

# Complaints Management – Code of Conduct Section 21A of the Development Act 1993 Procedure



## 1. Policy Statement

This Procedure is to manage complaints against Council’s Development Assessment Panel (CDAP) members and delegates arising from the Code of Conduct Section 21A of the Development Act 1993 in an efficient and effective manner to ensure public confidence in the local government system.

## 2. Scope

This Procedure applies to all members of Council’s CDAP and delegates exercising their powers and functions as members of the panel or as a delegate.

## 3. Definitions

**CEO** is the Chief Executive Officer

**CDAP** means a Council’s Development Assessment Panel established by a Council under section 56A of the Development Act 1993.

**CDAP Member** means a person appointed by Council under section 56A(3) of the Development Act 1993 to be a member of its CDAP and includes the Presiding Member of the CDAP.

**Delegate** means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

**Independent Reviewing Officer** is an independent person nominated by the City of Playford to review complaints and must be appointed as a member of Council’s Independent Review Officer Panel.

**Local Government Governance Panel (LGGP CHAIR)** means the independent Panel established by the Local Government Association (LGA) to assist Councils to deal with complaints made in respect of the Council’s Council Member Code of Conduct or the Minister’s code of conduct for CDAP Members.

**Public Officer** means a person appointed by the Council under section 56A(22) of the Development Act 1993 as the Public Officer for its CDAP. The functions of a Public Officer include ensuring the proper investigation of complaints about the conduct of a member of the CDAP.

**Presiding Member** means the person appointed by the Council under section 56A(3)(b) of the Development Act 1993 to be the Presiding Member of its CDAP. The Presiding Member must not be an officer or member of the Council.

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#### 4. Legislation and References

The Complaints Management – Section 21A of the Development Act 1993 Procedure is to be read and implemented in conjunction with Council's other relevant policies, strategies and documents. Legislative references include:

- The Minister's (for Urban Development and Planning) Code of Conduct for Council Development Assessment Panels; and
- Development Act 1993

#### 5. Policy

The Procedure to manage complaints against Council's Development Assessment Panel (CDAP) members and delegates arising from the Code of Conduct Section 21A of the Development Act 1993 is detailed in **Appendix A** to this procedure.

To assist A Complaint Level Flowchart is detailed in **Appendix B** to this procedure.

The published Code of Conduct Section 21A of the Development Act 1993 is detailed in **Appendix C** to this procedure.

#### 6. Responsibilities

Governance is responsible to implement and maintain this Complaints Management Procedure – Code of Conduct – Section 21A of the Development Act 1993.

#### 7. Relevance to Strategic Plan

This policy relates to "Strategy 5 - Building our capabilities" as follows:

- 5.1 Highly performing organisation
- 5.2 Delivering value for money services
- 5.3 Effective government and private sector partnerships.

#### 8. Approval and Change History

Version	Approval Date	Approval by	Change
1.0	26/11/2013	Council	Legislative Change
2.0	25/08/2015	Council	<ul style="list-style-type: none"><li>• Procedure placed into Corporate Policy Template</li></ul>

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**1. Introduction**

Each Council is required, under section 56A of the *Development Act 1993* (the Act), to establish a Council Development Assessment Panel (CDAP) and appoint its membership and Public Officer in accordance with the legislative requirements. Membership of the CDAP and details of the Public Officer must be published in the SA Government Gazette.

Local Government is a sphere of Government and as such the standards of behaviour it demonstrates should be at the highest level of community expectations.

The Minister for Urban Development and Planning has adopted a Code of Conduct under section 21A of the Act to be observed by CDAP Members and officers of relevant authorities exercising delegations under the Act – refer **Appendix C**. This Code of Conduct is to be observed by all CDAP Members while exercising their functions as CDAP Members. The code is designed to foster the respect of applicants, representors and the community and requires CDAP Members to uphold the highest standards of behaviour and ensure they act in accordance with the provisions of the Act at all times. The standards expressed in the code of conduct are complementary to the statutory requirements of the Act and other relevant Acts and Regulations.

Complaints received about the behaviour of a CDAP Member must be dealt with in an efficient and effective manner to ensure public confidence in the system. This model policy can be adapted by each Council to assist with the processes used to handle any complaints received about the conduct of a CDAP Member.

