

CITY OF WEST TORRENS



Council Policy: Behavioural Management

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Table of Contents

- 1. Preamble..... 3
- 2. Purpose..... 3
- 3. Scope..... 3
- 4. Definitions 3
- 5. Policy Statement..... 5
- 6. Procedure 7

COUNCIL POLICY - Behavioural Management

1. Preamble

- 1.1 The *Elected Member Behavioural Management Framework* (Framework), which applies to all Elected Members in South Australia, comprises of the legislative framework pursuant to the *Local Government Act 1999* (Act), which includes the *Behavioural Standards for Council Members* and a *Behavioural Management Policy* (Policy) relating to the management of behaviour of Elected Members, including the process for receipt and management of a complaint received regarding the conduct of an Elected Member.
- 1.2 This Policy has been developed in accordance with s262B of the Act.

2. Purpose

- 2.1 This Policy forms part of the Framework for Elected Members and sets out the approach to the reporting and management of complaints about the alleged breach of the Behavioural Standards for Council Members by an Elected Member.
- 2.2 This Policy sets out the procedures for dealing with an allegation of a breach of the behavioural requirements applying to Elected Members. Allegations of breaches of the behavioural requirements can be made by members of the community, other Elected Members or an employee of the City of West Torrens.

3. Scope

- 3.1 This Policy does not apply to complaints about Council employees or Council as a whole. For such matters, refer to the *Council Policy - Customer Complaints*.
- 3.2 This Policy does not apply to the resolution methods of a dispute between two parties.
- 3.3 This Policy does not deal with the reporting and investigating of criminal matters - refer to *Council Policy - Fraud and Corruption Prevention, Reporting and Investigation* for the reporting and investigation of fraud and/or corruption.
- 3.4 This Policy does not consider disputes which will be handled directly by the parties involved.

4. Definitions

- 4.1 **Behavioural Management Framework** – comprises four components:
 - The legislative framework within which all Council Members must operate;
 - The *Behavioural Standards for Council Members*, determined by the Minister for Local Government, which apply to all Council Members in South Australia;
 - The mandatory *Behavioural Management Policy* (Policy) relating to the management of behaviour of Council Members and adopted pursuant to s262B of the Act;
 - Optional Behavioural Support Policy designed to support appropriate behaviour by Council Members and adopted pursuant to section 75F of the Act.

- 4.2 **Behavioural requirements** refers collectively and individually to the *Behavioural Standards for Council Members*, the *Behavioural Management Policy* and any Behavioural Support Policies adopted by Council.
- 4.3 **Behavioural Standards Panel Contact Officer** refers to the person appointed by the Chief Executive Officer to comply with any lawful request of the Panel for information related to a matter under consideration and receive and respond to notices relating to matters under consideration by the Panel
- 4.4 **Behavioural Standards for Council Members** – are those standards established by the Minister for Local Government, and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to behaviour of members of councils.
- 4.5 The **Behavioural Standards Panel** refers to the independent statutory authority which comprises of three members and has powers to impose sanctions on those Elected Members who breach the behavioural requirements.
- 4.6 **Disputes** refer to the situation when there a difference of opinion or disagreement between two parties which may involve a heated discussion or some other unsatisfactory exchange between parties but may not amount to conduct inconsistent with the behavioural requirements.
- 4.7 **Elected Member** means a Council Member and includes the Mayor and Councillors of the City of West Torrens.
- 4.8 **Frivolous** means a complaint lacking in any serious purpose and therefore not worthy of serious notice.
- 4.9 **Misbehaviour** is defined in s262E of the Act as:
- (a) A failure by a member of a council to comply with a requirement of Council under s262C(1); or
 - (b) A failure by a member of a council to comply with a provision of, or a requirement under, Council's behavioural management policy; or
 - (c) A failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1
- 4.10 **Natural justice** means procedural fairness by which:
- a. decision makers act fairly and provide reasons for decisions;
 - b. the person affected is given a fair hearing;
 - c. all parties to a matter have an opportunity to put their case
 - d. all relevant arguments are considered and irrelevant arguments are excluded.
- 4.11 **Person responsible for managing the complaint** means, subject to any resolution of Council to the contrary;
- 1. the Mayor; or
 - 2. if the complaint relates to or involves the Mayor, the Deputy Mayor; or
 - 3. if the complaint relates to or involves the Mayor and Deputy Mayor, another Elected Member appointed by Council.

Where reference has been made to Mayor throughout this Policy, it is to be read in line with this definition as appropriate to the circumstances of the complaint.

