

COUNCIL MEMBER COMPLAINTS POLICY

27 February 2024

Legislative

PURPOSE

This Policy has been prepared and adopted pursuant to section 262B of the *Local Government Act 1999* (SA) (the Local Government Act).

This Council Member Complaints Policy constitutes Council's Behavioural Management Policy under Section 262B of the Local Government Act and forms part of the Behavioural Management Framework for Council Members. It sets out the approach to the management of complaints about the behaviour of Council Members. It sets out the process to be adopted where there has been an alleged breach of the Behavioural Standards, and/or any Behavioural Support Policy adopted by the Council (the Behavioural Requirements).

STATEMENT

This Policy sets out the procedures for dealing with an allegation of a breach of the Behavioural Requirements.

Nothing in this Policy prevents Council Members from seeking to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated.

The following will apply:

- where a Council Member considers there has been behaviour that is inconsistent with the Behavioural Requirements, a Council Member is encouraged to, in appropriate circumstances, seek to respectfully and constructively raise this issue with the member concerned, without the need to lodge a complaint under this Policy.
- if a matter proceeds to a complaint, all Council Members will continue to comply with the procedures set out in this Policy and support the Person Responsible for Managing the Complaint.
- a consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate consistent, timely and efficient resolution and minimisation of costs.
- where required, Council may engage the assistance of skilled advisors and support persons in the assessment, investigation and resolution of complaints.
- ongoing training and relevant resources will be provided to all Council Members to ensure they have the skills and knowledge necessary to perform their role in accordance with the Behavioural Requirements and the Local Government Act.
- training and relevant support will be provided to persons with specific obligations under this Policy to facilitate the management, reporting and resolution of complaints alleging a breach of the Behavioural Requirements.

This Policy does not apply to complaints about Council employees or the Council as a whole. Members of the public can lodge a complaint in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

A complaint made in accordance with this Policy must be lodged within 6 months of the occurrence of the behaviour complained about unless the Person Responsible for Managing the Complaint is of the opinion that, in all the circumstances of the case, it is proper to entertain the complaint out of time.

Confidentiality

Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to a Council Member) that information except:

- to deal with the complaint
- where required by law
- to obtain legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor
- where the disclosure is made to an external party investigating the complaint, or mediator/conciliator engaged in accordance with this Policy
- where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

Subject to the operation of the *Public Interest Disclosure Act 2018*, a complainant may request their identity be kept confidential from the person complained about. The Person Responsible for Managing the Complaint will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

Informal Action

Informal action may be undertaken as a result of:

- a concern raised with the Lord Mayor on an informal basis (or the Deputy Lord Mayor if it concerns the Lord Mayor), or
- conduct observed by the Lord Mayor directly.

Where requested, the Chief Executive Officer will facilitate for the Lord Mayor, or Deputy Lord Mayor, access to resources required to support the parties to facilitate early resolution of the matter.

The Lord Mayor, or Deputy Lord Mayor, will write to the impacted parties to address the conduct and suggest options for resolution. Such correspondence may contain a warning that repeated instances of matters raised on an informal basis may form the basis for Formal Action.

Formal Action

Receipt

A complaint made under this Policy must:

- be received in writing.
- be marked with "Confidential Council Member Complaint" and forwarded to the relevant email or physical address as published on the Council's website;
- provide the name of the Council Member who has allegedly breached the Behavioural Requirements, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint;

- identify the Behavioural Requirements the complainant alleges have been breached and
 - identify the outcome sought by the complainant.
- ("Formal Complaint")**

The complainant will receive written acknowledgement of the Formal Complaint and a copy of this Policy within two business days of the Formal Complaint being received, or as soon as reasonably practicable.

The Formal Complaint will be provided to the Person Responsible for Managing the Complaint within two business days of the Formal Complaint being received, or as soon as reasonably practicable.

The person complained about will be provided with a copy of the Formal Complaint and a copy of this Policy within five business days of receipt of the Formal Complaint, or as soon as reasonably practicable. The person complained about will be informed an assessment will be undertaken in accordance with this Policy and invited to provide a response.

A complainant may withdraw their Formal Complaint at any stage. If a complaint is withdrawn this may result in an investigation not being concluded or any findings being made.

The Person Responsible for Managing the Complaint will endeavour to have the Formal Complaint resolved within a month of the complaint being received, noting that complex complaints may require additional time.

Assessment

Upon receipt of a Formal Complaint the Person Responsible for Managing the Complaint will perform an assessment and determine what action will be taken from the assessment. The Person Responsible for Managing the Complaint has the ability to:

- refuse to deal with a complaint;
- determine to take no further action on a complaint;
- refer the matter to an alternative dispute resolution mechanism , including mediation, conciliation, arbitration, facilitated discussion or other dispute or conflict resolution
- require the person complained about to undertake training, instruction, counselling, mentoring or coaching ;
- refer the matter to another body or agency;
- inquire into a complaint in a manner in accordance with the Council Member Complaint Guidelines; or
- conduct an investigation themselves or delegate the conduct of an inquiry to any person or body considered appropriate in the circumstances.

