

Behavioural Management Policy

TBC

legislative

1. DEFINITIONS

In this Policy:

- 1.1 Behavioural Complaint means a complaint alleging that a Council Member has contravened a provision of one or both of the following instruments:
 - 1.1.1 The Behavioural Standards; or
 - 1.1.2 The Behavioural Support Policy.
- 1.2 Behavioural Standards means the behavioural standards established by the Minister under section 75E of the LG Act.
- 1.3 Behavioural Support Policy means the Behavioural Support Policy adopted by the Council under section 75F of the LG Act and any other policy which the Council may adopt under that provision from time to time.
- 1.4 Complainant means a person making a Behavioural Complaint.
- 1.5 Complaint Assessment mean an assessment of a Behavioural Complaint undertaken in accordance with clause 6 of this Policy.
- 1.6 Contact Officer has the meaning given by clause 5.4.
- 1.7 Council Member means the Lord Mayor, Deputy Lord Mayor, and each Councillor of the Council.
- 1.8 Dispute Resolution means mediation, conciliation, arbitration or other dispute or conflict resolution.
- 1.9 External Complaints Assessor has the meaning given by clause 5.5.
- 1.10 External Investigator has the meaning given by clause 7.12.
- 1.11 LG Act means the Local Government Act 1999.

2. PURPOSE AND INTRODUCTORY MATTERS

- 2.1 This Policy is the Council's behavioural management policy adopted under section 262B of the LG Act.
- 2.2 This Policy sets out:
 - 2.2.1 requirements relating to the making of a Behavioural Complaint; and
 - 2.2.2 the process for receipt and management of a Behavioural Complaint.
- 2.3 Nothing in this Policy:

- 2.3.1 prevents Council Members and other persons from seeking to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated; or
 - 2.3.2 prevents any person from making any complaint regarding a Council Member to any other authority, including the Office for Public Integrity or the Ombudsman.
- 2.4 This Policy does not apply to complaints about Council employees or the Council as a whole.
- 2.5 All decisions made and other steps taken by the Contact Officer, External Complaints Assessor, or External Investigator under this Policy are made or taken on behalf of, or as a delegate of, the Council within the meaning of section 262C(3) of the LG Act.
- 2.6 In accordance with section 262C(3) of the LG Act, the Contact Officer, External Complaints Assessor, and External Investigator:
 - 2.6.1 must proceed with as little formality and technicality and with as much expedition as the requirements of the LG Act or any other Act and a proper consideration of the matter permit; and
 - 2.6.2 are not bound by rules of evidence but may inform themselves of any matter in any manner that they consider appropriate.
- 2.7 The provisions of this Policy are intended to constitute an exhaustive statement of the requirements of the natural justice hearing rule in relation to all stages of the management of a Behavioural Complaint.
- 2.8 Failure by a Council Member to comply with a provision of, or a requirement under, this Policy constitutes misbehaviour within the meaning of section 262E of the LG Act and may be referred to the Behavioural Standards Panel.
- 2.9 The Council's Behavioural Standards Panel contact officer (as required by section 262B(4)(c) of the LG Act, and the Behavioural Standards) is the Chief Executive Officer.

3. **WHO CAN MAKE A BEHAVIOURAL COMPLAINT?**

- 3.1 Any person may make a Behavioural Complaint against any Council Member.
- 3.2 A Behavioural Complaint must be made in accordance with the requirements of this Policy in order to be dealt with as a Behavioural Complaint.