- 4.12 **Repeated misbehaviour** is defined in s262E of the Act as a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2 (Ch 5- Members of council, Pt 4-Member integrity and behaviour, Div 2-Member behaviour)
- 4.13 **Serious misbehaviour** is defined in s262E of the Act as a failure by a member of Council to comply with s75G (Health and safety duties)
- 4.14 **Trivial** means a complaint that is insignificant or the grounds for the complaint cannot be identified.
- 4.15 **Vexatious** means a complaint by which the complainant seeks to abuse the normal complaints process in order to cause annoyance, frustration, detriment and/or worry and the complaint lacks substance i.e.:
- a. The complaint has been addressed previously and no new evidence is provided.
 - b. The complaint appears to be without reasonable grounds and appears to have been deliberately made for the sole purpose of causing detriment, annoyance, frustration and/or worry.

5. Policy Statement

- 5.1 All involved persons are encouraged to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated.
- 5.2 Informal resolution of concerns regarding behaviour alleged to be contrary to the behavioural requirements are encouraged. A person may therefore consider raising the matter directly with the Elected Member concerned without the need to lodge a formal complaint under this Policy or seek informal intervention by or with the Mayor.
- 5.3 A person may raise their concern with the Mayor on an informal basis or lodge a formal complaint in accordance with this Policy.
- 5.4 If the Mayor considers that access to resources to support impacted parties and facilitate early resolution of the matter will be provided, the Mayor will request the CEO to facilitate access to relevant resources. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.
- 5.5 While members of the community can lodge a complaint with Council in accordance with this Policy, they cannot lodge a complaint directly with the Behavioural Standards Panel.
- 5.6 An Elected Member will be afforded natural justice when a complaint concerning their behaviour is being assessed and investigated.
- 5.7 A complainant may withdraw their complaint at any stage.
- 5.8 All Elected Members are required to comply with this Policy and support the person responsible for managing the complaint.

5.9 Responsibilities

5.9.1 The Mayor, Deputy Mayor (if appointed) or other Elected Member appointed by Council as the person responsible for managing complaints, is responsible under this Policy to:

- Perform the tasks conferred on the person responsible for dealing with a complaint pursuant to this Policy
- In consultation with, and approval by, the CEO, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter becoming serious, or escalating to a formal complaint.
- In consultation with, and approval by the CEO, engage external resources to assist with investigation and resolution of matters.

5.9.2 The CEO must:

- manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Policy; and
- facilitate access to external resources to support the resolution of complaints lodged in accordance with this Policy.

5.9.3 The *Behavioural Standards Panel Contact Officer* (appointed by CEO) must:

- Comply with any lawful request of the Panel for information related to a matter under consideration;
- Receive and respond to notices relating to matters under consideration by the Panel; and
- Keep the Mayor and CEO informed of the status of matters under consideration by the Panel.

5.10 Confidentiality

5.10.1 Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

5.10.2 Access to information relating to complaints and information about complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Policy.

5.10.3 A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to an Elected Member) that information except:

- For the purpose of dealing with the complaint;
- When required by law;
- For the purpose of obtaining legal advice or legal representation or medical or psychological assistance from a medical practitioner, psychologist or counsellor;
- When the disclosure is made to an external party, investigating the complaint or mediator/conciliator engaged in accordance with this Policy;

- When the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

5.10.4 While a complainant may request their identity be kept confidential from the person complained about. This does not constitute an anonymous complaint. The Mayor will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

5.11 Records Management

5.11.1 The Mayor must ensure that all actions and records relating to allegations about a breach of the Framework by an Elected Member are lodged in Council's electronic data management system.

5.11.2 Records of any complaint must include:

- Details of the complainant
- Details of the person being complained about
- A summary of the matter
- A summary of actions taken in response
- Details of agreed actions if any
- Formal report (if appropriate)
- Statements, emails and notes gathered during an investigation (if appropriate)

6. Procedure

6.1 Lodging a Complaint

6.1.1 A complaint must:

6.1.1.1 Be received in writing and marked with "Confidential Elected Member Complaint", addressed to the Mayor and forwarded to 165 Sir Donald Bradman Drive, Hilton SA 5033.

6.1.1.2 Provide:

- the name of the Elected Member who has allegedly breached the behavioural requirements;
- the name and contact details of the complainant;
- the name and contact details of the person submitting the complaint (if different to the complainant); and
- the name and contact details of any witnesses or other persons able to provide information about the complaint.

6.1.1.3 Be specific (including identifying the behavioural requirements the complainant alleges have been breached).

6.1.1.4 Provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint (e.g. where, when, impact of the behaviour, actions taken to try to resolve the issue, relevant records or documents).