To assess the Formal Complaint, the Person Responsible for Managing the Complaint should discuss the complaint with the complainant, the person complained about, and witnesses to the behaviour the subject of the complaint.

The Person Responsible for Managing the Complaint may engage a third party to assist with the assessment.

Should the person complained about wish to provide a response to the Formal Complaint to assist the assessment, they must do so within ten business days of their

receipt of the complaint, or such longer period as the Person Responsible for Managing the Complaint may allow.

The Person Responsible for Managing the Complaint will take into consideration any response provided by the person complained about when determining what action will result from the assessment, including recognition by the person complained about of poor behaviour, and offers of an apology.

The result of the assessment will be communicated to the complainant and the person complained about, with reasons detailed in writing, within 15 business days of the due date of a response from the person complained about.

The Person Responsible for Managing the Complaint may make recommendations to the parties at the conclusion of the assessment.

Reasons

If the Person Responsible for Managing the Complaint refuses to deal with a Formal Complaint or determines to take no further action in relation to a Formal Complaint, the complainant will be advised and provided with written reasons for the refusal or determination.

The grounds upon which the Person Responsible for Managing the Complaint may refuse to deal with a Formal Complaint or determine to take no further action in relation to a Formal Complaint include (but are not limited to):

- the subject matter of the complaint is trivial;
- the complaint is frivolous or vexatious or is not made in good faith;
- the complainant or the person on whose behalf the complaint was made does not have a sufficient personal interest in the matter raised in the complaint;
- having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the council to deal with or continue to deal with the complaint;
- the subject matter of the complaint has been or is already being investigated, whether by the council or another person or body;
- the council has dealt with the complaint adequately.

Investigation

Where the assessment results in a decision to conduct an investigation into the Formal Complaint, the Person Responsible for Managing the Complaint will engage a third party to conduct the investigation. The investigation will be referred to the third party within two business days of the conclusion of the assessment.

The complainant and the person complained about must cooperate with any process to consider the Formal Complaint and, if requested, participate in meetings in a timely manner. Failure by the person complained about to comply with this requirement may be considered when determining the actions to be taken and may constitute grounds for referral to the Behavioural Standards Panel for Misbehaviour.

The person conducting the investigation may:

- explore the complaint with the complainant and the person complained about.
- speak with witnesses and any other persons who have been nominated by the parties to have observed the behaviour complained about.

- request the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.
- perform any and all other functions necessary to properly investigate the Formal Complaint.

The investigation will, insofar as is reasonably practicable be concluded within 20 business days.

Report

Following investigation of a Formal Complaint the person conducting the investigation must, insofar as is reasonably practicable, within five business days, prepare a draft report summarising the matter and setting out their findings, conclusions and recommended actions.

The parties to the complaint will be provided with the draft report and five business days (or such longer period as may be allowed) to make submissions in relation to the draft report. A copy of the draft report will also be provided to the Person Responsible for Managing the Complaint. The person conducting the investigation will have regard to any submissions made when preparing the final report. The final report should be issued within five business days of receipt of submissions.

Outcomes

An investigation will result in one or more of the following outcomes:

- No breach found
- Breach found and actions agreed
- Breach found and actions not agreed

No breach found

Where the finding is that no breach of the Behavioural Requirements has occurred the final report prepared by the person conducting the investigation will be provided to the Person Responsible for Managing the Complaint, the complainant and the person complained about.

The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting. The complainant's identity may need to be redacted. If no such request is received, no further action will be taken.

Breach found and actions agreed

Where the finding is that a breach of the Behavioural Requirements has occurred the Person Responsible for Managing the Complaint may seek that the complainant and the person complained about agree to a resolution. In such a case, that agreement will be documented in writing and will include a commitment by the parties to the complaint to abide by the agreement.

The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council Meeting. The complainant's identity may need to be redacted. If no such request is received, no further action will be taken.

Breach found and actions are not agreed

Where the finding is that a breach of the Behavioural Requirements has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter, a final report will be presented to Council for determination. The Person Responsible for Managing the Complaint must request the Chief Executive Officer to include, as far as is reasonably practicable, the final report in the Council Agenda at the next ordinary meeting following the issuing of the final report.

Actions – for the purposes of a breach being found but actions not agreed

If the parties cannot agree on an approach to resolve the matter, the matter will be provided to Council to determine the actions to be taken. Council may do one or more of the following:

- pass a censure motion in respect of the Member
- require the Member to issue a public apology (in a manner determined by the Council)
- require the Member to undertake a specified course of training or instruction
- remove or suspend the Member from one or more offices held in the member's capacity as a Member of the Council or by virtue of being a Member of the Council (other than the office of Member of the Council).

If Council determines to take action, a report on the matter must be considered at a meeting open to the public.

Timeframes will be applied in which the actions must be completed by the member. Failure to comply with an action determined by the Council will amount to Misbehaviour.

