

CONFIDENTIAL - Code of Conduct

Originating Officer	Unit Manager Governance and Records - Jaimie Thwaites
Corporate Manager	N/A
General Manager	Acting General Manager Corporate Services - Kate McKenzie
Report Reference	GC180724F02

Confidential**Confidential Motion**

1. Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following Abby Dickson, Acting Chief Executive Officer; Kate McKenzie, Manager Corporate Governance and Jaimie Thwaites, Unit Manager Governance and Records be excluded from the meeting where the Council will receive and consider information pertaining to the item Code of Conducts upon the basis it is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential on the grounds that the report contains information relating to personnel matters.

REPORT OBJECTIVE

The purpose of this report is to seek Council's resolution on the next steps to take in addressing a complaint regarding the conduct of Councillor Kerry.

EXECUTIVE SUMMARY

Mayor Hanna has submitted a Code of Conduct Complaint against Councillor Kerry regarding an recent incident with a staff member. A copy of his complaint is attached in **Appendix 1**.

Council is asked to consider the complaint in line with the 'Elected Member Code of Conduct Procedure for the Investigating Complaints' and advise how it wishes to deal with the matter.

RECOMMENDATION

That Council determines:

1. The code of conduct has not been breach and the matter is dismissed

or

1. That Section X X X of the Code of Conduct has been breached and no further action is taken

or

1. That Section XXX of the Code of Conduct has been breach and orders that Councillor Kerry X

or

1. Further information is required and the matter be further investigated by the Local Government Governance Panel or an independent investigator.
2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, any attachment to this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2018.

DISCUSSION

On 11 July 2018, The Mayor submitted a code of conduct complaint against Councillor Kerry in relation to an alleged incident that occurred between Councillor Kerry and a staff member. A copy of the complaint is attached as **Appendix 1**. The complaint alleges that Councillor Kerry has breached the following sections of the Code of Conduct for Council Members:

2.11 Not bullying or harass Council Staff

2.14. Refrain from direction or influencing Council staff with respect to the way in which these employees perform their duties

Code of Conduct

The Code of Conduct for Council Members (the Code) is in three parts:

- Behaviour which falls under part 2 of the Code
- Misconduct which triggers action under Part 3 of the code, or
- Criminal or corrupt behaviour.

As noted above, the complaint specifies what sections the alleged breaches have occurred under. A copy of the Code is attached as **Appendix 2**

Council Considerations:

Pursuant to the Elected Member Code of Conduct Procedure for Investigating Complaints (the Procedure), Council must determine if this complaint relates to:

- Behaviour which falls under part 2
- Misconduct which triggers action under part 3 of the Code or
- Criminal or Misconduct

In undertaking the preliminary assessment of the a complaint, the council may have regard to the following considerations;

- whether the complaint is a "code of conduct complaint"
- whether the complaint is trivial, frivolous, vexatious or not made in good faith,
- whether the complaint discloses prima facie evidence of a breach of the code,
- whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
- whether there is or was an alternative and satisfactory means of redress available to
- the complainant in relation to the conduct complained of,
- whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
- whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- whether the conduct complained of forms part of a pattern of conduct,
- whether there were mitigating circumstances giving rise to the conduct complained of,

- the seriousness of the alleged conduct,
- the significance of the conduct or the impact of the conduct for the council,
- how much time has passed since the alleged conduct occurred, or
- such other considerations that the Council considers may be relevant to the assessment of the complaint.

Section 4 of the Procedure provides Council with four options to consider a matter:

1. Seek to resolve the matter internally, including through conciliation or mediation,
2. Referral the matter to an independent person of Councils choice for investigation,
3. Referral to the Local Government Governance Panel, or
4. Dismiss the allegation.

Please note that if Council wishes to dismiss the allegation, they must be certain that no breach has occurred.

A copy of the Procedure is attached as **Appendix 3**.

Options to resolve this matter:

The question for Council to consider is has Councillor Kerry breached the Code of Conduct due to his behaviour or conduct?

If yes:

Council may resolve the matter, if considered minor in nature, internally with the agreement of both parties.

Mediation would be offered to both parties and if the matter is then resolved to the satisfaction of both parties. The matter would be publicly reported to a meeting of Council. If the matter cannot be resolved in this manner, it would require a report back to Council to consider the matter further.

