

Council Member Complaints Policy

Tuesday, 17 October 2023
City Finance and Governance
Committee

Strategic Alignment - Enabling Priorities

Program Contact:
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Public

Approving Officer:
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EXECUTIVE SUMMARY

In November 2022, changes to the *Local Government Act 1999 (SA)* (the Act) introduced a Behavioural Management Framework and required that all councils must adopt a Behavioural Management Policy which complies with s262B of the Act.

The Local Government Association of South Australia (LGA) developed a Model Behavioural Management Policy which was adopted by all South Australian councils.

Council has determined that it will adopt a bespoke Policy to comply with s262B of the Act. This report presents Council with a Council Member Complaints Policy in accordance with the Act.

By adopting the Council Member Complaints Policy, the current Model Behavioural Management Policy and the entirety of Chapter Three will no longer be required in the Standing Orders.

RECOMMENDATION

The following recommendation will be presented to Council on 24 October 2023 for consideration

THAT THE CITY FINANCE AND GOVERNANCE COMMITTEE RECOMMENDS TO COUNCIL
THAT COUNCIL

1. Approves the Council Member Complaints Policy in Attachment A to Item 7.6 on the Agenda for the meeting of the City Finance and Governance Committee held on 17 October 2023.
 2. Approves the removal of Chapter Three from the City of Adelaide Standing Orders.
 3. Appoints the Chief Executive Officer as the Behavioural Standards Panel Contact Officer.
 4. Authorises the Chief Executive Officer to make any minor editorial and formatting changes as required to finalise the Council Member Complaints Policy.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	The Behavioural Management Framework consists of <ul style="list-style-type: none"> • The Behavioural Standards for Council Members, determined by the Minister for Local Government • The mandatory Behavioural Management Policy • Optional Behavioural Support Policy (or policies) designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the <i>Local Government Act 1999</i> (SA)
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Council must prepare and adopt a policy relating to the management of behaviour of Council Members and must review the operation of its behavioural support policy within 12 months after the conclusion of each periodic election.
Opportunities	Not as a result of this report
23/24 Budget Allocation	Not as a result of this report
Proposed 24/25 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background – Behavioural Management Framework

1. The Behavioural Management Framework (the Framework) was a key part of the recent reforms to the Act [Link 1](#).
2. The Framework commenced on 17 November 2022 and includes:
 - 2.1. The *prescribed* Behavioural Standards for Council Members (Behavioural Standards), determined by the Minister for Local Government which apply to all Council Members in South Australia (section 75E of the Act).
 - 2.2. The *mandatory* Behavioural Management Policy relating to the management of the behaviour of Council Members and adopted pursuant to section 262B of the Act.
 - 2.3. *Optional* Behavioural Support Policy (or policies) designed to support appropriate behaviour by Council Members and adopted pursuant to section 75F of the Act.
3. In addition, the Behavioural Standards Panel has been formed as an independent statutory authority which has power to impose sanctions on Council Members who breach the legislative and policy requirements of the Framework.

Behavioural Standards

4. The Behavioural Standards are standards published by the Minister for Local Government, which all members are required to observe [Link 2](#).
5. Council Members must comply with the provisions of these Behavioural Standards in carrying out their functions as public officials. It is the personal responsibility of Council Members to ensure that they are familiar with, and comply with, the Behavioural Standards at all times.

Behavioural Management Policy

6. Councils have the primary responsibility for managing instances where standards of behaviour are not met. The Act now requires Councils to have a 'Behavioural Management Policy', which sets out processes and procedures for dealing with complaints about Council Members' behaviour.
7. Section 262B of the Act provides guidance as to what a Behavioural Management Policy must include. Section 262C of the Act provides a range of actions that a Council can take in response to a behavioural issue, and include censure motions, public apologies, training and removal from an office within Council (e.g. on a committee).
8. The LGA developed a Model Behavioural Management Policy, and transitional regulations automatically made that model policy applicable to all councils, until such time as the council adopts its own policy. As such, the LGA's policy was incorporated into Council's Standing Orders ([Link 3](#) – Chapter 3).
9. Legislation requires councils to review the LGA's Model Behavioural Management Policy prior to November 2023, to either adopt it as is or modify it to suit the council's specific requirements.
10. A draft Council Member Complaints Policy appears as **Attachment A**, following a review of the Model Behavioural Management Policy.
11. A summary of the material differences and changes between the Model Behavioural Management Policy and the draft Council Member Complaints Policy are below

Summary of the material differences and changes between the Model Behavioural Management Policy and the draft Council Member Complaints Policy

Model Behavioural Management Policy	Draft Council Member Complaints Policy
Title of policy changed	Glossary moved to the end of the document.
Policy structured to reflect the look and feel of City of Adelaide policies.	Language simplified.
Removal of distinction between a Dispute and a Complaint.	Significant simplification of the stages of the complaint handling process. What was set out over the course of 9 pages in the Model Behavioural Management Policy, has now been captured in 4 pages in the Draft Council Member Complaints Policy, while still addressing the mandatory requirements of the Local Government Act.
No material departures from the intent of the Model Behavioural Management Policy.	Information which informs the stages of the complaint handling process or explains how the complaint handling process will be applied, is contained in the Operating Guideline.
Silent	Specific timeframes have been allocated to each stage of the complaint handling process.
Silent	Informal Action can be undertaken pro-actively by the Lord Mayor as a result of conduct observed by them directly. Correspondence to the impacted parties may contain a warning that repeated instances of Informal Action may result in Formal Action being taken.
Silent	Following the receipt of a Formal Complaint, the person complained about will be notified and provided a copy of the complaint.
Silent	Inclusion of the provision that repeated instances of matters raised on an informal basis may lead to Formal Action.
Silent	Inclusion of the provision that withdrawal of a complaint could still result in an investigation being conducted and a breach of the Behavioural Requirements being found.
Silent	Mandatory engagement of a third party investigator in circumstances where a decision to investigate is made.
Silent	Specification that Repeated Misbehaviour in a term of Council by the same council member will be considered by the Lord Mayor for referral to the Behavioural Standards Panel.
Silent	Inclusion of a section dealing with grievances regarding the outcome of Formal Action.
Silent	Inclusion of a Responsibilities section.
Silent	Inclusion of a diagram representing the stages of complaint handling.

12. s a result of the review, it was identified that a Council Member Complaints Operating Guideline should also be prepared. The purpose of the Operating Guideline will be to provide specific details to inform the operation of the Policy. Should the Council Member Complaints Policy be adopted by Council then an internal operating guideline will be adopted.
13. Council is asked to adopt the Council Member Complaints Policy.

14. Council must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. The contact officer is responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel. Council is asked to appoint the Chief Executive Officer as the Behavioural Standards Panel Contact Officer.

City of Adelaide Standing Orders

15. Chapter Three of the City of Adelaide Standing Orders contains information about General Duties and Member Integrity and Behaviour
16. This chapter largely contains copies of legislation as well as the Model Behavioural Model Policy.
17. In adopting the Council Member Complaints Policy and the Behavioural Support Policy, the information in Chapter Three becomes redundant and can be removed.

DATA AND SUPPORTING INFORMATION

Link 1 – *Local Government Act 1999 (SA)*

Link 2 – Behavioural Standards

Link 3 – Standing Orders

ATTACHMENTS

Attachment A – Council Member Complaints Policy