

# COMPLAINT OPERATING GUIDELINE - CHIEF EXECUTIVE OFFICER

XXX 2024

Council

**PARENT DOCUMENT:** Employee Behavioural Standards

## PURPOSE

The purpose of this Operating Guideline is to outline the process to be observed when managing formal complaints regarding the conduct of the Chief Executive Officer (CEO).

The Operating Guideline reflects the City of Adelaide's (CoA) commitment to properly investigating such complaints.

Should a complaint relate to a reasonable suspicion of corruption, it must be reported directly to the Office of Public Integrity (OPI) in accordance with the *Independent Commission Against Corruption Act 2012 (SA)* (ICAC Act). Employees are also strongly encouraged to report reasonable suspicions of systemic misconduct or maladministration. More information regarding the reporting obligations of Public Officers can be found [here](#).

## OPERATION

There are four stages in the management of a complaint under this Operating Guideline:

- Stage 1 - Receipt of Complaint
- Stage 2 - Preliminary Assessment
- Stage 3 - Further Investigation (if required)
- Stage 4 - Resolution (if required)

### Stage 1 - Receipt of Complaint

A formal complaint must be detailed in writing, be addressed to the Lord Mayor, and should include:

- Details of the allegations, including date/s when the conduct resulting in the complaint occurred
- Name/s of the other party/s involved
- Name/s of any witnesses
- As much supporting evidence as possible to assist a preliminary assessment and any subsequent investigation
- Any previous action taken to resolve the complaint, and

The City of Adelaide acknowledges the Kurna people as the Traditional Owners of the Country where the city of Adelaide is situated, and pays its respect to Elders past, present and emerging.

- The remedy that the complainant is seeking.

Anonymous complaints may be submitted; however, individuals must be aware that anonymity may limit the scope of any enquiries and investigations.

Complaints regarding the CEO, which are submitted to an employee of CoA, will be provided to the Lord Mayor.

On receipt of a complaint, the Lord Mayor will issue a written acknowledgment of the complaint to the complainant and refer the complaint to the Chief Operating Officer (COO). The COO will commence engaging a Conduct Reviewer as soon as practicable.

If for any reason the COO has a conflict of interest in relation to the complaint (e.g. is a party to the complaint or is likely to be interviewed as a witness etc) the engagement of a Conduct Reviewer will be conducted by the Manager, People.

The Conduct Reviewer will be an independent legal practitioner engaged to undertake a preliminary assessment of the complaint. Should the complaint not include sufficient information (outlined above), the Conduct Reviewer may request the complainant resubmit the complaint with additional information.

Where concerns arise regarding a potential conflict of interest, a legal practitioner outside of those on CoA's panel of legal providers may be selected.

## **Stage 2 - Preliminary Assessment**

A preliminary assessment by the Conduct Reviewer will involve an assessment of:

- The complaint and any evidence submitted.
- Any other relevant factors to making a fair and reasonable judgement assessment.

The Conduct Reviewer will consider factors including:

- Appropriate means of resolving the complaint
- Whether the issue(s) giving rise to the complaint have previously been addressed or resolved
- Whether the grounds of the complaint appear to form part of a pattern of conduct
- Any mitigating circumstances giving rise to the conduct complained about
- The seriousness of the alleged conduct
- The significance of the conduct or the impact of the conduct on CoA, and
- Any other considerations that may be relevant to the preliminary assessment of the complaint.

The Conduct Reviewer will also consider whether the complaint raises issues that would be more appropriately handled by another agency or body (e.g. SA Ombudsman, Office for Public Integrity, Independent Commission Against Corruption) and refer as required.

If the Conduct Reviewer determines that the complaint relates to behaviour which falls under CoA's Employee Behavioural Standards, the Conduct Reviewer will:

- Prepare a Preliminary assessment report containing one or more of the following recommendations:

- No further action
  - No further action – malicious or frivolous complaint
  - Resolve without investigation via alternative remedies which may include but are not limited to counselling, training, mediation, informal discussion, negotiated apology, performance management; or
  - Refer for further investigation.
- Advise the CEO in writing of the complaint, the allegation(s) made against them, the provisions of the Code which the complainant alleges have been breached, and referral of the matter to the Conduct Committee for consideration.

Where the Conduct Reviewer determines that the complaint is related to behaviour which falls under CoA's Employee Behavioural Standards, a Conduct Committee will be established comprising the Lord Mayor, Deputy Lord Mayor, and a qualified independent person.

The Conduct Committee has delegated authority to consider a preliminary assessment report prepared by a Conduct Reviewer and determine appropriate further action.

If a conflict of interest arises for either the Lord Mayor or Deputy Lord Mayor, an alternative member of the Council will be appointed to the Conduct Committee by the Lord Mayor or Council.

#### No Further Action

If the Conduct Reviewer recommends taking no further action and the Conduct Committee accepts the recommendation, the complaint will be finalised and will not be referred for further consideration by Council.

The Lord Mayor will confirm with the CEO in writing that no further action is to be taken, and will confirm with the complainant in writing that the complaint has been appropriately managed in accordance with this Operating Guideline, and the matter is considered closed.

#### No Further Action – malicious or frivolous complaints

If the Conduct Reviewer recommends taking no action based on the complaint having been malicious or frivolous in nature, and the Conduct Committee accepts the recommendation, the complaint will be finalised and will not be referred for further consideration by Council.

