Elected Member Code of Conduct
Complaint Handling Procedure

Adopted by Council 11 December 2018
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1. **PREAMBLE**


The Code, which applies to all Council Members across the Local Government sector in South Australia. It outlines sanctions which may be imposed by Council on a Member where a breach of the Code is found to be sustained.

2. **PURPOSE**

In accordance with clause 2 of the Code, to outline the process to be observed by the Council for the purposes of managing complaints alleging a breach of the Code by a Member.

3. **SCOPE**

This Procedure applies when the Council receives a complaint against a Member under the Code, which may relate to behaviour (a breach of Part 2 of the Code) or misconduct (a breach of Part 3 of the Code).

Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code but are referred to in the Appendix to the Code.

4. **DEFINITIONS**

- **Business Days** means a day that is not a Saturday, Sunday or public holiday
- **Chief Executive Officer** includes a delegate of the Chief Executive Officer
- **Code** refers to the prescribed *Code of Conduct for Council Members*
- **Council** refers to the City of Mitcham
- **Frivolous** refers to a complaint that does not have any serious purpose or value.
- **ICAC** refers to the Independent Commissioner against Corruption
- **Member** (or **Council Member**) refers to any person who has been elected or appointed to the position of principal member or councillor with the Council;
- **Natural Justice / Procedural Fairness** refers to the process by which all parties are:
  - advised of the complaint (and supporting evidence) against them, and
  - treated fairly and without bias; and
  - have the right to be heard; and
  - notified of the decision, the evidence relied on and the reasons for the decision.

A complaint that is considered to be of a **major** nature, is one that has the potential to cause a high to extreme risk to the City of Mitcham, as determined by the Chief Executive Officer.
A complaint that is considered to be of a **minor** nature, is one that has the potential to cause a low to medium risk to the City of Mitcham, as determined by the Chief Executive Officer.

**Natural Person** refers to an individual (living) human being, as opposed to a corporate entity (such as a company or other incorporated public organisation).

**OPI** refers to the Office for Public Integrity.

**Reportable matters**, refers to matters that a public officer (the definition of which includes all Members) is required to report to the OPI pursuant to the ICAC Directions and Guidelines for Public Officers, being any matter that the public officer reasonably suspects (on a factual basis) involves:

- corruption in public administration; or
- serious or systemic misconduct or maladministration in public administration

**Without merit** refers to a complaint that has no legal or factual basis and is not capable of being substantiated on the available evidence.

**Vexatious** refers to a complaint motivated by malice or for the purpose of causing annoyance or frustration and is without sufficient grounds.

### 5. ALLEGED BREACH OF THE CODE OF CONDUCT

5.1. A person wishing to report an alleged breach of the Code by a Member may report the allegation, in writing, to the Council addressed to the Chief Executive Officer.

5.2. The written report must:

- specify the allegations and identify the provisions of the Code that are alleged to have been breached;
- be accompanied by all supporting evidence in the complainant’s possession (or otherwise point to the availability of relevant evidence) to assist with any investigation; and
- identify the Member(s) whom it is alleged has breached the Code.

In the case of a complaint relating to a breach of Part 3 of the Code, the complaint may, alternatively, be made direct to the OPI or the Ombudsman.

5.3. Under the Code, a 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 Mayor or the Chief Executive Officer, the Ombudsman or the OPI. A failure by a Member 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. PRELIMINARY ASSESSMENT OF COMPLAINT

6.1. The Chief Executive Officer (CEO) is responsible for receiving and referring a complaint to the Mayor and will immediately advise the Mayor of receipt of the complaint.

An acknowledgement of the report will be provided to the complainant within five (5) business days.
6.2. If the complaint relates to the Mayor or is made by the Mayor, the CEO will act as or nominate a Council Member to deal with the complaint in accordance with this Procedure.

6.3. Upon receiving a complaint, the Mayor (or the CEO / Council Member) will undertake a preliminary assessment to determine whether the complaint relates to:

- behaviour, which falls under Part 2 of the Code (refer to Section 7 of this Procedure);
- misconduct, which falls under Part 3 of the Code or (refer to Section 8 of this Procedure); or
- criminal or corrupt behaviour (refer to Section 9 of this Procedure); or
- regardless of its categorisation, is otherwise frivolous and/or vexatious and/or without merit, in which case, the Mayor (or Council Member) may dismiss the complaint and the complainant will be notified of this decision, together with the reasons for the decision.

6.4. In making a determination pursuant to paragraph 6.3 above the Mayor (or CEO / Council Member) may seek advice and guidance from the Chief Executive Officer or from the Council’s solicitors.

6.5. Within 10 days of the Mayor (or CEO / Council Member) making a determination under paragraph 6.3 above, the Mayor (or CEO / Council Member) must notify the Member who is the subject of the complaint of the complaint and provide the Member with a copy of it.

6.6. For the avoidance of doubt, any complaint that is reported to the OPI will not, pursuant to the Independent Commissioner against Corruption Act 2012, be disclosed.