6.1.1.5 Identify the outcome being sought.

- 6.1.2 A complaint made to the Mayor in accordance with this Policy must be lodged within six (6) months of the behaviour that is inconsistent with the behavioural requirements.
- 6.1.3 A decision may be made to accept a complaint lodged more than six (6) months after the behaviour that is inconsistent with the behavioural requirements, on a case-by-case basis, at the discretion of the Mayor.
- 6.1.4 The Mayor will acknowledge the complaint in writing to the complainant within three (3) working days of receipt and a copy of this Policy will be provided to the person making the complaint.

6.2 Initial Complaint Assessment

- 6.2.1 An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at this stage.
- 6.2.2 The Mayor will undertake an assessment of the content of the complaint to determine whether it relates to the behavioural requirements and whether the conduct occurred in the context of the Elected Member carrying out their official functions and duties.
- 6.2.3 In undertaking the assessment, the Mayor will have regard to the following matters:
 - the person that is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter;
 - the complaint is trivial, frivolous or vexatious or not made in good faith;
 - the complainant does not have sufficient personal interest in the matter raised in the complaint;
 - the complaint has been lodged with another authority;
 - the subject matter of the complaint has been or is already being investigated by Council or another body;
 - it is unnecessary or unjustifiable for Council to deal with the complaint;
 - Council has dealt with the complaint adequately.
- 6.2.4 The person complained about will be provided a summary of the matter, at a sufficient level of detail, to understand the nature of the allegations and enable them to provide a preliminary response. The summary will be provided either in person or in writing, and will be provided within five (5) days of receipt of the complaint. The response must be received by the Mayor within ten (10) days of this summary being provided. The person complained about may have a support person present during any discussions. In circumstances when the complainant has not requested their identity be kept confidential, a copy of the complaint may be provided in full.
- 6.2.5 The Mayor will determine what action will result from the initial assessment. A matter may proceed to formal consideration under this Policy, unless there are grounds to take one of the following actions pursuant to section 262B(2)(b):
 - refusing to deal with the complaint or determining to take no further action;

- referring to an alternative resolution mechanism or to propose training for relevant parties (e.g. facilitated discussion, provision of training, mediation, arbitration, conflict resolution, etc.);
- referring the matter to another body or agency (e.g., the Ombudsman SA or the Behavioural Standards Panel);
- Proceed to formal consideration and investigation.

6.2.6 The outcome of the initial assessment and the determination of what action will result from the initial assessment will be provided to the complainant and person complained about in writing as far as is permitted by law, within 21 days of receipt of the complaint.

6.2.7 Refusing to deal with the complaint/Determining to take no further action

6.2.7.1 When the Mayor makes a decision not to proceed with formal consideration of the matter the following steps will be taken:

- the complainant will be provided written reasons explaining the decision
- the person complained about will be provided with a brief summary of the complaint and the reasons for not proceeding.
- A record of these steps and the decision not to proceed must be made.

6.2.7.2 When a matter does not proceed past an initial assessment, the Mayor may discuss the issues informally with the parties and identify strategies to build skills, facilitate positive relationship development and reduce the likelihood of repeat occurrences.

6.2.8 Decision to refer to alternative resolution mechanism:

6.2.8.1 When the Mayor decides that referring the complaint to an alternative resolution mechanism is the preferred approach, the Mayor will discuss this with:

- the CEO if there are any budgetary implications.
- both the complainant and the person complained about to determine whether there is support for this approach. Alternative resolution mechanism includes facilitated discussion, mediation, arbitration, conflict resolution or training.

6.2.8.2 If sufficient support exists, the Mayor will take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint if required

6.2.8.3 The complainant and the person complained about will be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

6.2.9 Decision to refer to another body or agency

6.2.9.1 When the Mayor makes a decision to refer the matter to another body or agency, the Mayor will follow any direction from that body or agency regarding what information is to be provided to the

complainant and the Elected Member complained about regarding the referral.

6.3 Formal Consideration and Investigation

6.3.1 When the Mayor makes a decision to proceed to formal consideration, both the person complained about and complainant will be provided with a copy of this Policy and a summary document setting out:

- the specific provision(s) of the behavioural requirements alleged to have been breached;
- the contact details for the Mayor;
- the circumstances where this breach is alleged to have occurred;
- confirmation of the decision to proceed to formal consideration and investigation; and
- in circumstances where the complainant has not requested their identity be kept confidential, a copy of the complaint may be provided in full.

6.3.2 When a decision to formally consider the complaint has been made the Mayor may determine:

- that they are the appropriate person to formally consider the complaint; or
- to engage a third party to formally consider the complaint and report to the Mayor, for example an investigator or external service provider with skills relevant to the matter; or
- to refer the complaint to the Behavioural Standards Panel.

6.3.3 If a third party is engaged, all available material will be provided to them including the written complaint that has initiated the investigation.

