

# Code of Conduct for Council Members Complaints Handling Procedure

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| Procedure Author    | General Manager Strategy and Corporate |
| Date of next review | June 2023                              |

## 1. Purpose

The Code of Conduct for Council Members (the Code) was published by the Minister for State/Local Government Relations on 18 August 2013, for the purposes of Section 63(1) of the *Local Government Act 1999*.

Council Members must comply with the provisions of the Code in the discharge of their official functions and duties 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.

The Code of Conduct for Council Members Complaints Handling Procedure outlines the procedures to be observed by the Council for the purpose of addressing and processing any complaints alleging a breach of the Code. Any person who believes a breach of the Code has occurred, can make a complaint or report in accordance with this Procedure.

This Procedure applies to all persons who wish to make a complaint or report, alleging a Council Member has breached the Code of Conduct for Council Members.

## 2. References and Supporting Documentation

This Procedure is to be read in conjunction with the Complaints Handling Policy and the Code of Conduct for Council Members.

## 3. Application

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| Council Members         | Abide by the Code of Conduct for Council Members  |
| Chief Executive Officer | <p>Ensure the Code of Conduct for Council Members Complaints Handling Procedure is implemented and subject to periodic evaluation and review.</p> <p>Appoint the Manager Governance as the CEO's delegate for the purpose of managing Code of Conduct complaint(s) against a Council Member(s).</p> |

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| Manager Governance | <p>As the Chief Executive Officer's delegate; receive, acknowledge and manage the investigation or referral of a Code of Conduct complaint(s) against a Council Member(s).</p> <p>Advise the CEO and the Principal Member (or if it relates to the Principal Member, his/her Deputy) of the receipt of a complaint and provide a summary of the complaint.</p> |
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## 4. Procedure

### 4.1 Alleged breach

- 4.1.1 Any person may make a complaint alleging a Council Member has breached the Code. A complaint alleging a breach of the Code must:
- a) Be in writing;
  - b) Be addressed to the CEO's delegate, the Manager Governance;
  - c) Be clearly marked 'Confidential';
  - d) Identify by name the Council Member who is the subject of the complaint;
  - e) Identify the person making the complaint by Name, Address, Contact Number(s) and/or Email Address;
  - f) State the circumstances giving rise to the complaint and clearly identify which part(s) of the Code has allegedly been breached; and
  - g) Be specific and provide as much supporting evidence as possible to substantiate the complaint and to assist with an assessment and/or investigation.
- 4.1.2 If a complaint does not comply with the requirements for a complaint set out in 4.1.1, the Manager Governance may request the person making the complaint (if their and contact details are known) to provide the required information. If the person making the complaint refuses or fails to do so within seven days from the date of request, the complaint will not be accepted and will not be investigated.
- 4.1.3 The Manager Governance may determine to dismiss and not investigate anonymous complaints, and complaints where the person making the complaint is not identifiable, is not contactable and/or has not provided contact details.
- 4.1.4 The *Public Interest Disclosure Act 2018* (PID Act) and *Independent Commissioner Against Corruption Act 2012* (ICAC Act) may apply to a complaint. In the event of any inconsistency between the requirements of these Acts and this Procedure, the PID Act and/or the ICAC Act will prevail.
- 4.1.5 A person making a complaint, can, at any time, take the alternative option of lodging the complaint with other persons or bodies such as the Office for Public Integrity (OPI), SAPol or the Ombudsman.
- 4.1.6 The Manager Governance will be responsible for receiving, acknowledging and managing the investigation or referral of a complaint in accordance with this Procedure and, if relevant the *Public Interest Disclosure Act 2018*.

- 4.1.7 The Manager Governance as soon as practicable will advise the Council Member, who is the subject of the complaint, that a complaint has been received, the nature of the complaint and other information regarding the complaint, so as to enable the complaint to be properly investigated, except where otherwise prohibited.
- 4.1.8 The Manager Governance will advise the CEO and the Principal Member (or if it relates to the Principal Member, his/her Deputy) of the receipt of a complaint and provide a summary the complaint received. The Manager Governance, based on the information provided by the person making the complaint, will make an assessment as to whether the complaint relates to:
  - a) Part 2 of the Code – Behavioural Code;
  - b) Part 3 of the Code – Misconduct; or
  - c) Criminal or Corrupt Behaviour
- 4.1.9 Complaints relating to Part 3 of the Code or to criminal or corrupt behaviour will not be investigated by the Council and will immediately be referred to the OPI.
- 4.1.10 Council maintains jurisdiction where the complaint deals with an alleged breach of Part 2 of the Code, which deals with behavioural matters.