Any person, regardless of their relationship with the Council or CDAP, who believes behaviour contrary to the requirements of the Act or the code of conduct or any other misconduct by CDAP Members may have occurred, should bring details to the attention of the Public Officer (contact details for the Public Officer are included at the end of this policy).

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Complaints should be raised in as timely a fashion as possible in the circumstances and will be promptly acted upon in accord with the steps outlined below.

Concerns relating to the assessment and/or determination of an application should be dealt with through the appeal process, where those rights are available under the Act.

## 2. Making a Complaint

- 2.1** A complaint by any person that relates to a CDAP Member must:
- 2.1.1** Be made in writing; and
  - 2.1.2** Be clearly marked 'Confidential'; and
  - 2.1.3** Be addressed to the Public Officer; and
  - 2.1.4** Identify by name the CDAP Member who is the subject of the complaint; and
  - 2.1.5** Identify the complainant by Name, Address, Contact Number(s) and/or Email Address; and
  - 2.1.6** States the circumstances giving rise to the complaint and identifies clearly which part(s) of the Code has allegedly been breached; and
  - 2.1.7** Be specific and provide as much supporting evidence as possible to assist with an investigation.
- 2.2** Anonymous complaints will not be investigated by Council.
- 2.3** The Public Officer must write to the complainant within 3 days of receiving the complaint to acknowledge receipt of the complaint and to direct the complainant to observe confidentiality regarding the complaint. The complainant will also be informed that, to ensure natural justice, particulars of the complaint will be provided to the person against whom the complaint is made.
- 2.4** The Public Officer must write to the CDAP Member who is the subject of the complaint to notify the CDAP Member that a complaint has been made concerning him/her and provide full particulars of the alleged misconduct and direct the CDAP Member to observe confidentiality regarding the complaint.

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- 2.5 The other CDAP Members will not be informed of the complaint.
- 2.6 The Public Officer may request further information from the complainant.

### 3. Initial Assessment and Referral by the Public Officer

3.1 The Public Officer must assess the level of severity of the complaint within 7 days of receiving the complaint (see **Appendix B** – Complaint Level Flowcharts, for information regarding how to determine the “level” or severity of complaint).

3.2 If the Public Officer assesses the complaint as a level 1 complaint, the Public Officer must refer the complaint to the Presiding Member of the CDAP, unless the complaint is about the Presiding Member in which case the complaint will be referred to **[the Local Government Governance Panel or an Independent Assessor (chosen from a previously approved list of people who are suitably qualified)]**.

3.2.1 Level 1 complaints include disrespect to the Presiding Member of the CDAP meeting, disrespect to other CDAP Members at a CDAP meeting, interruption of another speaker, failure to observe adopted CDAP operating procedures and inappropriate comments regarding staff, members of the public or fellow CDAP Members. The Public Officer may receive a level 1 complaint subsequent to the meeting, in which case this Policy applies.

3.3 If the Public Officer assesses the complaint as a level 3 complaint, the Public Officer must refer the complaint to the relevant investigating authority. For example:

- SA Police; and/or
- Anti-Corruption Branch of the SA Police; and/or
- Minister for State/Local Government Relations; and/or
- SA Ombudsman.

Level 3 complaints include conflict of interest under the *Development Act 1993*, theft, fraud, corruption, misuse of public office and bribery.

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**3.4** All other complaints (level 2 complaints) must be referred by the Public Officer to **[the Local Government Governance Panel or an Independent Assessor]**.

Note: While not an exhaustive list, examples of level 2 complaints include: a breach of the section 21 Minister's code of conduct, failure to disclose a conflict of interest, ongoing and repeated level 1 complaints and a level 3 complaint which the SA Police; and/or the Anti-Corruption Branch of the SA Police; and/or the Minister for State/Local Government Relations; and/or the SA Ombudsman has referred back to the Council to address.

**3.5** The Public Officer may refer the complaint to **[the Governance Panel Chair or to an Independent Assessor]** to assess the level of severity of the complaint for the purposes of the initial assessment. In these circumstances, the **[Panel Chair or to an Independent Assessor]** must assess the level of severity of the complaint within 7 days of the Public Officer referring the complaint.

**3.6** The Public Officer may seek the assistance of the Minister for State/Local Government Relations in respect of the initial assessment of a complaint.

