Governance Panel or
- e) dismiss the allegation.

3.1.4 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 considered a breach of this Part.

Person making the complaint can, at any time, take the alternative option of lodging the complaint with the Ombudsman of South Australia or with the Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.

3.1.5 Complaints relating to **misconduct or criminal behaviour** must be referred to the appropriate authorities immediately. (See below at clauses 5 and 6)

3.1.6 Within three (3) days of receipt of an allegation, the Member who is the subject of the complaint will be advised by the Panel of the complaint and provided with a copy of the complaint. The Member and the Person making the complaint will be advised of the manner in which the Panel intends to deal with the complaint.

3.1.7 The Complaint handling procedures are as follows:

- a. Receipt of the complaint will be acknowledged to the Person making the complaint within five (5) day of receiving the complaint.
- b. The Member about whom the complaint has been made will be notified within five (5) days of receipt of the complaint and of its content.
- c. Where, after consideration, the matter is found to have merit, the complaint will be investigated.

3.2 Alleged Breach of Part 2- Referral to the Panel

3.2.1 Only matters which are determined to be related to Part 2 of the Code of Conduct will be dealt with internally and only with the agreement of the parties.

3.2.2 The Panel must ensure that the principles of natural justice and procedural fairness are observed.

3.2.3 The matter will be assessed initially by the Panel Chairperson who will determine the process to be followed and the appropriate person and/or authority who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.

3.2.3 Where a complaint progresses to an investigation, the Panel may engage an independent consultant(s) to assist with the investigation.

3.2.4 Where the matter is resolved by the Panel to the satisfaction of all the parties, the matter will be closed and no further action will be taken. The Panel will send written confirmation to all the parties confirming that the matter has been resolved.

3.2.5 Where the matter cannot be resolved, the Panel may refer the original complaint for independent investigation (see 3.2.3) by an appropriate authority.

3.2.6 Neither the Mayor nor the Chief Executive Officer will investigate a complaint.

3.2.7 If, following investigation by the Panel, 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 may recommend to the Council, and the Council may take, 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 as follows:-

- 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 within the Council (not including the Member's elected position on Council)
- Request the member to repay monies to the Council.

4. Appeals

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

5. Part 3-Mandatory Code (Misconduct)

- 5.1 Any person may report an alleged breach of Part 3 of the Code to the Panel as the Council's delegate, the Ombudsman or the Office for Public Integrity. Alleged breaches of Part 3 made to the Panel or to the Office for Public Integrity may be referred to the Ombudsman for investigation.
- 5.2 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 Panel, the Ombudsman or the Office for Public Integrity.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.

- 5.7 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 public meeting of the Council.
- 5.8 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.

6. Criminal Matters – Appendix to the Code of Conduct

- 6.1 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 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, Corruption, Misconduct and Maladministration Prevention Policy for further information on reporting requirements or the Directions and Guidelines issued by the Independent Commissioner Against Corruption).
- 6.2 In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

7. References

Local Government Act, s59-63

Local Government (General) Variation Regulations 2013

Code of Conduct for Council Members as published in the SA Gazette, 29 August 2013.

Independent Commissioner Against Corruption Act 2012

Directions and Guidelines issued by ICAC

6.10 Caretaker Policy

8. Review and Evaluation

In order to ensure Council continues to provide the best possible complaints handling service for its customers, this policy will be subject to periodic evaluation in accordance with local government election cycles and appropriate legislative changes.

History of Procedure Amendment

1. Procedure adopted by Council at its 17 December 2013 Ordinary Meeting, Refer Item GAP9.2.1/2013 on page 2013/406.
2. Amendment No. 1 reviewed by Council at its 22 September.2015 Ordinary Meeting, Refer Item GAP9.2.4/2015 Page 2015/311
3. Amendment No. 2 adopted at 24 March 2020 Council meeting, Minute reference GAP9.2.2/2020, Page 2020/38

Further information

This Procedure will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded from Council's website: www.light.sa.gov.au or Light Regional Council's offices located at:

Principal Office

Branch Office

93 Main Street

12 Hanson Street

Kapunda SA 5373

Freeling SA 5372

Copies will be provided to interested parties upon request. Email light@light.sa.gov.au