6.7. A complaint will not be investigated by the Mayor (or CEO / Council Member).

7. BEHAVIOURAL COMPLAINTS (PART 2)

7.1. Part 2 of the Code deals with conduct that reflects reasonable community expectations of how Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this Part.

7.2. Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code.

7.3. Having regard to the seriousness of the allegation and any supporting information provided, the Mayor (or CEO / Council Member) may:

- seek to resolve the matter internally, including through conciliation or mediation (refer to Section 10) or
- refer the complaint for independent investigation, either to the Local Government Governance Panel (refer to Section 11.1 of this Procedure) or an alternative independent investigator (refer to Section 11.2 of this Procedure)
7.4. A failure by a Member to:

7.4.1. co-operate with the Council’s process for handling alleged breaches of Part 2 of the Code;

7.4.2. comply with a finding of an investigation under Part 2 of the Code that is adopted by the Council,

may be referred for investigation as a breach of Part 3 of the Code.

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

8. MISCONDUCT COMPLAINTS (PART 3)

8.1. Part 3 of the Code deals with misconduct, including conduct that is in breach of the Act.

8.2. Any person may report an alleged breach of Part 3 of the Code to the: 
- Council,
- Ombudsman or
- OPI.

8.3. Alleged breaches of this Part made to the OPI may be referred to the Ombudsman for investigation.

8.4. Where the complaint is received by Council, the Mayor (or CEO / Council Member), having regard to the seriousness of the allegation and information provided may, subject to clause 8.5:

- if the complaint is deemed to be minor in nature:
  - seek to resolve the matter internally, including through conciliation or mediation (refer to Section 10); or
  - refer the complaint to the Local Government Governance Panel (refer to Section 11.1 of this Procedure) or an alternative independent investigator (refer to Section 11.2 of this Procedure); or
- if the complaint is deemed to be major in nature, report the complaint to the OPI or the Ombudsman.

8.5. If the complaint is deemed to relate to a reportable matter the Mayor (or CEO / Council Member) must report it to the OPI unless it is known that the complaint has already been reported to the Ombudsman or the OPI.

9. CRIMINAL BEHAVIOUR (APPENDIX)

9.1. The matters within the Appendix to the Code are matters to which a criminal penalty attaches and must be reported to the OPI.

9.2. Any allegation that a Member has committed an offence under the Act must also be reported to the OPI.
10. **RESOLVE COMPLAINTS INTERNALLY**

10.1. Only matters which are determined to be of a *minor* nature will be dealt with internally.

10.2. The Mayor (or CEO / Council Member) may hold meetings with the complainant and the Member the subject of the complaint and may seek to arrange professional mediation or 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 Member.

10.3. Where the matter is resolved by the Mayor (or CEO / Council Member) to the satisfaction of all the parties, the matter will be considered to be closed and no further action will be taken. The Mayor (or CEO / Council Member) will confirm this outcome in writing to the parties. No other action is required.

10.4. Where the matter cannot be resolved, the Mayor (or CEO / Council Member) will refer the complaint to either:
   - the Local Government Governance Panel (refer to [Section 11.1](#) of this Procedure); or
   - an alternative independent investigator (refer to [Section 11.2](#) of this Procedure); or
   - in the case of a complaint alleging misconduct by a Member, to the Ombudsman.

The Mayor (or CEO / Council Member) will not investigate the complaint.

11. **INDEPENDENT INVESTIGATION OF COMPLAINTS**

11.1. The Local Government Governance Panel

Where there has been an allegation that a Member has breached Part 2 of the Code, the complaint may be referred to the independent Local Government Governance Panel by the Mayor (or Council Member) 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 website under Rules of Engagement.

The matter will be assessed initially by the Panel Manager who may recommend that the matter is dismissed on the grounds it is frivolous, vexatious, misconceived or lacking in substance.

Otherwise, the Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding.

In any of these circumstances, Council will accept the views of the Panel Manager and take no further action. The complainant and the Member the subject of the complaint will be advised of this decision and the reasons for it.
Where a complaint is to progress to an investigation, the Panel Manager will determine the process to be followed and the Panel investigator who will deal with the matter. Ultimately, a report will be prepared by the Governance Panel and will be provided to the Mayor (or CEO / Council Member).

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 (refer to Section 12.5 of this Procedure).

11.2. Alternative Independent Investigator

Alternatively, a complaint that alleges that a Member has breached Part 2 of the Code, may be referred to an alternative independent investigator, such as one of Council’s legal service providers, without further reference to Council.

This may be appropriate where an independent investigator has previously dealt with related issues or complaints (for example serial complainants), or provided advice to the Mayor (or CEO / Council Member) in relation to the preliminary assessment of the complaint (see Section 6 of this Procedure) or, has recognised technical expertise in the matters raised by the complaint.

Complaints referred to an independent investigator 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.

The matter will be assessed by the independent investigator who may recommend that the Mayor (or CEO / Council Member) dismiss the complaint on the grounds it is frivolous, vexatious, misconceived or lacking in substance.