**3.7** The Public Officer must within 3 days of assessing the level of severity of the complaint and referring the complaint, notify the complainant and the CDAP Member who is the subject of the complaint of:

- 3.7.1** the Public Officer's initial assessment determination; and
- 3.7.2** the referral.

For a level 3 complaint only the complainant will be notified of the initial assessment determination and referral.

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**4. Investigation**

**4.1 Level 1 complaints:**

**4.1.1** The Presiding Member may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations the subject of the complaint. The Presiding Member must report this determination in writing to the Public Officer.

**4.1.2** The Presiding Member may determine that the complaint has substance and make recommendations as to the consequences that should follow. The Presiding Member must report this determination in writing to the Public Officer within 2 weeks from the date of receipt of the complaint.

**4.1.2.1** The recommended consequences may include a request that the CDAP Member withdraw remarks, a request that the CDAP Member offer an apology, a request that the CDAP Member receive training, and/or a request that the CDAP Member receive counselling from the Presiding Member or another suitable experienced and qualified person.

**4.1.3** The Presiding Member may determine that the complaint requires referral to **[the Local Government Governance Panel or to an Independent Assessor]** for investigation. The Presiding Member must report this determination in writing to the Public Officer.

Where a level 1 complaint has been referred to **[the Governance Panel or to an Independent Assessor]** for investigation the determination should be reported to the Public Officer within 4 weeks from the date of referral of the complaint.

**4.1.4** Where a Level 1 complaint has been made against the Presiding Member, then the complaint will be referred to **[the Governance Panel or an Independent Assessor]** for investigation.

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**4.2 Level 2 complaints (and level 1 complaints referred to [the **Governance Panel or to an Independent Assessor**] for investigation):**

**4.2.1** The [**Governance Panel Chair or Independent Assessor**] may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations that are the subject of the complaint. The [**Panel Chair or Independent Assessor**] must report this determination in writing to the Public Officer.

**4.2.2** If the [**Panel Chair or Independent Assessor**] identifies issues of substance that warrant investigation:

**4.2.2.1** The investigation shall be through a thorough and balanced assessment of the evidence and all circumstances relevant to making a fair and reasonable judgement about the matter.

**4.2.2.2** The CDAP Member the subject of the complaint shall be provided with a reasonable opportunity to respond to the complaint, explain his/her actions and to make a written submission on the allegations. The Member also has the right to have a representative attend any meeting about the complaint with them (including legal counsel).

**4.2.2.3** The [**Governance Panel Chair or Independent Assessor**] may, for the purposes of an investigation, request the complainant and/or the CDAP Member the subject of the complaint and/or a third party to answer questions which may assist the investigation.

**4.2.3** The [**Governance Panel or Independent Assessor**] may determine that the complaint has substance and make recommendations as to the consequences that should follow. The [**Governance Panel or Independent Assessor**] must report this determination in writing to the Public Officer.

**4.2.3.1** The recommended consequences may include suspension or removal of the CDAP Member from the Panel (requires a Council resolution), provision of training to the CDAP Member, and/or provision of counselling to the CDAP

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Member from the Presiding Member or another suitably experienced and qualified person to the CDAP Member.

**4.2.4** The **[Governance Panel or Independent Assessor]** may determine that the complaint requires referral to the SA Police; and/or the Anti-Corruption Branch of the SA Police; and/or the Minister for State/Local Government Relations; and/or the SA Ombudsman. The **[Panel Chair or Independent Assessor]** must report this determination in writing to the Public Officer who will refer the complaint to the relevant investigating authority.

**4.2.5** Level 2 complaints investigated and determined by the **[Governance Panel or Independent Assessor]** must be reported to the Public Officer within 4 weeks from the date of the referral. If the **[Panel Chair or Independent Assessor]** forms the view that additional time will be required to conclude the investigation and finalise the report the **[Panel Chair or Independent Assessor]** should bring this to the attention of the Public Officer at the earliest opportunity, and at the very least, before the expiration of the 4 week timeframe.

**4.3** Level 3 Complaints (and level 2 complaints referred to the SA Police; and/or the Anti-corruption branch of the SA Police; and/or the Minister for State/Local Government Relations; and/or the SA Ombudsman):

**4.3.1** The SA Police; and/or the Anti-corruption branch of the SA Police; and/or the Minister for State/Local Government Relations and/or the SA Ombudsman will investigate the matter as they see fit and report the determination to the Public Officer.