6.3.4 The Mayor will advise both the complainant and the person complained about that they are able to have a support person accompany them during discussions relating to the complaint.

6.3.5 It is the expectation of Council that both the complainant and the person complained about will cooperate with any such process to consider the complaint and, if requested, participate in meetings in a timely manner.

6.3.6 The Elected Member will be given adequate notice in the formal investigation process in order to have sufficient time to prepare. If the Elected Member believes that insufficient time for preparation has been allowed, the Mayor may grant a reasonable extension of time.

6.3.7 Failure, by the Elected Member complained about, to comply with this requirement may be taken into account when considering the actions to be taken under section 262B(2)(e) of the Act and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

6.3.8 Further consideration by the Mayor (or the third party engaged), may (at the discretion of that person) involve:

- exploring the complaint with the complainant and the person who is the subject of the complaint
- speaking with other persons who have been nominated by the parties to have observed the behaviour
- speaking directly with witnesses to the conduct complained about

- requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

6.3.9 Investigations will be concluded within three (3) months of receipt of the original complaint.

6.4 **Formal Investigation Findings, Actions and Report to Council**

6.4.1 The Mayor (or the third party engaged) will prepare a report summarising the matter and setting out their findings, conclusions and recommendations. The report must set out:

- Allegations made in the complaint
- Summary of evidence to which the investigation had regard
- Findings
- Conclusions
- Recommendations

6.4.2 A report will generally include a recommended action for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as per the Act:

- discussions with parties to the complaint to seek agreement
- formal mediation if not already undertaken
- conciliation
- arbitration
- education and further training

6.4.3 A copy of the draft report will be provided to the parties to the complaint who will be given a reasonable opportunity, but no more than ten (10) business days, to make submissions in relation to the draft report. The Mayor (or the third party engaged) may provide a longer period of time for lodgement of submissions to the draft report at their discretion. The Mayor (or the third party engaged) will have regard to any submissions made in preparing a final report.

6.4.4 Outcome of Formal Consideration and Investigation

6.4.4.1 When the finding is that no breach of the behavioural requirements has occurred a final report will be prepared by the Mayor (or third party engaged) and provided to the complainant and the person complained about.

The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken.

6.4.4.2 When the finding is that a breach of the behavioural requirements has occurred and the complainant and the person complained about agree to a path for resolution, that agreement will be documented including matters such as:

- actions to be undertaken
- responsibility for completing actions

- timeframes for completion of actions
- what will occur if there is a repeat of the behaviours complained about
- monitoring arrangements for completion of actions
- what will occur if the actions aren't completed
- confirmation that the matter is considered resolved

Such agreement will be made in writing, including a commitment by parties to the complaint to abide by the agreement (which may be by electronic means). A copy of the agreement will be retained by each party and a copy held in Council records.

The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next appropriate Council meeting.

6.4.4.3 When the finding is that a breach of the behavioural requirements has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter, a final report will be presented to Council for determination. The CEO will include the final report in the Council Agenda as soon as practical.

6.4.5 Actions of Council

6.4.5.1 When the parties are not able to agree on an approach to resolve the matter, the matter will be provided to Council for determine the actions to be taken which may include:

- taking no further action
- passing a censure motion in respect of the member;
- requiring the member to issue a public apology (in a manner determined by Council)
- requiring the member to undertake a specified course of training or instruction;
- removal or suspension from one or more offices held in the member's capacity as a member of Council or by virtue of being a member of Council – but not the office of Member of Council;

6.4.5.2 If Council determines to take action, a report on the matter must be considered at a meeting open to the public.

6.4.5.3 If Council resolves to take no further action, the complainant will be advised of this along with reasons, which may include:

- (a) the grounds that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for Council to deal with or continue to deal with the complaint;
- (b) the grounds that the subject matter of the complaint has been or is already being investigated, whether by Council or another person or body; or
- (c) the grounds that Council has dealt with the complaint adequately.

6.4.5.4 In making a determination under s262C(1) of the Act, Council will be reasonably prescriptive about the manner and time periods in which the action must be completed. Section 262E defines a

failure to comply with a requirement of Council under s262C(1) as 'misbehaviour which may result in a referral to the Behavioural Standards Panel.

6.4.5.5 The matter will be reported in Council's Annual Report which will contain the information required by the Regulations.

6.5 Behaviour Standards Panel

6.5.1 In accordance with s262Q of the Act, a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be made to the Panel by:

- a resolution of Council;
- the Mayor; or
- at least 3 members of Council
- responsible person under 75G which can be the CEO, Mayor, or Deputy Mayor – direction not to attend meeting.

6.5.2 The contact person for matters referred to the Behavioural Standards Panel is the General Manager Business and Community Services.