Alternatively, the independent investigator will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a finding of breach.

In any of these circumstances, Council will accept the views of the independent investigator and take no further action. The complainant and the Member the subject of the complaint will be advised (in writing) of this outcome and the reasons for it.

Where a complaint progresses to an investigation, a report will be prepared by the independent investigator and will be provided to the Mayor (or CEO / Council Member).

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 (refer to Section 12.5 of this Procedure).
12. REPORTING ON COMPLAINTS

Behavioural Complaints (Part 2)

12.1. Subject to clause 12.6 of this Procedure, only where a report is received from the Governance Panel or an independent investigator that finds there has been a breach of Part 2 of the Code, it must be dealt with at a public meeting of the Council (clause 2.24 of the Code).

12.2. For this purpose, the report of the Panel or the independent investigator may be tabled at the Council meeting.

12.3. If the report prepared by the Panel or the independent investigator is not tabled at the Council meeting, the written report that is presented to the Council will:

12.3.1. outline the findings of the Panel or the independent investigator; and

12.3.2. includes any recommendations made by the Panel or the independent investigator.

The report to the Council must also specify the costs incurred by Council as a result of the investigation.

12.4. The outcome of the item will be minuted.

12.5. The Council may, by resolution, determine to take any of the following actions upon considering a report relating to a finding of breach of the Code by a Member:

- 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 the Council.

12.6. Where a report from the Panel or the independent investigator finds there has not been a breach of the Code, the report will not be made public, except at the request of the Member who was the subject of the complaint. Where such a request is made, a copy of the report will be tabled at the next practicable Council meeting.

12.7. If such request is not received, an information report may, at the discretion of the Mayor, be provided to the Members (whether at or outside of a formal Council meeting) and may address any observations or recommendations made by the Panel or the independent investigator that are considered to be of broader application.
Misconduct Complaints (Part 3)

12.8. Where a complaint relating to allegations of misconduct has been investigated by either the Local Government Governance Panel or an independent investigator, the reporting procedure outlined in Sections 12.1 – 12.8 above apply.

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

12.10. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two (2) ordinary meetings of the Council following the receipt of the recommendations.

Notification to Complainant

12.11. The complainant will be notified by letter or email of the outcome of any investigation into their complaint including, as recognised in this Procedure, of reasons where necessary.

12.12. Where the full investigation report is to be tabled at a public Council meeting, the complainant will be entitled to receive a copy of the report at the same time that Members receive the report.

12.13. If the full report is not presented at a Council meeting, the complainant will not be provided with a copy of the report.

13. **CONFIDENTIALITY**

13.1. Subject to paragraph 13.2, all complaints received under the Code will be managed on a confidential basis.

13.2. Information relating to a complaint or a related investigation will only be disclosed:

13.2.1. where necessary to ensure compliance with the Council’s legislative obligations;

13.2.2. as necessary and appropriate to ensure the proper assessment and investigation of a complaint in accordance with the Code or as may be necessary to facilitate an internal resolution of the complaint under Part 10;

13.2.3. where required by this Procedure.

13.3. The Council will be notified of any complaint that is progressed to an investigation. If the report finds there has been a breach of the Code the matter will be considered at a public Council meeting as per paragraphs 12.1 and 12.10 above.

13.4. If the report makes no finding of a breach of the Code, then subject to paragraph 12.7, the Mayor may, in conjunction with the CEO, determine the manner in which the Members are notified of the related complaint and outcome.
14. COMPLAINT CONTACT INFORMATION

Council  
www.mitchamcouncil.sa.gov.au  
council@mitchamcouncil.com.au  
131 Belair Road  
TORRENS PARK, SA, 5062  
(08) 8372 8101  

Office of Public Integrity  www.icac.sa.gov.au/opi  

15. POLICY REVIEW

This Procedure will be reviewed within twelve (12) months of a periodic election or as deemed necessary by the Chief Executive Officer.

16. FURTHER INFORMATION

This Procedure will be available for inspection at the Civic Centre during ordinary business hours and available to be downloaded, free of charge, from Council’s internet site: www.mitchamcouncil.sa.gov.au

17. VERSION HISTORY

<table>
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<th>VERSION</th>
<th>AUTHOR(S) POSITION</th>
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<td>1</td>
<td>General Manager</td>
<td>Significant revision / re-write</td>
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</tbody>
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18. DOCUMENT CONTROL

Responsible Department: Governance  
Delegations Apply: YES  
Classification: Governance  
Applicable legislation:  
Local Government Act 1999  
Local Government General Regulations 2013  
Related Policies & Corporate Documents: Elected Member Code of Conduct  
Additional references: Local Government Governance Panel – Rules of Engagement  
Endorsed by Council: 11 December 2018  
Item No: Item 7.7  
Effective Date: 11 December 2018  
Next Review Date: 2020  
ECM Record Number: 3891138  
Template Folder No: FF/2012/245  
Template Record No: 12.60143[v4]