4. **REQUIREMENTS FOR MAKING BEHAVIOURAL COMPLAINT**

- 4.1 A Behavioural Complaint must:
 - 4.1.1 be in writing and sent by email to councilmembercomplaints@cityofadelaide.com.au
 - 4.1.2 include the name and email address of the Complainant;
 - 4.1.3 specify which Council Member(s) are alleged to have contravened the Behavioural Standards or Behavioural Support Policy;
 - 4.1.4 specify which clause(s) of the Behavioural Standards or Behavioural Support Policy are alleged to have been contravened by the relevant Council Member(s);

- 4.1.5 describe with reasonable particularity the facts and circumstances said to constitute such contravention(s);
 - 4.1.6 be accompanied by any evidence in the possession of the Complainant which supports the description of the relevant facts and circumstances;
 - 4.1.7 explain whether the matter(s) raised in the complaint affects or relates to the Complainant in some way personally (as opposed to affecting or relating to the general public at large);
 - 4.1.8 identify the outcome being sought by the Complainant, by reference to the potential outcomes contemplated under this Policy (See particularly clauses 6.1 and 8.6.4);
 - 4.1.9 be made within 6 months of the event or circumstances said to constitute a contravention of the Behavioural Standards or Behavioural Support Policy.
- 4.2 If the Complainant is a Council Member, a Behavioural Complaint must also (in addition to the requirements of clause 4.1):
- 4.2.1 explain whether the Complainant has made any attempt to reach an informal resolution of the matters the subject of the complaint with the Council Member(s) the subject of the complaint and:
 - (a) if such an attempt has been made—explain the outcome of that attempt;
 - (b) if no such an attempt has been made—explain why no such attempt has been made;
 - 4.2.2 include a statement to the effect that the Council Member does not consider there to be any reasonable prospect of reaching an informal resolution of the matter(s) the subject of the complaint.
- 4.3 Subject to clause 4.4, if a complaint is received which purports to be a Behavioural Complaint but which does not meet any one or more of the requirements of this clause 4:
- 4.3.1 The complaint will not be dealt with under this Policy;
 - 4.3.2 the Contact Officer will indicate to the Complainant which requirements of clause 4 have not been met and will invite the Complainant to submit a new complaint;
 - 4.3.3 the Contact Officer may indicate to the Complainant whether there is any available alternative complaint mechanism which the Complainant may wish to utilise.
- 4.4 If the only requirement of clause 4 which a particular complaint does not meet is the time limit in clause 4.1.9, the complaint will be dealt with as a Behavioural Complaint under this Policy (however, the External Complaints Assessor may be required to dismiss the complaint in accordance with clause 7.2).

5. **RECEIPT OF COMPLAINT**

- 5.1 Following receipt of a Behavioural Complaint which complies with the requirement of clause 4, the Contact Officer will refer the complaint to an External Complaints Assessor for a Complaint Assessment.

- 5.2 The Contact Officer will also consider whether the complaint attracts the operation of the Public Interest Disclosure Act 2018 and will advise the External Complaints Assessor of their conclusion in this regard.
- 5.3 The External Complaints Assessor will decide whether to keep the Complainant's identity confidential from the Council Member(s) the subject of the complaint, after having regard to:
 - 5.3.1 the requirements of the Public Interest Disclosure Act 2018 (if applicable); and
 - 5.3.2 whether (and the terms in which) the Complainant has requested that their identity be kept confidential from the Council Member(s) the subject of the complaint; and
 - 5.3.3 any other matters the External Complaints Assessor considers relevant.
- 5.4 The Contact Officer with respect to a particular Behavioural Complaint is:
 - 5.4.1 the Chief Executive Officer of the Council; or
 - 5.4.2 if the Chief Executive Officer has designated another employee of the Council as Contact Officer (whether generally or in relation to the particular complaint)—that other officer; or
 - 5.4.3 if the Chief Executive Officer considers that they are unable to act in relation to the particular complaint and has not appointed another employee under above clause 5.4.2 who may deal with that complaint—the Chief Operating Officer.
- 5.5 The External Complaints Assessor with respect to a particular Behavioural Complaint is a person chosen by the Contact Officer on a case-by-case basis and who:
 - 5.5.1 is not a Council Member or an employee of the Council;
 - 5.5.2 is, in the opinion of the Contact Officer, a person with appropriate qualifications, knowledge, experience or expertise to conduct a Complaint Assessment under this Policy; and
 - 5.5.3 has agreed to perform the role of External Complaints Assessor in relation to the complaint.
- 5.6 As soon as practicable after the Behavioural Complaint has been referred to the External Complaints Assessor, the Contact Officer will inform the Complainant of the identity of the External Complaints Assessor.

