

# 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](http://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](http://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