Repeated Misbehaviour

Where a member is found to have breached the Behavioural Requirements on more than one occasion during a term of Council, the Lord Mayor will consider whether to refer the Repeated Misbehaviour to the Behavioural Standards Panel.

Grievance regarding outcome of Formal Action

If the parties to a Formal Action are dissatisfied with the outcome of the Formal Action, either party may refer the matter to the OmbudsmanSA.

Parties are reminded of the confidentiality requirements associated with Council Member complaints.

Other matters

The complainant and the person complained about are entitled to have a support person present during any discussions relating to complaints.

The Chief Executive Officer will not refuse any reasonable request made by the Person Responsible for Managing the Complaint for resources made in accordance with this Policy.

In circumstances where a breach of the Behavioural Requirements is found, the matter must be reported in the Council's Annual Report.

Behavioural Standards Panel

A complaint alleging Misbehaviour, Repeated Misbehaviour or Serious Misbehaviour may be made to the Behavioural Standards Panel.

Complaints to the Behavioural Standards Panel can only be referred by:

- a resolution of Council
- the Lord Mayor
- at least three members of the Council
- a Responsible Person

Council must appoint a Behavioural Standards Panel Contact Officer.

RESPONSIBILITIES

The Person Responsible for Managing the Complaint must:

- perform the tasks bestowed upon the Person Responsible for Managing a Complaint pursuant to this Policy.
- In consultation with the Chief Executive Officer, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner.
- In consultation with the Chief Executive Officer, engage external resources to assist with investigation and resolution of matters.

The Chief Executive Officer must:

- manage the administrative receipt, acknowledgement, record keeping and allocation of complaints lodged in accordance with this Policy.
- facilitate access to external resources to support the resolution of complaints lodged in accordance with this Policy.

The Behavioural Standards Panel Contact Officer must:

- comply with any lawful request of the Behavioural Standards Panel for information related to a matter under consideration.
- receive and respond to notices relating to matters under consideration by the Behavioural Standards Panel.
- If the Behavioural Standards Panel Contact Officer is not the Chief Executive Officer, keep the Chief Executive Officer informed of the status of matters under consideration by the Behavioural Standards Panel.

OTHER USEFUL DOCUMENTS**Related documents**

- Council Member Complaints Operating Guideline
- Behavioural Standards for Council Members published in the South Australian Government Gazette on 17 November 2022, No.79 p.6658-6659
- Public Interest Disclosure Policy

Relevant legislation

- *Independent Commission Against Corruption Act 2012*
- *Local Government Act 1999*
- *Ombudsman Act 1972*
- *Public Interest Disclosure Act 2018*

GLOSSARY

Throughout this document, the below terms have been used and are defined as:

Behavioural Management Framework – comprises four components:

- The legislative framework within which all council members must operate;
- The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all Council Members in South Australia;
- The mandatory Behavioural Management Policy (this document) relating to the management of behaviour of Council Members and adopted pursuant to section 262B of the Local Government Act;
- Optional Behavioural Support Policy (or policies) designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Local Government Act.

Behavioural Requirements: refers collectively and individually to the Behavioural Standards for Council Members, and any Behavioural Support Policies adopted by the Council.

Behavioural Standards: The Behavioural Standards for Council Members established by the Minister for Local Government, and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by Members of Councils; and providing for any other matter relating to behaviour of Members of Councils.

Behavioural Standards Panel: an independent statutory authority with powers to impose sanctions on Council Members who breach the Behavioural Requirements.

Behavioural Standards Panel Contact Officer: person responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

Misbehaviour means: A Council Member fails to:

- take the action required by council under section 262C(1) of the Local Government Act;
- comply with a provision of, or a requirement under, this policy; or
- comply with an agreement reached pursuant to this policy.

Person Responsible for Managing the Complaint: means, subject to any resolution of the Council to the contrary

- the Lord Mayor;
- if the complaint relates to or involves the Lord Mayor, the Deputy Lord Mayor;
- if the complaint relates to or involves the Lord Mayor and Deputy Lord Mayor, another council member appointed by Council.

Repeated Misbehaviour – means a second or subsequent breach of the Behavioural Requirements.

Responsible Person – means, for the purposes of s75G of the Local Government Act

- if the person whose health and safety may be adversely affected is an employee of the council—the chief executive officer of the council; or
- if the person whose health and safety may be adversely affected is the Lord Mayor—the Deputy Lord Mayor or another member chosen by the council; or
- if the person whose health and safety may be adversely affected is another member or the Chief Executive Officer of the council –
 - unless subparagraph (ii) applies, the Lord Mayor of the Council; or
 - if the relevant acts or omissions are those of the Lord Mayor – the Deputy Lord Mayor or another member chosen by the Council.

Serious Misbehaviour – means a breach of the health and safety duties (including sexual harassment) as set out in section 75G of the Local Government Act.

ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every four years, within 12 months after each periodic election unless legislative or operational change occurs beforehand. The next review is required in 2027.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2024/XXXX	Council	27/02/2024	Adoption of City of Adelaide Behavioural Management Policy in accordance with s262B of the Local Government Act 1999

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Appendix 1

