

## POLICY DOCUMENT

9.63.19

<b>Policy Name</b>	<b>COMPLAINT HANDLING UNDER CODE OF CONDUCT POLICY</b>
<b>Policy No</b>	<b>9.63.19</b>
<b>Reviewed By</b>	Mandy Bowyer Executive Assistant - Communications
<b>CEO Authorisation</b>	Rob Donaldson CEO
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### 1. INTRODUCTION

The Code of Conduct for Council Members is made by regulation. The Code of Conduct applies to all Council Members across the Local Government sector and may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue. The Code of Conduct also contains sanctions which may be imposed by Council on a Council Member where a breach of the Code is found to be sustained.

### 2. PURPOSE

This policy sets out the processes for handling complaints relating to the [Code of Conduct for Council Members](#).

### 3. BREACHES OF THE CODE OF CONDUCT

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 Council Members but are referred to in the appendix to the Code. This policy covers referral of these types of complaints to other agencies.

### 4. COMPLAINT HANDLING PROCESS

#### 4.1. *Alleged Breach*

When an alleged breach occurs the complainant should report the allegation in writing, to the Council, addressed to the CEO;

The allegation needs to be specific and include:

- all available evidence that supports the allegation(s) of breach; and
- the name of the member who allegedly breached the Code.

Complainants can, at any time, take the alternative option of lodging the complaint with the Office of Public Integrity (OPI) which will direct the complaint in accordance with the Independent Commissioner Against Corruption Act 2012 (ICAC Act).

#### **4.2. Receipt and Referral of Complaints**

The CEO will be responsible for receiving and managing the referral of a complaint and will:

- deliver the complaint to the Mayor (which includes any person acting in the Office of Mayor), (in the case of a complaint against a Council Member); or
- deliver the complaint to the Deputy Mayor (in the case of a complaint against the Mayor).

Within three days of receipt of an allegation, the Council Member who is the subject of the complaint will be notified by the Mayor/or Deputy Mayor of the complaint and provided with a copy of the complaint.

#### **4.3. Complaint Determination**

The Principal Member (or deputy) will determine whether the complaint relates to:

- Behaviour which falls under Part 2 of the Code;
- Misconduct which triggers action Under Part 3 of the Code; or
- Criminal or corrupt behaviour.

Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately. (See section 8 and 9 of this policy)

Council will maintain jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Council Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this part.

The Mayor/Deputy Mayor will make a determination of the seriousness of the allegation and information provided and may:

- a) Seek to resolve the matter internally, including through conciliation or mediation;
- b) Refer the complaint to the Local Government Governance Panel; or
- c) Dismiss the allegation

The Council Member and the complainant will be advised of the determination and manner in which the Mayor/Deputy Mayor intends to deal with the complaint.

### **5. ALLEGED BREACH OF PART 2 – INTERNAL RESPONSE**

On agreement of the persons involved matters of minor nature will be dealt with internally. The Mayor/Deputy Mayor may hold meetings with the complainant and the Council Member in an attempt to resolve the matter and may seek mediation or conciliation between the persons involved.

The Mayor/Deputy Mayor must ensure that the principles of natural justice are observed.

Where the matter is resolved by the Mayor/Deputy Mayor to the satisfaction of all the persons involved, the matter will be closed and no further action will be taken. The Mayor/Deputy Mayor will send written confirmation to all the parties confirming that the matter has been resolved and may provide a report to a public meeting of the Council if appropriate.

Where the matter cannot be resolved, the Mayor/Deputy Mayor will refer the original complaint to the Local Government Governance Panel. The Mayor/Deputy Mayor and the CEO will not investigate the complaint.

## **6. ALLEGED BREACH OF PART 2 – REFERRAL TO THE LOCAL GOVERNMENT GOVERNANCE PANEL**

Where there has been an allegation that a Council Member has breached Part 2 of the Code the complaint may be referred to the independent Local Government Governance Panel (LGGP) by the Mayor/Deputy Mayor under this procedure, without further reference to Council.

