

# Council Member Complaints Policy

Tuesday, 20 February 2024  
City Finance and Governance  
Committee

Strategic Alignment - Our Corporation

**Program Contact:**  
Alana Martin, Manager  
Governance

Public

**Approving Officer:**  
Anthony Spartalis, Acting Chief  
Operating Officer

---

## 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 adopt a Behavioural Management Policy that complies with section 262B of the Act. Council adopted the model Local Government Association of South Australia (LGA) Behavioural Management Policy on 12 December 2023.

At this meeting, it was noted that a report would be brought back to a future City Finance and Governance Committee seeking Council approval for a customised City of Adelaide Policy. This report seeks the endorsement of that policy.

---

## RECOMMENDATION

The following recommendation will be presented to Council on 27 February 2024 for consideration

THAT THE CITY FINANCE AND GOVERNANCE COMMITTEE RECOMMENDS TO COUNCIL

THAT COUNCIL

1. Revokes the Behaviour Management Policy as adopted by Council on 12 December 2023.
  2. Adopts the Council Member Complaints Policy (as required by Section 262 B of the *Local Government Act 999 SA*) as contained in Attachment A to Item 7.4 on the Agenda for the meeting of the City Finance and Governance Committee held on 20 February 2024.
  3. Authorises the Acting Chief Executive Officer or delegate to make minor, typographical or syntactical updates to the documents contained in Attachment A and Attachment B to Item 7.4 on the Agenda for the meeting of the City and Finance Committee held on 20 February 2024.
-

## IMPLICATIONS AND FINANCIALS

|  |   |
|--|---|
| City of Adelaide<br>2024-2028<br>Strategic Plan                        | <a href="#">Strategic Alignment – Our Corporation</a>   |
| Policy   | The Behavioural Management Framework consists of <ul style="list-style-type: none"> <li>• The Behavioural Standards for Council Members, determined by the Minister for Local Government</li> <li>• The mandatory Behavioural Management Policy</li> <li>• 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)</li> </ul> |
| Consultation   | Not as a result of this report  |
| Resource   | Not as a result of this report  |
| Risk / Legal /<br>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<br>Allocation   | Not as a result of this report  |
| Proposed 24/25<br>Budget Allocation                                    | Not as a result of this report  |
| Life of Project,<br>Service, Initiative<br>or (Expectancy of)<br>Asset | Not as a result of this report  |
| 23/24 Budget<br>Reconsideration<br>(if applicable)                     | Not as a result of this report  |
| Ongoing Costs<br>(eg maintenance<br>cost)                              | Not as a result of this report  |
| Other Funding<br>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 the power to impose sanctions on Council Members who breach the legislative and policy requirements of the Framework.
4. At its meeting on 17 October 2023 the City Finance and Governance Committee received a report on a draft Council Member Complaints Policy [Link 2](#).
5. This report provided a draft Council Member Complaint Policy that was recommended to replace the Model LGA Behavioural Management Policy.
6. At its meeting of 24 October 2023 [Link 3](#) Council resolved:
  - 6.1. *Notes the review of the mandatory Behavioural Management Policy and requests Administration to provide further advice at an upcoming meeting of the City Finance and Governance Committee meeting.*
7. Given the requirement to adopt the Behavioural Management Policy within 12 months of the Election, Council adopted the LGA Model Behavioural Policy on 12 December 2023 [Link 4](#). Council resolved:
  1. *Adopts the Council Member Behavioural Management Policy as contained in Attachment A to Item 16.2 on the Agenda for the meeting of the Council held on 12 December 2023.*
  2. *Approves the deletion of Chapter 3 – General Duties and Member Integrity and Behaviour 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 Behavioural Management Policy as contained in Attachment A to Item 16.2 on the Agenda for the meeting of the Council held on 12 December 2023.*
8. It was noted that a report would come back to a future meeting of the City Finance and Governance Committee so that a customised City of Adelaide policy could be considered by Council.

## Behavioural Standards

9. The Behavioural Standards are standards published by the Minister for Local Government, which all members are required to observe [Link 5](#).
10. 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.
11. Council has also chosen to adopt a Behavioural Support policy which is available on Council's website [Link 6](#)

## Behavioural Management Policy

12. The Act requires councils to have a 'Behavioural Management Policy', which sets out processes and procedures for dealing with complaints about Council Members' behaviour.
13. 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. a committee).
14. Council's current Behavioural Management Policy is on the Council's website [Link 7](#)

15. A draft Council Member Complaints Policy appears as Attachment A, following a review of the Model Behavioural Management Policy.
16. If adopted, the Council Member Complaints Policy would replace the Behavioural Management Policy. It meets all the requirements of the 262B of the Act.