OR

Council may resolve to refer the matter to the Ombudsman or Office for public Integrity for investigation. If this option is progressed, this report and the referral will continue to be confidential until such time as a final report is received.

If no:

Council may resolve to dismiss the matter if Council is of the opinion that the Code of Conduct has not been breached. This dismissal (including the reasoning for dismissal) would be recorded in the minutes. The minutes together with this report may continue to be confidential. The confidentiality should be considered on a case by case basis and take into consideration the view of the subject/s (individual/s) of the complaint.

If unsure:

Council may resolve to forward the Code of Conduct to an independent person for further investigation. If this option is progressed, this report and the referral will continue to be confidential until such time as a final report is received.

OR

Council could refer the complaints to the Local Government Governance Panel. The Panel Manager would conduct an initial assessment and may form a provisional conclusion or else recommend the matter proceed to a full investigation. If this option is progressed, this report and the referral will continue to be confidential until such time as a final report is received.

If Council wishes to refer the matter to the Local Government Governance Panel for assessment, the Panel requires two forms to be completed. Form One is a referral form the Council which will be completed by the Manager Corporate Governance and Form Two is provided to the Elected Member who is the subject of a complaint to provide the person 'accused' a preliminary opportunity to respond to the complaint. The form is not compulsory and the assessment can progress if the elected member does not complete the form,. Please note that where there are disputes as to the facts, context or circumstances, it is usually the case that

the matter will be recommended for investigation to resolve the issue. It is the secondary process of investigation that those involved will be given a full opportunity to explain their position. A copy of the two forms are included within this report, as **Appendix 4** and **Appendix 5**.

Findings:

In accordance with Section 2.25 of the Code of Conduct for Council Members if, following investigation under the Procedure, a breach of Part 2 of the Code is found, the Council may, by resolution:

2.25.1 Take no action;

2.25.2 Pass a censure motion in respect of the Council member;

2.25.3 Request a public apology, whether written or verbal;

2.25.4 Request the Council member to attend training on the specific topic found to have been breached;

2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);

2.25.6 Request the member to repay monies to the Council.

Attachment

#	Attachment	Type
1	Appendix 1. Code of conduct complaint	PDF File
2	Appendix 2. EM Code of Conduct	PDF File
3	Appendix 3. Elected-Member-Code-of-Conduct-Procedure-for-investigation-complaints-270318	PDF File
4	Appendix 4. TEMPLATE - Form 1 - Code of Conduct Complaint Form	PDF File
5	Appendix 5. TEMPLATE - Form 2 - Response to a Code of Conduct Complaint form	PDF File

APPENDIX 1**Code of conduct complaint: Councillor Kerry**

It has been reported to the Mayor that Councillor Nick Kerry has been bullying and threatening a member of staff, [REDACTED]. It is alleged that the threats have included both termination of employment and expressing a wish that the employee come to physical harm. The background for this is a decision by [REDACTED] to refuse certain comments for publication, contributed by Councillor Kerry for his City Limits opinion piece. The allegation is that bullying communications have been carried on over a period of some months, but recently intensified.

To the extent that evidence of a propensity is useful, it may be noted that there was an allegation made against Councillor Kerry in 2015, that he told a staff member (in the customer service area) that he would ensure the employment of a staff member, [REDACTED], would be terminated due to the views he had formed while an Australian Services Union official. The Mayor raised the allegation with Councillor Kerry and cautioned him at the time, but the matter was not brought to Council's attention.

It is recommended that Council initiate an investigation of the facts and then consider a possible breach of the Code of Conduct, 2.11 (bullying a staff member) and 2.14. (attempt improperly influence a staff member).

CODE OF CONDUCT FOR COUNCIL MEMBERS

Local Government Act 1999: Section 63 (1)

NOTICE under Clause 3.10 of the Code of Conduct for Council Members published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.

For the purposes of Clause 3.10 of the Code of Conduct for Council Members adopted for the purposes of Section 63 (1) of the Local Government Act 1999 and published in the *Gazette* on the day on which this Notice is made, the value of \$100 is specified.

Dated 18 August 2013.

JOHN RAU, Deputy Premier, Minister for Planning

Code of Conduct for Council Members

*Published by the Minister for Planning for the purposes of Section 63 (1) of the
Local Government Act 1999.*

This Code of Conduct is to be observed by all Council members.

Council members must comply with the provisions of this Code 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 standards in the Code at all times.