## 5. Determined Consequences

**5.1** Level 1 complaints:

The Public Officer must report the determination in writing to the complainant and the CDAP Member who is the subject of the complaint. The Presiding Member may request that the recommended consequences be implemented.

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## 5.2 Level 2 complaints:

The Public Officer must report the determination in writing to the complainant, the CDAP Member who is the subject of the complaint and the Presiding Member.

**5.2.1** The Public Officer must report the determination to the Council if the determination requires a Council resolution. All deliberations by the Council must be conducted in confidence, subject to satisfying the requirements of section 90(3) of the *Local Government Act 1999*, and maintained as confidential until finally determined, at which time the Council must decide the ongoing status of the confidentiality order. The Council may enforce any recommended consequences within its powers.

Note: The section 21 Minister's code of conduct provides that where an allegation of misconduct is made out, the Council may:

- (a) remove the person from the CDAP;
- (b) suspend the person from the CDAP for a period of time; or
- (c) take any other reasonable action deemed appropriate.

**5.2.2** Otherwise, the Presiding Member may request that the recommended consequences be implemented.

## 5.3 Level 3 complaints:

**5.3.1** The SA Police; and/or the Anti-Corruption Branch of the SA Police; and/or the Minister for State/Local Government Relations; and/or the SA Ombudsman will report the determination as they see fit, and may enforce any determined consequences.

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## 6. General Reporting Requirements

### 6.1 Level 1 complaints:

6.1.1 No general reporting requirements.

### 6.2 Level 2 and 3 complaints:

6.2.1 The Public Officer must prepare a report for the Panel on an annual basis regarding the number and nature of level 2 and level 3 complaints received, the status of the investigations and the outcomes of the investigations. The reports must not contain any personal identifying information about the complainant or the CDAP Member who is the subject of the complaint

## 7. Public Officer

The following person has been appointed as Public Officer:



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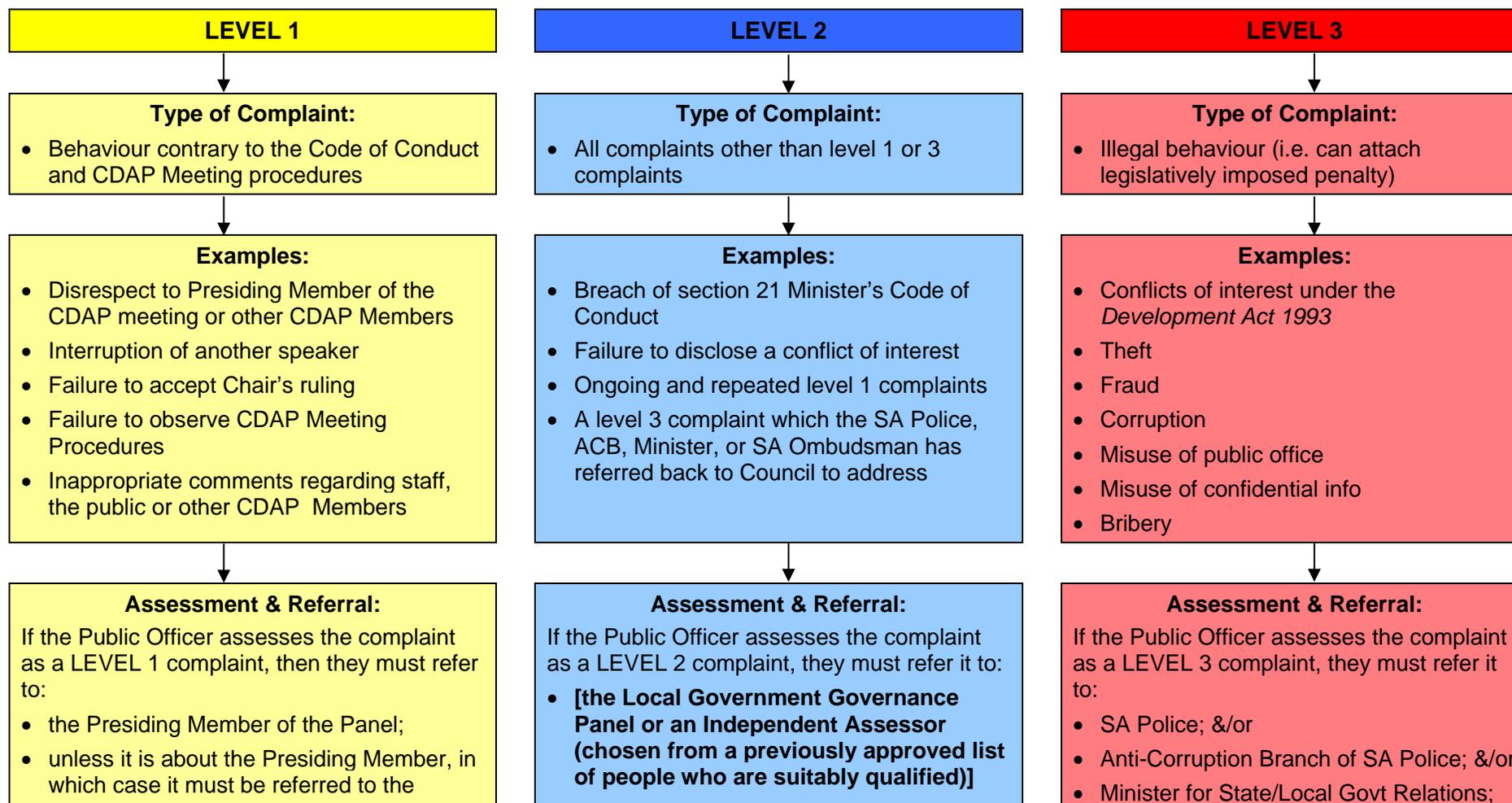
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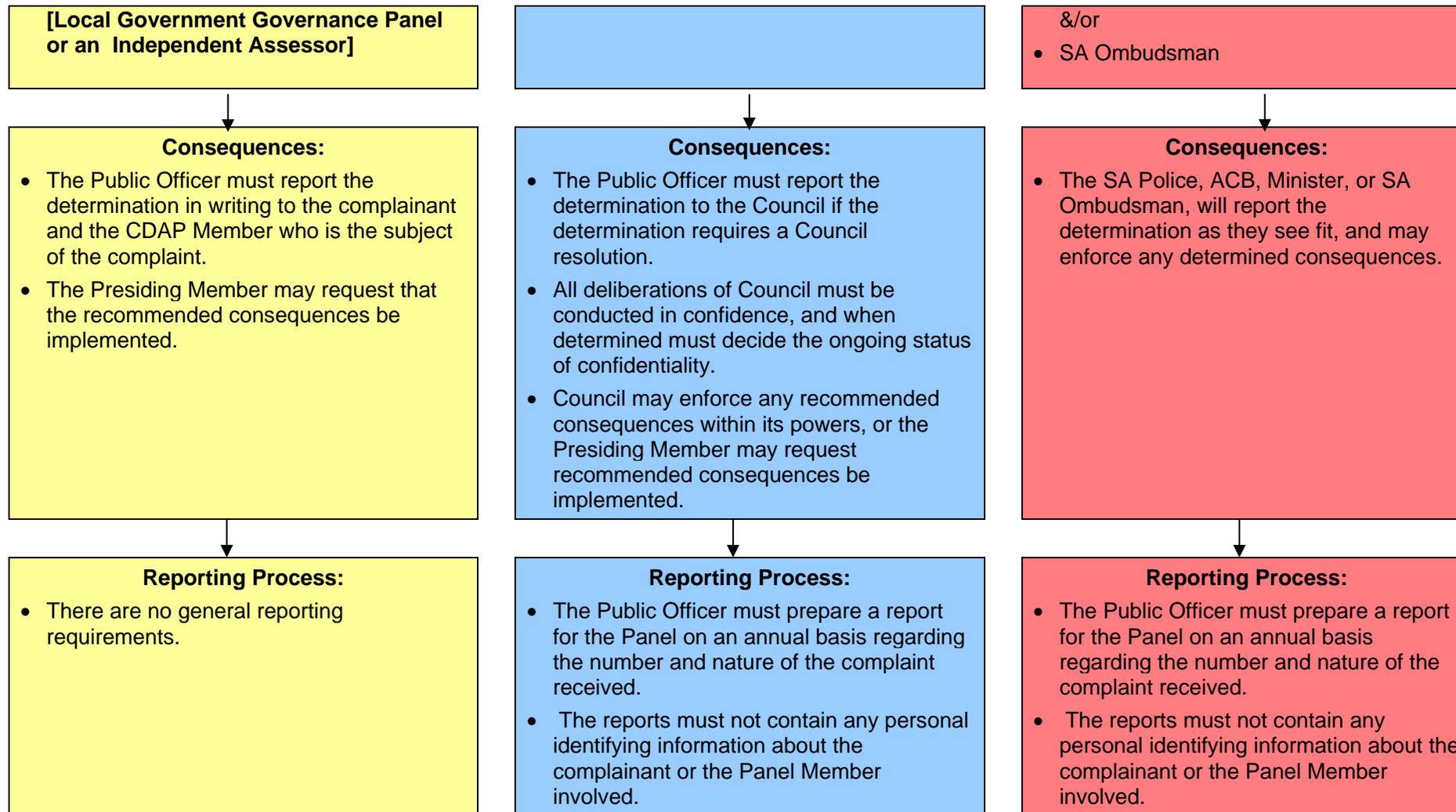
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**CODE OF CONDUCT SECTION 21A OF THE DEVELOPMENT ACT 1993 COMPLAINT LEVEL FLOWCHARTS**