### **Key Changes**

17. Feedback from the City Finance and Governance Committee on 17 October 2023 has been incorporated into the draft document. A marked-up version of changes made to the draft policy can be found at Link 8 view [here](#).
18. Material differences and changes between the adopted Behavioural Management Policy and the draft Council Member Complaints Policy are summarised below:
  - 18.1. Title of policy changed to Council Member Complaint Policy.
  - 18.2. Glossary moved to the end of the document.
  - 18.3. Policy structured to reflect the look and feel of City of Adelaide policies.
  - 18.4. Language simplified.
  - 18.5. Removal of distinction between a Dispute and a Complaint.
  - 18.6. Significant simplification of the stages of the complaint-handling process.
  - 18.7. 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.
  - 18.8. Information that informs the stages of the complaint-handling process or explains how the complaint-handling process will be applied, will be contained in the related Operating Guideline.
  - 18.9. Timeframes have been allocated to each stage of the complaint-handling process, noting that there may be circumstances requiring extensions to these timeframes.
  - 18.10. Informal Action can be undertaken pro-actively by the Lord Mayor as a result of conduct observed directly by the Lord Mayor.
  - 18.11. Correspondence to the impacted parties may contain a warning that repeated instances of Informal Action may result in Formal Action being taken.
  - 18.12. Following the receipt of a Formal Complaint, the person complained about will be notified and provided a copy of the complaint.
  - 18.13. Inclusion of the provision that withdrawal of a complaint by the complainant could result in an investigation not being concluded or any findings being made.
  - 18.14. Mandatory engagement of a third-party investigator in circumstances where a decision to investigate is made.
  - 18.15. 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.
  - 18.16. Inclusion of a section dealing with grievances regarding the outcome of Formal Action.
  - 18.17. Inclusion of a Responsibilities section.
  - 18.18. Inclusion of a diagram representing the stages of complaint handling.
  - 18.19. A requirement for the Person Responsible for Managing the Complaint to discuss the complaint with the complainant, the Council Member being complained about and any witnesses.
  - 18.20. A stipulation that the communication to the complainant and the person complained about will contain reasons detailed in writing.

### **Legal Review**

19. As requested by the City Finance and Governance Committee, a legal review has been performed on the draft Policy.
20. These changes can be seen in Link 8 and include the following:

- 20.1. Updates to reflect a breach of the Council Member Complaints Policy is considered Misbehaviour (and dealt with by the Behavioural Standards Panel).
  - 20.2. Allows the discretion of the person managing a complaint under the policy to consider it out of time.
  - 20.3. Includes reference to the *Public Interest Disclosure Act 2018*.
  - 20.4. Includes references to Deputy Lord Mayor.
  - 20.5. Deletion of the reference to repeated informal complaints forming the basis for formal action.
  - 20.6. Further detail in regard to alternative dispute mechanisms under the assessment section.
  - 20.7. Further detail on grounds for refusal of a complaint.
  - 20.8. Deletion of the requirement to consult with Council Members before referring repeated misbehaviour to the Behavioural Standards Panel.
21. The City Finance and Governance Committee requested two questions be asked as part of this review:
- Question One - Should the identity of the complainant be made known to the person complained about?
    - The Policy as drafted enables a complainant to request that their identity be kept confidential.
    - It is recommended that this provision remains.
    - There will be some circumstances where a complainant's identity may be required to be kept confidential in accordance with the provisions of the *Public Interest Disclosure Act 2018 (SA)*.
    - An assessment should be made on a case-by-case basis as to whether these provisions apply.
    - The draft Policy has been modified to refer to the operation of the *Public Interest Disclosure Act 2018 (SA)*.
  - Question Two - Can Council delegate the handling of formal complaints to a third party?
    - Under Section 262B(2)(d) of the Act, the Council can delegate the conduct of an inquiry to any person or body. Multiple delegations can be made. This includes natural persons or companies.
    - This is separate from the function of managing the complaint, which is vested in the Lord Mayor.
    - The draft Policy allows the Person Responsible for Managing the Complaint to make the decision to refer the inquiry (investigation) to a third party.
    - The Council does not need to make any separate delegations in this respect.

### Next Steps

22. If adopted, the Council Member Complaints Operating Guideline will also be prepared. The purpose of the Operating Guideline will be to provide specific details to inform the operation of the Policy.

---

## DATA AND SUPPORTING INFORMATION

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

**Link 2-** City Finance and Governance 17 October 2023

**Link 3-** Council 24 October 2023

**Link 4-** Council 12 December 2023

**Link 5-** Behavioural Standards

**Link 6-** Behavioural Support Policy

**Link 7-** Behavioural Management Policy

**Link 8-** Marked-up copy of the Council Member Complaints Policy

---

# ATTACHMENTS

**Attachment A** – Council Member Complaints Policy

---

- END OF REPORT-