6. COMPLAINT ASSESSMENT

- 6.1 The External Complaints Assessor must assess a Behavioural Complaint and must determine that the complaint will be dealt with in one of the following ways:
 - 6.1.1 The complaint is dismissed;
 - 6.1.2 The matter the subject of the complaint will be referred to another body or agency;
 - 6.1.3 There will be mediation, conciliation, arbitration or other dispute or conflict resolution in relation to the complaint;
 - 6.1.4 The Council Member(s) the subject of the complaint is/are required to undertake training, instruction, counselling, mentoring or coaching;
 - 6.1.5 The complaint will be subject to investigation under this Policy.

- 6.2 The External Complaints Assessor may make different determinations with respect to different parts or different aspects of a single Behavioural Complaint.
- 6.3 The External Complaints Assessor is not required to seek the views of the Complainant, or the Council Member(s) the subject of the complaint, before dismissing a Behavioural Complaint under clause 6.1.1 or referring a Behavioural Complaint to another body or agency under clause 6.1.2.
- 6.4 Before making a determination under clause 6.1.3, 6.1.4 or 6.1.5 with respect to a Behavioural Complaint, the External Complaints Assessor must:
 - 6.4.1 provide a copy of the complaint (or relevant part(s) thereof) to the Council Member(s) the subject of the complaint;
 - 6.4.2 indicate the determination which the External Complaints Assessor proposes to make;
 - 6.4.3 in the case of a proposed determination under clause 6.1.5 — indicate whether or not the External Complaints Assessor also proposes they be appointed to be the External Investigator;
 - 6.4.4 invite the Council Member(s) the subject of the complaint to provide any reasons in writing as to why the External Complaints Assessor should not make that determination, and any views as to whether the External Complaints Assessor should make a different determination under the Policy, within a reasonable timeframe (being at least 7 days);
 - 6.4.5 give genuine consideration to any reasons and views provided in response to the invitation under clause 6.4.4.
- 6.5 Further specific requirements for each of the above kinds of determination are set out below in clause 7.
- 6.6 The External Complaints Assessor must communicate their determination to the Contact Officer, who will be responsible for communicating that determination and any reasons for the determination to the Complainant and to the Council Member(s) the subject of the complaint.

7. DETERMINATION OF COMPLAINT ASSESSMENT – SPECIFIC REQUIREMENTS

Dismissal of Complaint

- 7.1 The External Complaints Assessor may dismiss a Behavioural Complaint on any one or more of the following grounds:
 - 7.1.1 the subject matter of the complaint is trivial;
 - 7.1.2 the complaint is frivolous or vexatious or is not made in good faith;
 - 7.1.3 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;
 - 7.1.4 that, 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;

- 7.1.5 the subject matter of the complaint has been or is already being investigated, whether by the Council or another person or body;
 - 7.1.6 the Council has dealt with the complaint adequately;
 - 7.1.7 in cases where the Complainant is a Council Member – the External Complaints Assessor is not satisfied that the Complainant made adequate attempts to reach an informal resolution of the matters the subject of the complaint with the Council Member(s) the subject of the complaint;
 - 7.1.8 the External Complaints Assessor is satisfied that there is other good reason why it is appropriate to dismiss the complaint.
- 7.2 The External Complaints Assessor must dismiss a Behavioural Complaint if:
- 7.2.1 the complaint was made out of time; and
 - 7.2.2 the External Complaints Assessor is of the opinion that, in all the circumstances of the case, there is no proper basis as to why the complaint should be entertained out of time.
- 7.3 The External Complaints Assessor must provide written reasons for any decision to dismiss a Behavioural Complaint.