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## MINISTER’S CODE OF CONDUCT

### Code of Conduct

### Section 21A of the *Development Act 1993*

This Code has been adopted pursuant to the provisions of the *Development Act 1993* as a Code of Conduct to be observed by Members of the Development Assessment Commission, Members of Regional Development Assessment Panels, Members of Council Development Assessment Panels and delegates.

In order to foster the respect of applicants, representors and the community, panel members and delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

This Code is binding on all panel members and delegates exercising their powers and functions as members of a panel or as a delegate.

This Code must be read in conjunction with the Act.

## 1. Interpretation

**Act** means the Development Act 1993.

**closed meeting** means a panel meeting, or a part of a panel meeting where the public is excluded in accordance with the Act :

**Code** means a code of conduct established under section 21A of the Act.

**confidential information** includes but is not limited to:

- (a) information derived from a document marked by the presiding member to clearly show that the information in the document is confidential or not to be disclosed;
- (b) information you acquired in a closed meeting ; and
- (c) any other information which would be considered confidential and not generally available to members of the public

**delegate** means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

**disclosure of financial interest** means disclosing a pecuniary interest as set out in Schedule 2 of the Act.

**interest** has the same meaning as in Section 56A (7)&(8) of the Act

**Minister** means the Minister responsible for the administration, from time to time, of the Act.

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**panel** means an assessment panel as defined in Schedule 2 of the Act.

**panel information** means information that is disclosed at a panel meeting or in the course of a panel member's duties.

**panel member** means a person who is a member of a panel under the Act.

**presiding member** means a panel member appointed as presiding member under the Act.

**public officer** means a person appointed as a public officer under the Act .

## 2. Panel Member Behaviour

### Panel information

2.1 As a panel member, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat panel information appropriately by:

- (a) Not using information gained by virtue of your membership of the panel for any purpose than to exercise your role as a panel member;
- (b) Respecting the panel's procedures in relation to public comments and communications with the media;
- (c) Not releasing confidential information;
- (d) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
- (e) Recognising that information may be subject to the requirements of the Privacy Act 2000 and abiding by the principles of that legislation.

*However, nothing in this Code prevents you from disclosing information:*

2.2 At a closed meeting;

- (a) To the extent specified by the panel and subject to such other conditions as the panel determines;
- (b) That is already in the public domain; or
- (c) If the disclosure is required by law.

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### Conflict of Interest

- 2.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of financial interests and disclosure of any other interest which may affect your ability to fulfil your duties on a panel.
- 2.4 If you consider that you have, or might reasonably be perceived to have an interest in the matter before the panel, you must clearly state the nature of that interest in writing to the presiding member before the matter is considered.
- 2.5 If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above.
- 2.6 If you have an interest in a matter, you must not partake in any of the assessment processes involving the matter. You must leave the room at any time in which the matter is discussed by the panel including during the hearing of any representations or during any vote on the matter. You must not vote on the matter and you must not move or second any motion or participate in any discussion through the consensus process.
- 2.7 If an interest has been declared by any member of the panel, the presiding member must record the nature of the interest in the minutes of meeting.