## **4.2 Alleged Breach of Part 2 – Behavioural Code - Internal response procedure**

- 4.2.1 With the agreement of both the person making the complaint and the Council Member(s) who is (are) the subject of the complaint, the Manager Governance may engage an external provider for mediation and conciliation between the parties. This may be appropriate, for example, where the person making the complaint is also a Council Member.
- 4.2.2 Where a complaint is resolved by mediation and conciliation to the satisfaction of the parties, the matter will be closed and no further action taken. The Manager Governance will send written confirmation to both parties confirming that the matter has been resolved. The matter will not be subject to a report to a public meeting of the Council.
- 4.2.3 If mediation or conciliation fails to resolve the complaint or if mediation or conciliation does not occur, the Manager Governance will refer the complaint for investigation to either;
  - a) the Local Government Governance Panel or such other similar body or person established to investigate breaches of the Code ; or
  - b) an investigator independent of the complainant and the Council Member the subject of the complaint.

The person or body to whom a complaint is referred for investigation, must ensure that the principles of natural justice and procedural fairness are observed.

- 4.2.4 All complaints will be dealt with confidentially as far as lawful and practicable, until such time, as they are required to be reported to the Council in a public meeting in accordance with the Code.

### **4.3 Part 2 – Referral to the Local Government Governance Panel or Independent Investigator**

- 4.3.1 Complaints referred to the Governance Panel or other such similar body or person will include all information provided by the person making the complaint, and any other material that is available to the Manager Governance relevant to the complaint.
- 4.3.2 Subject to complying with procedural fairness requirements, the process to be followed for the investigation of a complaint will be determined by the person or body to whom the complaint has been referred for investigation.
- 4.3.3 A complaint may be dismissed and not investigated if it is considered trivial, frivolous or vexatious.
- 4.3.4 Where a complaint progresses to an investigation, a report will be prepared by the person or body conducting the investigation and will be provided to the Manager Governance. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to the Council under clause 2.25 of the Code
- 4.3.5 If following an investigation in accordance with this Procedure, there is a finding that a breach of Part 2 of the Code has occurred, this 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:
  - a) Take no action;
  - b) Pass a censure motion in respect of the Council Member;
  - c) Request a public apology, whether written or verbal;
  - d) Request the Council Member to attend training on the specific topic found to have been breached;
  - e) Resolve to remove or suspend the Council Member from a position within the Council (not including the Member's elected position on Council); or
  - f) Request the member to repay monies to the Council.
- 4.3.6 If following an investigation in accordance with this Procedure, there is a finding that no breach of Part 2 has occurred, a report will not be presented to the Council at a Council meeting.

### **4.4 Alleged Breach Part 3 – Misconduct**

- 4.4.1 Any person may make a complaint or report that an alleged breach of Part 3 of the Code has occurred to the Ombudsman or the OPI. Alleged breaches of Part 3 of the Code made to Council, will be referred to the OPI or the Ombudsman,

Refer to the Code of Conduct for Council Members for further information pertaining to alleged breaches of Part 3

## 4.5 Alleged Breaches of Part 2 and Part 3 of the Code

- 4.5.1 If a complaint is made alleging breaches of both Part 2 and Part 3 of the Code, the Part 3 aspect will be referred to the Ombudsman and the Council will investigate the Part 2 aspect in accordance with this Procedure, except where that is not practicable or the Ombudsman requests otherwise.

## 5. Feedback

Your feedback on this procedure is invited and can be directed to the Manager Governance via email to [governance@playford.sa.gov.au](mailto:governance@playford.sa.gov.au) or by calling the Customer Contact Team on 8256 0333.

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### Administration use only

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| ECM document set no.    | 3978347   |
| Version no.             | 3   |
| Policy link             | Complaints Handling Policy                              |
| Procedure author        | General Manager Strategy and Corporate                  |
| Endorsed by             | Council   |
| Resolution no.          | 4629  |
| Legal requirement       | Local Government Act 1999 - Section 63(1)               |
| Review schedule         | Within 12 months of a general Local Government Election |
| Date of current version | May 2021  |
| Date of next review     | June 2023   |

### Version history

| Version no. | Approval date | Approval by                          | Change   |
|-------------|---------------|--------------------------------------|--|
| 1           | 25/02/2014    | Ordinary Council                     | New Procedure – Legislative Requirement  |
| 2           | 28/07/2015    | Ordinary Council<br>Resolution #2224 | Scheduled Review<br><br>Addition of Point 4.4 under Part 2 – Referral to the Local Government Governance Panel or Independent Investigator as per Annexure A<br><br>Addition of point 5.8 under Part 3-Mandatory Code (Misconduct) of Annexure A |

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| 3 | 25/05/2021 | Ordinary Council<br>Resolution 4629 | Scheduled review.<br>Removed Annexures.<br>Deleted content that<br>repeated the Code.<br>Updated reference to<br>nominated delegate to<br>Manager Governance |
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