

## Procedure for Managing Elected Members

### Code of Conduct (Breach of Code) Complaints

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<i>Responsible Officer(s):</i>	<i>Chief Executive Officer / Executive Assistant</i>
<i>Council File Reference:</i>	<i>Council Policies (P)</i>
<i>Applicable Legislation:</i>	<i>Local Government Act 1999 – Section 59-63 Local Government (General) Regulation 2013 Independent Commission Against Corruption Act 2012</i>
<i>Relevant Policies:</i>	<i>Code of Conduct for Elected Members; Confidentiality Provisions - Code of Practice; Development Act 1993; Fraud &amp; Corruption Prevention Policy; Media &amp; Communications Policy; Public Interest Disclosure Model Policy and Procedure Equal Employment Opportunity; LG Elections Caretaker's Policy.</i>
<i>Related Procedures:</i>	<i>As determined by the Local Government Act 1999</i>
<i>Delegations:</i>	<i>N/A</i>

#### 1. Purpose

The Code of Conduct for Council Members is 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.

This procedure applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members as gazetted on 22 August 2013. A copy of the code can be accessed at the Councils principal office, 5 Riverview Drive Berri or via the Council website [www.berribarmera.sa.gov.au](http://www.berribarmera.sa.gov.au)

#### 2. Definitions

<b>Act</b>	means Local Government Act
<b>Business Day</b>	Means a day that is not a Saturday or Sunday or public holiday in South Australia
<b>Complainant</b>	Refers to the person who makes a complaint.
<b>Council</b>	Means the Berri Barmera Council

#### 3. Principles

##### 3.1. Breaches 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.

#### **4. Alleged Breach**

- 4.1. 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.

- 4.2. The CEO will be responsible for receiving and managing the referral of a complaint and will advise the Mayor (or if it relates to the Mayor, his/her deputy) of receipt of a complaint.

The Mayor (or deputy) will determine whether the complaint relates to:

- behaviour 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:

- seek to resolve the matter internally, including through conciliation or mediation.
- refer the complaint to the Local Government Governance Panel
- dismiss the allegation.

- 4.3. Within three days of receipt of an allegation, the Member who is the subject of the complaint will be advised by the Mayor of the complaint and provided with a copy of the complaint. The Member and the complainant will be advised of the manner in which the Mayor intends to deal with the complaint.

#### **5. Alleged Breach of Part 2– Internal Response**

- 5.1. 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 Mayor 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.

- 5.2. The Mayor must ensure that the principles of natural justice and procedural fairness are observed.
- 5.3. Where the matter is resolved by the Mayor to the satisfaction of all the parties, the matter will be closed and no further action will be taken. The Mayor 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 if appropriate.
- 5.4. Where the matter cannot be resolved, the Mayor will refer the original complaint to the Local Government Governance Panel. Neither the Mayor nor the CEO will investigate a complaint.

## **6. (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 Mayor 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 Manager 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. A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. 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 these circumstances, Council will accept the views of the Panel Manager and take no further action [or, Council will consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.

Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Mayor. 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).

- 6.1. A breach of Part 2 of the Code must be the subject of a report to a public meeting of the Council. The report of the Panel may be tabled at the Council meeting. If the report is not tabled, a Council report of the breach will be made in writing and will include any recommendations made by the Panel. The outcome of the item will be minuted.

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)
- Request the member to repay monies to the Council.

6.2. Where a report finds no breach of the Code, the report will not be made public, except at the request of the Council Member who was the subject of the complaint. If such a request is made, a copy of the report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken, although a summary report may be made to the Council regarding other observations or recommendations made by the panel that are of broader application.

6.3. The complainant will be notified by letter of the outcome of the investigation. Where the full investigation report is to be tabled at a Council meeting, the complainant will be entitled to a copy of the report at, or following, the Council meeting which receives the report. If the full report is not presented at a Council meeting, the complainant will not be provided with a copy of the report as a matter of course.

6.4. Appeals

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

## **7. (Part 3) - Mandatory Code (Misconduct)**

7.1. 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.

7.2. 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 Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.

7.3. 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.

7.4. 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.

7.5. 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.

7.6. 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.

7.7. 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.

7.8. 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.

## **8. Criminal Matters – Appendix to the Code of Conduct**

8.1. 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).

- 8.2. In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

## **9. Further information**

This procedure will be available for inspection at the Council's principal office located at 19 Wilson Street Berri below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: [www.berribarmera.sa.gov.au](http://www.berribarmera.sa.gov.au)

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Before using a printed copy, verify that is the current version.***