PART 1—PRINCIPLES

1. Higher principles—Overarching Statement

This part does not constitute separate enforceable standards of conduct.

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

PART 2—BEHAVIOURAL CODE

2. Behavioural Code

In line with 'Part 1—Higher Principles' of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

General behaviour

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

Responsibilities as a member of Council

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

Relationship with fellow Council Members

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

Relationship with Council staff

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

Requirement to report breach of Part 3

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

Complaints

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

Findings

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
- 2.25.1 Take no action;
 - 2.25.2 Pass a censure motion in respect of the Council member;
 - 2.25.3 Request a public apology, whether written or verbal;
 - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
 - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
 - 2.25.6 Request the member to repay monies to the Council.

PART 3—MISCONDUCT

3. Misconduct

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the Local Government Act 1999. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the Local Government Act 1999, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

Member duties

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

Gifts and benefits

3.7 Council members must not:

- 3.7.1 Seek gifts or benefits of any kind;
 - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
 - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the Local Government (Elections) Act 1999.

- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
- 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
 - 3.9.1.2 Council work related events such as training, education sessions workshops and conferences;
 - 3.9.1.3 Council functions or events;
 - 3.9.1.4 Social functions organised by groups such as Council committees and community organisations.
 - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the *Government Gazette* by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

Register of Interests

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

Campaign donation returns

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

Conflict of interest

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

Misuse of Council resources

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

Repeated or sustained breaches of Part 2

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

APPENDIX—CRIMINAL MATTERS

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outlined in this Appendix should be reported to the Office for Public Integrity in the first instance.

Breaches of the Local Government Act 1999

Member duties

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (3)).

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (4)).

Provision of false information

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the Local Government Act 1999, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

Restrictions on publication of information from Register of Interests

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

Breaches of other Acts

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the Independent Commissioner Against Corruption Act 2012, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring benefit on basis of public office;
- offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.

Elected Member Code of Conduct Procedure For Investigating Complaints



1. POLICY

- 1.1 The Code of Conduct for Council Members is set by regulation and applies to all Elected Members across local government in South Australia. Depending on the nature of an alleged breach of the Code, a matter may be subject to a Council investigation or an investigation by the Ombudsman or Office of Public Integrity (OPI). This procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. A copy of the Code is available on the City of Marion's website www.marion.sa.gov.au

2. ALLEGED BREACH

- 2.1 Breaches of the Code of Conduct may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Elected Members but are referred to in the Appendix of the Code of Conduct.
- 2.2 Where an alleged breach occurs the complainant should report the allegation, in writing to the Chief Executive Officer. The allegation should:
 - 2.2.1 Be specific
 - 2.2.2 Provide as much supporting evidence as possible to assist an investigation
 - 2.2.3 Provide the name of the Elected Member who has allegedly breach the Code.
- 2.3 Complainants can, at any time, take the alternative option of lodging the complaint with the Ombudsman or Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.
- 2.4 On receipt of a complaint, the CEO will be responsible for advising the Mayor and referring the complaint to Council.
- 2.5 When no allegations have been substantiated, Council will consider the matter in confidence.
- 2.6 The Council will consider the matter, in conjunction with legal advice if required, and determine whether the complaint relates to:
 - 2.6.1 Behavioural which falls under Part 2 of the Code
 - 2.6.2 Misconduct which triggers action under Part 3 of the Code, or
 - 2.6.3 Criminal or Corrupt behaviour.
- 2.7 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.
- 2.8 As soon as practical after the receipt of an allegation and prior to the complaint being referred to Council, the Mayor will advise the Elected Member who is the subject of the

complaint and its substance. If the complaint is about the Mayor, the Deputy Mayor will undertake this function.

- 2.9 A copy of the complaint will be provided to the Elected Member and will also be provided to confidentially Council. This may be done in person, via email and/or a Council report.

3. COMPLAINT ASSESSMENT

- 3.1 In undertaking the preliminary assessment of a complaint, the Council may have regard to the following considerations:
- a) whether the complaint is a “code of conduct complaint”,
 - b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
 - c) whether the complaint discloses prima facie evidence of a breach of the code,
 - d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
 - e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
 - f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
 - g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
 - h) whether the conduct complained of forms part of a pattern of conduct,
 - i) whether there were mitigating circumstances giving rise to the conduct complained of,
 - j) the seriousness of the alleged conduct,
 - k) the significance of the conduct or the impact of the conduct for the council,
 - l) how much time has passed since the alleged conduct occurred, or
 - m) such other considerations that the Council considers may be relevant to the assessment of the complaint.