The Lord Mayor will confirm with the CEO in writing that no further action is to be taken and will confirm with the complainant in writing that the complaint has been appropriately managed in accordance with this Operating Guideline, and the matter is considered closed.

Concerns regarding malicious or frivolous complaints will be raised with the Manager People and managed by CoA's Fair Treatment in the Workplace and Grievance Resolution Operating Guideline.

Resolve Without Investigation - alternative remedies.

If the Conduct Reviewer recommends resolving the complaint by an alternative remedy and the Conduct Committee accepts the recommendation, the complaint will be finalised. It will not be referred for further consideration by Council.

The Lord Mayor will confirm the alternative remedy determined by the Conduct Committee with the CEO in writing. The Lord Mayor will confirm with the complainant in writing that the complaint has been appropriately managed in accordance with this Operating Guideline and advise of any alternative remedies to which they will be privy, e.g. mediation.

Where one or both parties are unwilling to resolve the complaint by an alternative remedy, the Conduct Reviewer may reconsider their recommendation.

Refer the Complaint for Further Investigation

If the Conduct Reviewer recommends referring the complaint for further investigation, and the Conduct Committee accepts the recommendation, a Preliminary Assessment Report will be presented to Council for consideration, as soon as practicable.

Council is not obliged to adopt the Conduct Reviewer's recommendation. Where the Council does not adopt the Conduct Reviewer's recommendation, the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

The Lord Mayor will confirm with the CEO in writing that an investigation is to occur as a result of the Preliminary Assessment. The Lord Mayor will confirm with the complainant that an investigation is to be conducted following a Preliminary Assessment of the complaint.

If the Council adopts a recommendation to refer the complaint for further investigation, an Independent Assessor will be engaged to undertake the work. The Independent Assessor may be from the same or a different legal practice from that undertaking the Preliminary Assessment.

**Stage 3 – Investigation**

Investigations are to be undertaken by the Independent Assessor without undue delay.

The Independent Assessor will determine the appropriate scope of the investigation and conduct a fact-finding investigation, providing procedural fairness.

The Independent Assessor will consider the evidence available and produce an investigation report outlining the facts and findings about the complaint. The investigation report must:

- Make findings of fact concerning the matter investigated.
- Determine whether the conduct investigated constituted a breach of the CoA's Employee Behavioural Standards
- Provide reasons for the determination, and
- Provide recommendations for resolution.

Where an Independent Assessor identifies additional possible breaches of CoA's Employee Behavioural Standards, not related to or arising from the complaint referred to them, they are to report the matters separately in writing to the Lord Mayor or such appropriate authorities as may be applicable.

#### **Stage 4 – Resolution**

The Investigation Report will be presented to Council for consideration as soon as practicable following completion.

Council must consider imposing the recommended sanction(s) (if any) contained in the investigation report, where the Independent Assessor determines that there has been a breach of CoA's Employee Behavioural Standards.

Council is not obliged to adopt the Independent Assessor's recommendation(s) as set out in the Final Investigation Report. Where the Council does not adopt the Independent Assessor's recommendation, the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

Where Council passes a resolution of its determination in connection with the Final Investigation Report and the sanctions (if any) that will be imposed, the Lord Mayor must advise the CEO in writing of the Council's decision and the reasons for that decision, and provide the CEO with a minimum of seven days to respond to the intended sanction.

Following the deadline for a response to the intended sanction(s), the Council will again consider the sanction to be imposed, considering any additional information provided by the CEO.

Following the Council passing a resolution of its final determination, the Lord Mayor must advise the CEO, in writing, of Council's decision. The Lord Mayor will confirm with the complainant in writing that the complaint has been appropriately managed in accordance with this Operating Guideline, and the investigation concluded. The complainant will only be advised of any outcomes to which they which they will be privy e.g. mediation.

and

#### **OTHER USEFUL DOCUMENTS**

##### **Related documents**

- CoA Employee Behavioural Standards
- CoA Fair Treatment in the Workplace, Grievance Resolution Operating Guideline

##### **Relevant legislation**

- *Local Government Act 1999*
- *Independent Commissioner Against Corruption Act 2012*

#### **GLOSSARY**

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

**Complainant:** a person who makes a Complaint.

**Conduct Committee:** delegated the authority for the purpose of considering a preliminary assessment report prepared by a Conduct Reviewer and determining appropriate further action.

**Conduct Reviewer:** a legal practitioner responsible for the Preliminary Assessment of the Complaint – Where concerns arise regarding a potential conflict of interest, a legal practitioner outside of those on CoA’s panel of legal providers may be selected.

**Council:** any then-current elected council members, including the Lord Mayor of the City of Adelaide.

**The City of Adelaide / CoA:** the City of Adelaide established under the *Local Government Act 1999*.

**Employee:** all City of Adelaide employees, whether they are working in a full-time, part-time or casual capacity.

**Independent Assessor:** a legal practitioner responsible for the Investigation of the complaint. Where concerns arise regarding a potential conflict of interest, a legal practitioner outside of those on CoA’s panel of legal providers may be selected.

**Qualified Independent Person:** a person who is (a) not a member or employee of the Council; and (b) determined by the council to have appropriate qualifications or experience in human resource management.

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## ADMINISTRATIVE

As part of the 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 two years unless legislative or operational change occurs beforehand. The next review is required in **February 2026**.

### Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2018/9000 <i>(example)</i>		19/12/2018	<i>New Operating Guideline</i>

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