Complaints referred to the Local Government 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 website on the LGA's website [www.lga.sa.gov.au](http://www.lga.sa.gov.au) under Rules of Engagement.

The matter will be assessed initially by the Panel Chairperson 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. Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Mayor/Deputy Mayor. 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.

### **6.1. *Part 2 of the Code – Reporting Requirements***

A breach of Part 2 of the Code that has been referred to the LGGP must be the subject of a report to a public meeting of the Council (clause 2.24 of the Code). The report of the Panel may be tabled at the Council meeting. If the report is not tabled, a Council report of the breach will be made in writing and will include any recommendations made by the Panel. The outcome of the item will be minuted.

### **6.2. *Council Actions***

The Council may, by resolution, take any of the following actions;

- Take no action;
- Pass a censure motion in respect of the Council Member;
- Request a public apology, whether written or verbal;
- Request the Council Member to attend training on the specific topic found to have been breached;
- Resolve to remove or suspend the Council Member from a position within the Council (not including the Member's elected position on Council)
- Request the member to repay monies to Council.

### **6.3. *No Breach of the Code Found***

Where a report finds no breach of the Code, the report will not be made public, except at the request of the Council Member who was the subject of the complaint. If such a request is made, a copy of the report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken, a summary report may be made to the Council regarding other observations or recommendations made by the Panel that are of broader application.

### **6.4. *Outcome Notification to Complainant***

The complainant will be notified by letter of the outcome of the investigation. Where the full investigation report is to be tabled at a Council meeting, the complainant will be entitled to a copy of the report at, or following, the Council meeting which received the report. If the full report is not presented at a Council meeting, the complainant will not be provided with a copy of the report as a matter of course.

## **7. APPEALS**

Council will not enter into any process of appeal in relation to Part 2 of the Code.

## **8. PART 3 OF THE CODE - MANDATORY CODE (MISCONDUCT)**

Any person may report an alleged breach if a Council Member breaches Part 3 of the Code to the Council, the Ombudsman or the Office for Public Integrity for investigation. Alleged breaches of this Part made to a Council or to the OPI 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.

### **8.1. *Council Member Obligations***

Where a Council member is of the opinion that a breach of Part 3 of the Code of Conduct has occurred or is currently occurring they must report the breach to the Mayor/Deputy Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity. If a Council Member fails to report an alleged or suspected breach of Part 3 of the Code, they are themselves are in breach of the Code of Conduct under Part 2 of the Code.

A failure of a Council 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.

A failure of a Council member to comply with a finding of an investigation under part 2 of the Code, adopted by the Council, may be referred for investigation under Part 3.

Repeated or sustained breaches of Part 2 of the Code by the same Council Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.

### **8.2. *Part 3 of the Code – Reporting Requirements***

If a report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct it must be the subject of a report to a public meeting of the Council.

**8.3. Council Response to Ombudsman Recommendation**

The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council upon receipt of a recommendation.

**9. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT**

The matters within the Appendix of the Code of Conduct for Council Members are matters for which a criminal penalty attaches. These matters must be reported to the OPI. In addition, allegations of a breach of any of the offence provisions in the Local Government Act must also be reported to the OPI. (See Council's Fraud and Corruption Prevention Policy for further information on reporting requirements or the Directions and Guidelines issued by the Independent Commissioner Against Corruption (ICAC).

In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

**10. RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy, will be enacted upon as per Council's current Delegations Register.

**11. REVIEW**

This policy shall be reviewed by the City of Port Lincoln within twelve months after the conclusion of each periodic election or on significant change to legislation or aspects included within this policy.

**12. REFERENCES**

[9.63.3 Code of Conduct – Elected Members](#)

[9.63.17 Council Elections – Caretaker Period](#)

[9.63.21 Fraud and Corruption Prevention](#)

[Local Government Act 1999](#)

[Independent Commissioner Against Corruption Act 2012](#)

[ICAC SA - Directions and Guidelines](#)