

	<b>POLICY 26.04.05 – COUNCIL MEMBER CONDUCT, COMPLAINT HANDLING</b>	Version No:	2.0
		Issued:	December 2013
		Next Review:	March 2015

Responsibility:	Governance
Minutes reference:	C815 (1)
Applicable Legislation:	Local Government Act, s59-63 Local Government (General) Variation Regulations 2013 Independent Commissioner Against Corruption Act 2012
Related Policies/Procedures:	Code of Conduct – Elected Members Fraud and Corruption Prevention Policy Election Caretaker Policy Code of Conduct for Council Members, as published in the South Australian Government Gazette 29 August 2013, <i>Directions and Guidelines</i> issued by ICAC

## 1. INTRODUCTION

On 1 September 2013, a new Code of Conduct for Council Members was 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 AND SCOPE

This procedure applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members as gazetted on 29 August 2013 (and as adopted by Council as the District Council of Lower Eyre Peninsula's Code of Conduct for Elected Members 18 October 2013. A copy of this code is available on Council's website: [www.lowereyrepensula.sa.gov.au](http://www.lowereyrepensula.sa.gov.au)

## 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. This procedure covers referral of these types of complaints to other agencies.

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#### 4.1 ALLEGED BREACH

**4.1.1** Where an alleged breach occurs the complainant should report the allegation, in writing, to the Council, addressed to the CEO. The allegation should:

- be specific
- provide as much supporting evidence as possible to assist an investigation
- provide the name of the Member who has 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 ICAC Act.

**4.1.2** The CEO will be responsible for receiving and managing the referral of a complaint and will advise the Principal Member (or if it relates to the Principal Member, his/her deputy) of receipt of a complaint. The Principal Member (or deputy) will determine whether the complaint relates to:

- behavior 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 below at clauses (6) and (7)).

Council maintains 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.

Having regard to the seriousness of the allegation and information provided, the Principal Member may:

- a) seek to resolve the matter internally;
- b) refer the complaint to the Local Government Governance Panel; and/or
- c) dismiss the allegation.

**4.1.3** Within three days of receipt of an allegation, the Member who is the subject of the complaint will be advised by the Principal Member of the complaint and its substance. The Member will also be advised of the manner in which the Principal Member intends to deal with the complaint.

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## 5.1 ALLEGED BREACH OF PART 2-INTERNAL RESPONSE

- 5.1.1** Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. The Principal Member may hold meetings with the complainant and the Council 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 a Council Member.
- 5.1.2** The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.
- 5.1.3** Where the matter is resolved by the Principal Member to the satisfaction of all the parties, the matter will be closed and no further action will be taken. The Principal Member will send written confirmation to all the parties confirming that the matter has been resolved and provide a report to a public meeting of the Council.
- 5.1.4** Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel. Neither the Principal Member nor the CEO will investigate a complaint.

## 5.2 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 by the Principal Member under this procedure, without further reference to Council.

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)]

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 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 (see below).

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## 5.2 PART 2 – REFERRAL TO THE LOCAL GOVERNMENT GOVERNANCE PANEL CONT'D:

5.2.1 A breach of Part 2 of the Code must be the subject of a report to a public meeting of the Council.

If, following investigation by the Governance Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a report to the Council (clause 2.24 of the Code). 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); and / or,
- Request the member to repay monies to the Council.

## 5.3 APPEALS

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

## 6. PART 3-MANDATORY CODE (MISCONDUCT)

6.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or the Office for Public Integrity. Alleged breaches of this Part made to Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation.

6.2 Under the Code of Conduct, a Council 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 Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.

6.3 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.

6.4 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.

(continued):

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**6. PART 3-MANDATORY CODE (MISCONDUCT)**

**CONT'D:**

- 6.5 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.
- 6.6 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.
- 6.7 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.

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

- 7.1 The matters within the Appendix to the Code of Conduct 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).
- 7.2 In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

**8. FURTHER INFORMATION**

This policy and associated procedure will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's website: [www.lowereyrepeninsula.sa.gov.au](http://www.lowereyrepeninsula.sa.gov.au)

Principal Office:  
 32 Railway Terrace, Cummins, SA, 5631 / PO Box 41, Cummins, SA, 5631  
 Ph: 8676 2106 | Fax: 8676 2375 | Email: [mail@dclep.sa.gov.au](mailto:mail@dclep.sa.gov.au)



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SIGNED: .....

CEO

Date: 13 / 12 / 2013

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Mayor, DCLEP

Date: 13 / 12 / 2013