Referral to another agency or body

- 7.4 The External Complaints Assessor may determine that a Behavioural Complaint will be referred to an appropriate body or authority external to the Council, if is satisfied that there is good reason for such a referral to be made.
- 7.5 Without limiting clause 7.4:
- 7.5.1 if the External Complaints Assessor forms a reasonable suspicion of corruption in public administration within the meaning of the directions and guidelines issued under the Independent Commission Against Corruption Act 2012 in relation to the matters the subject of a Behavioural Complaint, the complaint must be referred to the Office for Public Integrity.
 - 7.5.2 If the External Complaints Assessor forms a reasonable suspicion of misconduct or maladministration in public administration within the meaning of the directions and guidelines issued under the Ombudsman Act 1972 in relation to the matters the subject of a Behavioural Complaint, the complaint may be referred to the Ombudsman.
- 7.6 The Contact Officer is responsible for:
- 7.6.1 making any referral to an external authority on behalf of the Council; and
 - 7.6.2 notwithstanding clause 6.6—determining whether the Complainant and/or the Council Member(s) the subject of the complaint can or should be informed of the referral (including seeking guidance from the relevant external authority as to whether this is permissible).

Mediation, conciliation, arbitration or other dispute or conflict resolution

- 7.7 If the External Complaints Assessor determines that there will be mediation, conciliation, arbitration or other dispute or conflict resolution (Dispute Resolution) in relation to a Behavioural Complaint:

- 7.7.1 the External Complaints Assessor will liaise with the Contact Officer in order to make arrangements for Dispute Resolution, including identifying and (if necessary) engaging a suitable mediator, conciliator, arbitrator or other facilitator, and for the completion of any documentation in order to facilitate the Dispute Resolution;
- 7.7.2 the External Complaints Assessor must determine who is required to attend and participate in Dispute Resolution, and whose attendance and participation (if anyone) is optional;
- 7.7.3 if the External Complaints Assessor determines that a Council Member is required to attend and participate in Dispute Resolution, and the Council Member does not do so, that Council Member fails to comply with this Policy; and
- 7.7.4 if the External Complaints Assessor determines that a Complainant who is not a Council Member is required attend and participate in Dispute Resolution, and the Complainant does not do so, the External Complaints Assessor may dismiss the complaint on the basis that it is unnecessary or unjustifiable for the Council to deal with or continue to deal with the complaint in accordance with clause 7.1.4.
- 7.8 If the Complainant is not a party to the Dispute Resolution, the Contact Officer is responsible for communicating the outcome of the Dispute Resolution process to the Complainant.
- 7.9 A failure by a Council Member to comply with an agreement reached following Dispute Resolution constitutes misbehaviour under section 262E of the LG Act.

Training, instruction, counselling, mentoring or coaching

- 7.10 If the External Complaints Assessor determines that the Council Member(s) the subject of the complaint is/are required to undertake training, instruction, counselling, mentoring or coaching:
 - 7.10.1 the External Complaints Assessor will liaise with the Contact Officer in order to make arrangements, including identifying and (if necessary) engaging a suitable training, instruction, counselling, mentoring or coaching service provider;
 - 7.10.2 the External Complaints Assessor must determine with reasonable particularity the nature and duration of required training, instruction, counselling, mentoring or coaching;
 - 7.10.3 if a Council Member who is required to attend and participate in training, instruction, counselling, mentoring or coaching does not do so, that Council Member fails to comply with this Policy.

Investigation

- 7.11 If the External Complaints Assessor determines that a Behavioural Complaint will be subject to investigation under this Policy:
 - 7.11.1 the External Complaints Assessor will liaise with the Contact Officer in order to make arrangements to engage a suitable External Investigator; and
 - 7.11.2 the investigation will be conducted by the External Investigator in accordance with clause 8.
- 7.12 The External Investigator with respect to a particular Behavioural Complaint is a person chosen by the External Complaints Assessor on a case-by-case basis and who:

- 7.12.1 is not a Council Member or an employee of the Council;
- 7.12.2 is, in the opinion of the External Complaints Assessor, a person with appropriate qualifications, knowledge, experience or expertise to conduct an investigation under this Policy; and
- 7.12.3 has agreed to perform the role of External Investigator in relation to the complaint.
- 7.13 To avoid doubt:
 - 7.13.1 the External Complaints Assessor may also be appointed the External Investigator (noting however that the External Complaints Assessor must indicate to the Council Member(s) the subject of the complaints that they propose to be External Investigator, prior to a determination being made, in accordance with clause 6.4.3);
 - 7.13.2 the External Complaints Assessor may have regard to all relevant information, including information which obtained as part of the Complaint Assessment, when undertaking their investigation.