4. ALLEGED BREACH UNDER PART 2

Having regard to the seriousness of the allegation and information provided, the Council will:

- a) seek to resolve the matter internally, including through conciliation or mediation,
- b) refer the matter to an independent person of Council's choice,
- c) refer the complaint to the Local Government Governance Panel or
- d) dismiss the allegation.

4.1 Internal Response

- 4.1.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties.
- 4.1.2 Council may request that the Mayor facilitate a meeting with the complainant and the Elected Member and may seek mediation and conciliation between the

parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also an Elected Member.

- 4.1.3 The Mayor must ensure that the principles of natural justice and procedural fairness are observed.
- 4.1.4 Where the matter is resolved by the Mayor to the satisfaction of all the parties the matter will be closed and no further action will be taken. The Mayor will send written confirmation to all the parties confirming that the matter has been resolved and provide report the outcome to a public meeting of the Council if appropriate.

Where the matter cannot be resolved in this manner, it will be referred back to Council for further consideration.

- 4.1.5 Where the Mayor is the complainant or the subject of the complaint the internal response will be facilitated by the Deputy Mayor or other Elected Member as resolved by Council.
- 4.1.6 If Council determines to resolve a complaint internally, it must be satisfied that it has all relevant facts have been obtained. If Council has outstanding questions, relating to the matter, these must be addressed prior to finalising the complaint.

4.2 Referral to independent person of Council's choice

- 4.2.1 A complaint may be referred by Council to an independent person for investigation.
- 4.2.2 Complaints to an independent person will specify:
 - The grounds of the complaint
 - Set out the circumstances of the complaint
 - Be accompanied by any other material that is available to support the complaint.
- 4.2.3 The independent person must ensure that the principles of natural justice and procedural fairness are observed.
- 4.2.4 Following the investigation, a report will be prepared by the independent person and will be provided to Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.3 Referral to the Local Government Governance Panel

- 4.3.1 Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel's procedures is available on the Governance Panel webpage on the LGA's website under Rules of Engagement. [www.lga.sa.gov.au]
- 4.3.2 The matter will be assessed initially by the Panel Manager who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.

- 4.3.3 A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. The Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding. In these circumstances, Council will consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.
- 4.3.4 Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.4 Dismiss the allegation.

- 4.4.1 The Council may choose to dismiss a matter only in the circumstances where it is evident that the complaint is frivolous, vexatious, misconceived or lacking in substance. The Council must provide reasoning for undertaking this action.

5. REPORTING TO COUNCIL

- 5.1 At the conclusion of an investigation, Council must resolve if a breach of part 2 of the Code is found, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
 - 5.1.1 Take no action and provide the reasons as to why
 - 5.1.2 Pass a censure motion in respect of the Elected Member
 - 5.1.3 Request a public apology, whether written or verbal
 - 5.1.4 Request the Elected Member to attend training on the specific topic found to have been breached
 - 5.1.5 Resolve to move or suspend the Elected Member from a position within the Council (not including the Members Elected position on Council)
 - 5.1.6 Request the member to repay monies to the Council.

6. APPEALS

- 6.1 The Council will not enter into any process of appeal in relation to Part 2 of the Code. If an Elected Member is aggrieved by the process and or outcome, they may refer the matter to the Ombudsman for review.

7. PART 3 – MANDATORY CODE (MISCONDUCT)

- 7.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or Office of Public Integrity. Alleged breaches of this Part made to Council or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
- 7.2 Under the Code of Conduct, an Elected Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office of Public Integrity.

- 7.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.
- 7.4 A failure of an Elected Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 7.5 A failure of an Elected Member to comply with a finding of an investigation under this procedure may be referred for investigation under Part 3 of the Code.
- 7.6 Repeated or sustained breaches of Part 2 of the Code by the same Elected Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 7.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

8. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT

- 8.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act 1999* must be reported to the Office of Public Integrity.
- 8.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

9. FURTHER INFORMATION

Adopted by Council:	27 March 2018
Next Review:	November 2019 (within 12 months of general election)
Version:	1.1
Previous Version:	Adopted 24 June 2014
Owner:	Manager Corporate Governance
Applicable Legislation:	Local Government Act 1999 (sections 59-63) Local Government (General) Variation Regulations 2013 Independent Commissioner against Corruption Act 2012
Related Documents:	Code of Conduct for Council Members Directions of Guidelines issued by ICAC
Related Policies:	Caretaker Policy

Form 1—Code of Conduct Complaint

Code of Conduct for Council Members 2013 - Part 2 – Behavioural Code

This is a complaint about the conduct of a council member under the *Code of Conduct for Council Members 2013 Part 2 – Behavioural Code* ('**Code of Conduct**').

