

**Complaints Handling Procedure under Council Members' Code of Conduct**

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| Procedure Type:                 | Administrative Procedure  |
| Responsible Department:         | Office of the Chief Executive   |
| Responsible Officer:            | Manager Governance and Risk   |
| Related Policies and Procedures | Fraud and Corruption Prevention Policy,<br>(Election) Caretaker Policy  |
| Related Documents               | Code of Conduct for Council Members, as published in the South Australian Government Gazette 29 August 2013;<br><i>Directions and Guidelines</i> issued by ICAC |
| Date Adopted                    | Item 941; 28 October 2013   |
| Last reviewed                   | Item 217; 24 August 2015  |
| Next Review Date:               | Within 12 months of a Local Government General Election   |
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**1. INTRODUCTION**

On 1 September 2013, a new Code of Conduct for Council Members (“Code”) was made by Regulation. The Code applies to all Council 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 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. COMMUNITY GOAL**

O5.3 Good governance and legislative framework

**3. DEFINITIONS**

**Act** means the *Independent Commissioner Against Corruption Act (ICAC) 2012*.

**Appropriate Authority** that receives disclosure of public interest information includes:

- a *Minister of the Crown*;
- a *member of the police force* - where the information relates to an illegal activity;

- the *Auditor-General* – where the information relates to the irregular or unauthorised use of public money;
- the *Ombudsman* – where the information relates to a public officer;
- a *Responsible Officer*, where the information relates to a matter falling within the sphere of responsibility of a Local Government body; or
- any other person to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.

**Complainant** refers to the person who makes a complaint.

**Corruption in public administration** means:

- an offence against Part 7 Division 4 (offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:
  - (i) bribery or corruption of public officers;
  - (ii) threats or reprisals against public officers;
  - (iii) abuse of public office;
  - (iv) demanding or requiring benefit on basis of public office;
  - (v) offences relating to appointment to public office.
- Any other offences (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
- Any of the following in relation to an offence referred to in a preceding paragraph:
  - (i) aiding, abetting, counselling or procuring the commission of the offence;
  - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
  - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
  - (iv) conspiring with others to effect the commission of the offence.

**Directions and Guidelines** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner's website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au))

**Employee** refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity.

**ICAC Act** is the Independent Commissioner Against Corruption Act 2012.

**Maladministration** is defined by the *Independent Commissioner Against Corruption Act 2012* in public administration to mean:

- (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
- (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - includes conduct resulting from impropriety, incompetence or negligence; and
  - is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

**Mandatory Code** refers to the Code of Conduct for Council Members as published in the South Australian Government Gazette 29 August 2013.

**Misconduct** in public administration defined at Section 4 of the ICAC Act means:

- contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- other misconduct of a public officer while acting in his or her capacity as a public officer.

**Office for Public Integrity (OPI)** is the office established under the ICAC Act that has the function to:

- receive and assess complaints about public administration from members of the public;
- receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- make recommendations as to whether and by whom complaints and reports should be investigated;
- perform other functions assigned to the Office by the Commissioner.

**Public administration** defined at section 4 of the ICAC Act means without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration.

**Public Officer** includes:

- an elected Member of the Council, including the Mayor;
- an Independent member of the Council's Development Assessment Panel;
- an Independent member of a Council Committee or a subsidiary of the Council, and
- an Employee or Officer of the Council.

## 4. PROCEDURES

This procedure applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members (“Code”) as gazetted on 29 August 2013. [A copy of the Code may be accessed on the website at [www.unley.sa.gov.au](http://www.unley.sa.gov.au) ].

### Breaches of the Code of Conduct

Breaches of the Code 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 for Council Members but are referred to in the appendix. This procedure covers referral of these types of complaints to other agencies.

### Alleged breach

1. Where an alleged breach occurs the complainant should report the allegation, in writing, to the Council, addressed to the 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.

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

Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately. (See below at clauses 6 and 7 under Part 3, Mandatory Code (Misconduct))

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.

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

- seek to resolve the matter internally
- refer the complaint to the Local Government Governance Panel

- dismiss the allegation.
3. 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 its substance. The Member will also be advised of the manner in which the Principal Member intends to deal with the complaint.

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

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.
2. The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.
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 public meeting of the Council.**
4. Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel. Neither the Principal Member nor the CEO will be part of a complaint referred to the Local Government Governance Panel.

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

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 independent Local Government Governance Panel by the Principal Member under this procedure, without further reference to Council.
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](http://www.lga.sa.gov.au) ]
3. The matter will be assessed initially by the Panel Chairperson 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. Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Council. 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 (see below).

4. A breach of Part 2 of the Code **must be the subject of a report to a public meeting of the Council.**

If, following investigation by the Governance 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 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 within the Council (not including the Member's elected position on Council);
- Request the member to repay monies to the Council.

### **Appeals**

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

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

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.
2. Under the Code, 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.
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.
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. 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.
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.

7. 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.
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.

## **5. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT**

1. The matters within the Appendix to the Code 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).
2. In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

## **6. LEGISLATION**

*Local Government Act 1999, s59-63;*  
*Local Government (General) Variation Regulations 2013;*  
*Independent Commissioner Against Corruption Act 2012*