8. INVESTIGATION

- 8.1 If the outcome of the Complaint Assessment with respect to a Behavioural Complaint is that the complaint will be investigated, the External Investigator will conduct an investigation of the complaint however the External Investigator sees fit, subject however to clause 2.6, and the following subclauses.
- 8.2 The External Investigator may conduct interviews with and/or seek written responses or other documents or information from the Complainant, the Council Members(s) the subject of the complaint, and any other witnesses.
- 8.3 If the External Investigator, acting reasonably, determines that a Council Member is required to attend and participate in an interview and/or to provide written responses or other documents or information in the course of the investigation, and the Council Member does not do so, that Council Member fails to comply with this Policy.
- 8.4 The External Investigator will liaise with the Contact Officer in order to obtain any other records or information which is or may be held by the Council and which may be relevant to the investigation (and the Contact Officer is authorised to supply such records and information as may reasonably be required by the External Investigator).
- 8.5 The External Investigator must in the course of their investigation (unless clause 8.9 applies):
 - 8.5.1 prepare a draft report summarising the matter and setting out their provisional findings, conclusions and recommendations;
 - 8.5.2 provide the Complainant and the Council Members(s) the subject of the complaint with a reasonable opportunity to provide written submissions to the External Investigator and in response to that draft report; and
 - 8.5.3 give genuine consideration to any submissions provided by the Complainant and the Council Members(s) the subject of the complaint before finalising their report.
- 8.6 The External Investigator's final report must include:
 - 8.6.1 A summary of the Behavioural Complaint;

- 8.6.2 All relevant material findings of fact made by the External Investigator with respect to the matters alleged in the complaint;
- 8.6.3 Conclusions as to whether the alleged breach, or each alleged breaches, of the Behavioural Standards or the Behavioural Support Policy is, or is not, substantiated on the balance of probabilities;
- 8.6.4 If a breach of the Behavioural Standards or the Behavioural Support Policy is substantiated (with respect to one or more Council Members the subject of the complaint) — one or more of the following recommendations:
 - (a) That no action be taken with respect to one or more Council Members the subject of the complaint;
 - (b) That one or more Council Members the subject of the complaint undertake training, instruction, counselling, mentoring or coaching; or
 - (c) That action be taken under section 262C of the LG Act against one or more Council Members the subject of the complaint, namely that the Council:
 - (i) pass a censure motion in respect of the Council Member;
 - (ii) require the member to issue a public apology (in a manner determined by the Council);
 - (iii) require the member to undertake a specified course of training or instruction;
 - (iv) remove or suspend the member from one or more offices held in the member's capacity as Council Member or by virtue of being a Council Member (other than the office of Council Member).
- 8.7 If the External Investigator's final report recommends that action be taken under section 262C of the LG Act against some Council Members the subject of the complaint, but not others, the External Investigator must divide their final report in such a way as to enable the Council to consider, in public, whether to take action against certain Council Members for the purposes of section 262C(2) of the LG Act, without disclosing any findings in relation to other Council Members.
- 8.8 The External Investigator must provide their final report to the Contact Officer, who will be responsible for communicating that final report to the Complainant and to the Council Member(s) the subject of the complaint (and, if required under this Policy, to the Council).
- 8.9 The External Investigator may, if satisfied that there is good reason to do so, determine that no further action will be taken with respect to the complaint, prior to finalising the investigation. With respect to such a determination:
 - 8.9.1 the External Investigator is not required to seek the views of the Complainant, or the Council Member(s) the subject of the complaint, before making such a determination;
 - 8.9.2 the External Investigator must provide written reasons for any such determination; and
 - 8.9.3 the Contact Officer is responsible for communicating to the Complainant and to the Council Member(s) the subject of the complaint the decision and reasons of the External Investigator with respect to such a determination.