1. Council

1.1 Details of Council and authorized person referring the Complaint:

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)			
Surname			
Council			
Position			
Postal address			
Suburb			
		Postcode	
Phone number		Fax number	
Email address			

2. Complainant

2.1 These are the details of the person who has made the complaint.

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)			
Surname			
Position			
Council Ward			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

3. Person(s) subject to the complaint

3.1 These are the details of the person(s) alleged to have breached the *Code of Conduct*. Provide all their details, where possible.

Name of person(s) subject to the complaint			
Position			
Council Ward			
Postal address			
Suburb			
		Postcode	
Phone number		Fax number	
Email address			

4. Alleged Complaint

- 4.1 Describe the behavior, events or incidents that you think amount to a breach of Part 2 of the Code of Conduct for Elected Members.
- 4.2 Set out in numbered paragraphs a brief summary of what occurred, including specific details of conduct.
- 4.3 You must include a reference to which part(s) of the *Code of Conduct* that you believe has been breached.

For each of the examples you provide in this question, the following should be addressed:

- What happened?
- Who was involved in the example, including any witnesses?
- Was the incident reported?
- How many times has this happened?
- How long ago did the event occur – provide dates (even approximate dates) if possible.
- When was the last time this behaviour happened?
- Do you have any documentation to support the events? If so, please attach the documentation in date order



Attach additional pages or supplementary documents if necessary

5. Repeated Part 2 Breaches

- 5.1 The Code states that repeated or sustained breaches of the Behavioural Code may be a breach of Part 3 of the Code that we will not investigate. Has Council considered a referral to the Ombudsman?**

☐ Yes — please provide details

☐ No

6. Dispute Resolution Steps Taken

6.1 Please attach a copy of the relevant Complaints Handling procedure.

6.2 Have any other steps been taken to resolve this complaint? For example, counseling, mediation or conciliation.

☐ Yes — please provide details

☐ No

7. Outcome

7.1 What outcome or action has the Complainant asked for as a result of this complaint?

8. Disclaimer

By completing this form, it is acknowledged that:



- 8.1** Information provided may be disclosed to the other parties to the complaint and to other parties as part of the complaint determination process.
- 8.2** De-identified information may also be used for statistical, research or qualitative purposes or to otherwise improve complaint handling services.

Form completed by:

Name	
Date	

Form 2— Response to a Code of Conduct Complaint

Code of Conduct for Council Members 2013 - Part 2 – Behavioural Code

This is a response by a Council Member in relation to a complaint about their conduct under the *Code of Conduct for Council Members 2013* Part 2 – Behavioural Code ('*Code of Conduct*').

1. Complainant

- 1.1** These are the details of the person who is making the complaint.
This information can be found in the Code of Conduct Complaint Form
1.

First name(s)	
Surname	
Position	
Council Ward	
Date of Complaint	

2. Person subject to the complaint

- 2.1** These are the details of the Council Member (you) who is the subject of the complaint.

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)			
Surname			
Position			
Council Ward			
Postal address			
Suburb			
		Postcode	
Phone number		Fax number	
Email address			



3. Response to Complaint

3.1 What is your understanding of the complaint made against you?

3.2 What is your response the complaint that you breached the Behavioural Code in Part 2 of the *Code of Conduct*.

- 3.2.1 You should state whether you believe your conduct has breached the Behavioural Code and respond to each of the examples of breach alleged in the Complaint.



Attach additional pages or supplementary documents if necessary
Attach relevant documents

4. Disclaimer

By completing this form, it is acknowledged that:

- 4.1** Information provided may be disclosed to the other parties to the complaint and to other parties as parties as part of the complaint determination process.
- 4.2** Non-identifying information may also be used for statistical, research or qualitative purposes or to otherwise improve complaint handling procedures.

Form completed by:

Name	
Date	