### Relations with State/local government employees and applicants/representors

- 2.8 In your role as panel member, you must not (other than in accordance with the provisions of the Act):
  - (a) Direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee;
  - (b) In the case of members of the Development Assessment Commission, direct a person who is a State government employee to do or not to do anything in the person's capacity as a State government employee;
  - (c) Attempt to influence the conduct of a person who is a local government employee in the person's capacity as a local government employee;
  - (d) Approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel; and
  - (e) Except where required as part of the assessment of a particular decision such as a formal panel viewing of a development site, you should not enter a development site, even if invited by the land owner or a neighbouring property owner or any other person.

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## Development Assessment Conduct

2.9 You acknowledge that the assessment of development by the panel requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Panel members must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

2.10 You must not:

- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
- (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
- (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
- (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
- (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

2.11 In regard to attendance of a public meeting as set out in point 2.10 (c) above, you must inform the panel that you have attended such a meeting and confirmed that you have not made representations to the meeting, discussed the matters raised at the meeting with any person or given an indication as to the merits of a particular development application or proposed development application outside of a panel meeting.

*Note that nothing in this Code prevents you from properly seeking clarification or comment from staff members prior to or during the discussion of any matter in a panel meeting.*

## Public Comment

2.12 Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

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### **3. Breaches of the Code, Complaints and Sanctions (Panel Members)**

3.1 You have an obligation to act honestly and diligently as a panel member. You should report any instances of suspected breach of the Act, this Code or any other misconduct by other panel members immediately to the public officer in writing and refrain from discussing those matters at future panel meetings.

3.2 Upon receipt of this information the public officer may:

- (a) Seek legal advice; and/or
- (b) Require an investigation into the allegations by an appropriate person; and/or
- (c) Refer the matter to the police; and/or
- (d) Take any other action which the public officer deems appropriate and which accords with the Act.

*Note that nothing in this Code prevents you, or any other person from making a complaint under the Ombudsman Act 1972.*

3.3 Where an investigation is undertaken in accordance with this Code, the person to whom the allegation of misconduct relates must be given by the public officer:

- (a) Full particulars of the alleged misconduct in advance of the investigation (at least 7 days prior to the date of the meeting at which the complaint will be investigated);
- (b) An opportunity to respond to the allegations; and
- (c) The right to have a representative attend any hearing with them (including legal counsel).

3.4 Where an allegation of misconduct is made out, the Minister (in regard to the Development Assessment Commission), the relevant Councils (in regard to a Regional Development Assessment Panel) and the relevant Council (in regard to a Council Development Assessment Panel or a Regional Development Assessment Panel) may:

- (a) Remove the person from the panel;
- (b) Suspend the person from the panel for a period of time; or
- (c) Take any other reasonable action deemed appropriate.

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## 4. Delegate Behaviour

- 4.1 In order to foster the respect of applicants, representors and the community, delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

### Development application information

- 4.2 As a delegate, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat development application information appropriately by:
- (a) Not using information gained by virtue of your role as delegate for any purpose than to exercise that role;
  - (b) Not releasing confidential information;
  - (c) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
  - (d) Recognising that information may be subject to the requirements of the *Privacy Act 2000* and abiding by the principles of that legislation.

### Conflict of Interest

- 4.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of any interest which may affect your ability to fulfil your duties as a delegate:
- (a) If you consider that you have, or might reasonably be perceived to have an interest in the matter before you as delegate, you must clearly state the nature of that interest in writing and must not proceed to exercise your delegation; and
  - (b) If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above and must not proceed to exercise your delegation.

### Development Assessment Conduct

- 4.4 You acknowledge that the exercising of a delegation by you in relation to the assessment of development requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Delegates must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

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4.5 You must not:

- (a) Exercise a delegation to make a decision on an application for development plan consent, or issue an instruction in relation to the exercise of a delegation held by another person, where you have assisted the applicant in the preparation of the application, to the extent that it leads to an expectation that if the applicant followed this advice you would grant delegated consent to the application;
- (b) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application where you hold a delegation other than to outline process and/or requirements of the Act or Regulations or, unless required by the Act; and
- (c) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

**5. Breaches of the Code (Delegates)**

5.1 Breaches of this code by a delegate are to be reported to either the chief executive of the relevant council or the chief executive of the relevant government department. The responsible chief executive will take the appropriate action as required.

**Hon. Paul Holloway M.L.C**  
**Minister for Urban Development and Planning**

**Dated:**        /    /

P.H.

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