9. **STEPS FOLLOWING INVESTIGATION**

- 9.1 If the External Investigator's final report concludes, on the balance of probabilities, that there has been no breach of the Behavioural Standards or the Behavioural Support Policy on the part of the Council Member(s) the subject of the complaint:
 - 9.1.1 the final report will not be provided to the Council unless the Council Member(s) the subject of the report requests for this to occur (which, in the case of multiple Council Members, must be a unanimous request); and
 - 9.1.2 if the final report is provided to the Council pursuant to a request under clause 9.1.1:
 - (a) the name of the Complainant will be redacted from the final report, unless this would not meaningfully prevent the identity of the Complainant from being ascertained or the Complainant requests that their name not be redacted; and
 - (b) it is a matter for the Council as to whether the report will be considered in public, or in confidence, at a meeting of the Council.
- 9.2 If the External Investigator's final report concludes, on the balance of probabilities, that there has been a breach of the Behavioural Standards or the Behavioural Support Policy on the part of the Council Member(s) the subject of the complaint:
 - 9.2.1 the final report will be provided to the Council;
 - 9.2.2 the name of the Complainant will be redacted from the final report, unless this would not meaningfully prevent the identity of the Complainant from being ascertained or the Complainant requests that their name not be redacted;
 - 9.2.3 if the Council determines to take action under section 262C of the LG Act against the Council Member(s) the subject of the complaint, a report on the matter must then be considered in public at a meeting of the Council.
 - 9.2.4 if the Council does not decide to take action under section 262C of the LG Act against the Council Member(s) the subject of the complaint, it is a matter for the Council as to whether the report will be considered in public or in confidence at a meeting of the Council.

10. **CONFIDENTIALITY**

- 10.1 Behavioural Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are considered by the Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.
- 10.2 A person who has access to information about a Behavioural Complaint (including the identify of the Complainant or the Council Member(s) complained about) must not directly, or indirectly disclose to any person (including to a Council Member) that information except:
 - 10.2.1 to deal with the complaint;
 - 10.2.2 where required by law;
 - 10.2.3 to obtain legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor;

- 10.2.4 where the disclosure is made to an external party investigating the complaint, or a mediator, conciliator, arbitrator or other facilitator engaged in accordance with this Policy; or
- 10.2.5 where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

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:

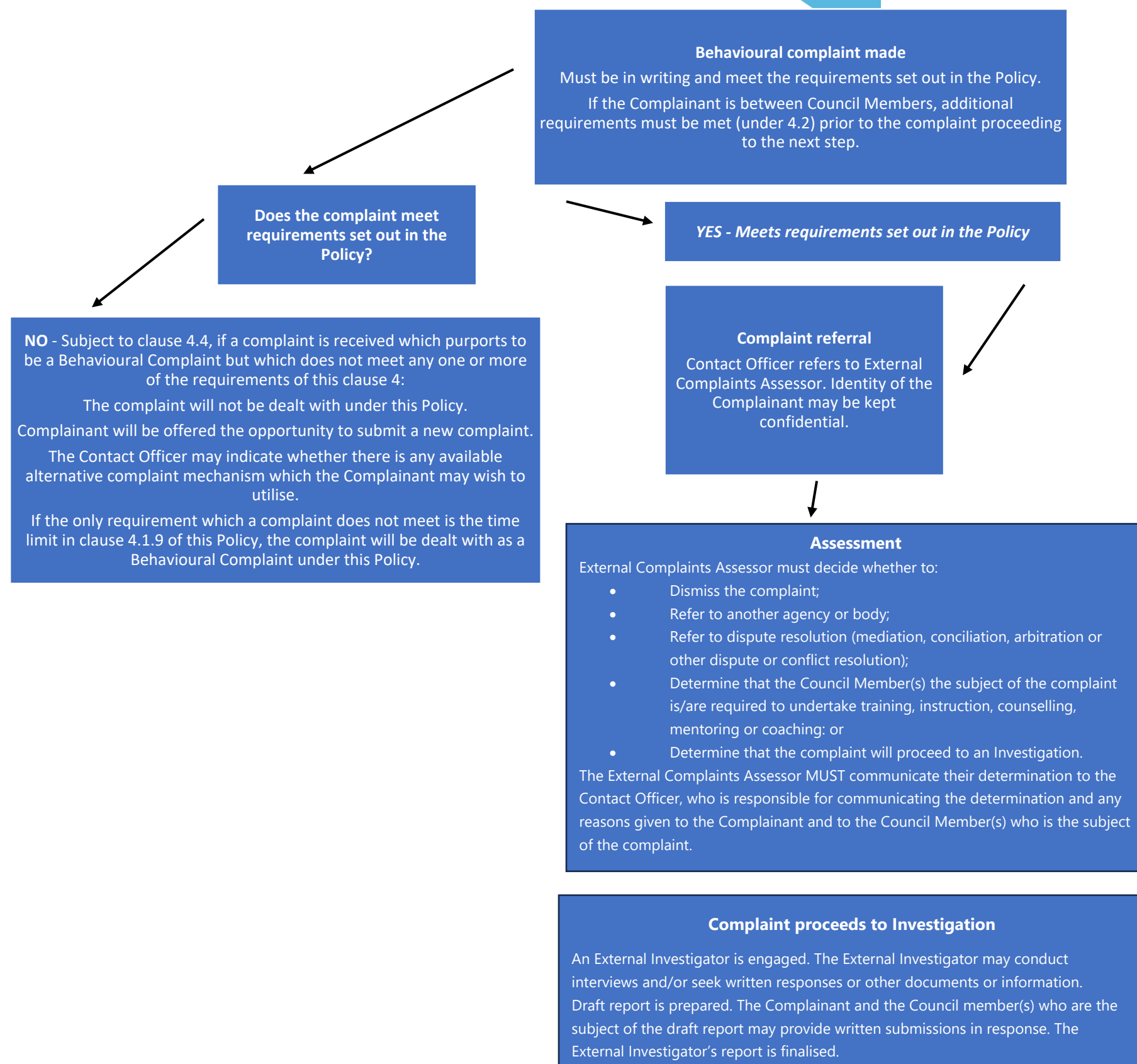
Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2023/177822	Council	12/12/2023	Adoption of City of Adelaide Behavioural Management Policy in accordance with s262B of the Local Government Act 1999
ACC2024/27136	Council	27/02/2024	Recission of the Behavioural Management Policy and adoption of the amended Council Member Complaints Policy in accordance with s262B of the Local Government Act 1999

Contact:

For further information contact the Governance & Strategy Program

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Appendix 1 – Behavioural matters Flow Chart



No Breach Found

If the External Investigator final report concludes on the balance of probabilities that there has been no breach of the Behavioural Standards or the Behavioural Support Policy then a final report will not be provided to Council (unless the Council Member who is the subject of the complaint requests this to occur).

A Breach has been Found

If the External Investigator final report concludes on the balance of probabilities that a breach of the Behavioural Standards or the Behavioural Support Policy has occurred then a final report will be provided to Council.

- The name of the Complainant will be redacted from the final report, unless the identity of the Complainant can be ascertained or the Complainant requests their name not to be redacted
- If the Council determines to take action under section 262C of the LG Act, the report MUST be considered in a public meeting of Council
- If the Council determines not to take action under section 262C of the LG Act, the report can be considered in a public meeting or in confidence at a meeting of Council

Council action could include:

- Censure motion;
- Public apology;
- Mandatory training or
- Suspension from certain roles.