ELECTED MEMBER COMPLAINT HANDLING

COUNCIL POLICY – Elected Member Complaint Handling

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<th>Reference Number</th>
<th>685231</th>
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<td>Responsible Business Unit</td>
<td>Office of the CEO</td>
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<td>Legislation</td>
<td>Local Government Act 1999</td>
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<td>Relevant Delegations</td>
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<td>Related Policies Management Guidelines Frameworks</td>
<td>• Good Public Administration Framework - 741628</td>
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<td>• Code of Conduct Elected Members – 682841</td>
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<td>Link to Strategic Plan</td>
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<td>Council resolution</td>
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<td>Date Adopted</td>
<td>10 December 2018</td>
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<td>Review Date</td>
<td>Following a periodic election</td>
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<td>Previous Revisions</td>
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POLICY STATEMENT

To provide Elected Members, the Chief Executive Officer and Community clear guidelines in relation to the handling of complaints received in relation to behaviour of Elected Members under the Code of Conduct for Elected Members, as gazetted.

OBJECTIVES

To ensure transparent, natural justice and procedural fairness is afforded to all parties concerned.

SCOPE

This Policy relates to the management of complaints made in relation to the Elected Member Code of Conduct.

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ELECTED MEMBER COMPLAINT HANDLING

PRINCIPLES

Behavioural Code – as identified within the Elected Member Code of Conduct (part 2)

Elected Member Code of Conduct – the code gazetted for the purposes of section 63 of the Local Government Act, 1999.

Misconduct – as identified within the Elected Member Code of Conduct (part 3)

Criminal Matters – as identified with the Elected Member Code of Conduct Appendix

Corruption – as defined in the ICAC Act

Mediator – as included within Council’s approved contractor listing

ICAC – Independent Commissioner Against Corruption

ICAC Act – the Independent Commissioner Against Corruption Act 2012

Independent Investigator – as included within Council’s approved contractor listing

Local Government Governance Panel – as appointed by the Local Government Association

OPI – Office of Public Integrity

Reporting Breaches of the Elected Member Code of Conduct – Part 2

- Complaints relating to the behaviour of an Elected Member must be made in writing to the Mayor
- Complaints relating to the behaviour of the Mayor must be made in writing to the Deputy Mayor.
- Complaints relating to behaviour between the Mayor and Deputy Mayor must be made in writing to the Chief Executive Officer.

Reporting Breaches of the Elected Member Code of Conduct – Part 3

- Reporting of breaches under Part 3 must be made in writing to either Council, the Ombudsman, Electoral Commissioner, Office for Public Integrity.
- Reporting of breaches under Part 3 made to Council or the Office for Public Integrity may be referred to the Ombudsman for investigation by Council’s Chief Executive Office or by the Independent Commissioner Against Corruption, where he or she so determines.
ELECTED MEMBER COMPLAINT HANDLING

BREACHES OF THE CODE OF CONDUCT

Breaches of the Elected Member Code of Conduct may relate to behaviour (in Part 2 of the Code) or Misconduct (in Part 3 of the Code).

Criminal Matters do not form part of the Code of Conduct for Elected Members but some offences are referred to in the appendix to the Code and must be reported to the Office for Public Integrity in the first instance.

ALLEGED BREACH – PART 2

Alleged breach

1. Where an alleged breach occurs the complainant should report the allegation in writing in the manner prescribed under the Principles of this Policy.

   The allegation should:
   • Provide the name of the Member who has allegedly breached the Code.
   • Be specific
   • Provide supporting evidence in relation to the complaint to assist an investigation

   Complainants can, in relation to allegations of misconduct, take the option of lodging the complaint with the Office of Public Integrity.

2. The Chief Executive Officer will assist either the Mayor and/or Deputy Mayor to seek further information before determining whether a formal investigation should be initiated by determining whether the complaint relates to:
   • Behaviour which falls under Part 2 of the Code
   • Misconduct which triggers action against Part 3 of the Code or
   • Corruption.

   Complaints relating to serious or systemic misconduct or where a reasonable suspect of corruption is held must be referred to the OPI in accordance with the Directions and Guidelines issued by the ICAC.

3. Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code, ie conduct that reflects reasonable community expectations of how Elected Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of Part 2.

4. Within three days of receipt of an allegation the party who is the subject of the complaint will be advised of the complaint in writing and its substance. All parties involved will be advised of the manner in which the complaint will be dealt with, ie
   • Internal Response
   • Referred to a third party
5. An investigation undertaken by the Council or an Independent Investigator in response to a complaint under the Code will accord with principles of natural justice. The investigation will be undertaken by a person or persons who are independent of the circumstances of the complaint and who will approach the investigation with an open mind as to the outcome of the investigation.

The Elected Member/s who the complaint is made against will be informed of the substance of the complaint and be given the opportunity to respond to the complaint during the investigation.

A response by an Elected Member to a complaint will be taken into account by the investigator.

6. In relation to complaints that are not serious or systemic misconduct or relate to corruption and having regard to the seriousness of the complaint may be:
   1. Dismissed as trivial and vexatious
   2. Resolved internally, which may involve the use of a Mediator
   3. Referred to an appointed Independent Investigator or Local Government Governance Panel or Office of Public Integrity

7. A breach of the Behavioural Code, which is not dismissed a trivial and vexatious, must be the subject of a report to a public meeting of Council in accordance with the Code of Conduct for Elected Members.

ALLEGED BREACH– INTERNAL RESPONSE

1. Only matters which are considered to be of an informal or minor nature will be dealt with internally and only with the agreement of the parties. Meetings may be held with the complainant and the Elected 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 an Elected Members.

2. The principles of natural justice and procedural fairness must be observed at all times.

3. Where the matter is resolved to the satisfaction of all the parties, the matter will be closed and no further action will be taken. Written confirmation will be sent to all the parties confirming that the matter has been resolved.

4. Where a breach of the Behavioural Code has been determined a report will be submitted to the next available public meeting of Council in accordance with the Code of Conduct for Elected Members.
ALLEGED BREACH REFERRAL TO A THIRD PARTY

1. Where there has been an allegation that an Elected Member has breached the Code, the complaint may be referred to an Independent Investigator or the Local Government Governance Panel under this procedure, without further reference to Council.

2. Complaints referred to an Independent Investigator or Local Government 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 supply the complaint.

   The external independent investigator or Panel Chairperson will assess the complaint initially and determine the process to be followed. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.

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

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

5. If, following investigation by the Independent Investigator or Panel Chairperson, a breach of the 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 (clause 2.25):
   - Take no action
   - Pass a censure motion
   - Request a public apology
   - Request the Elected Member to attend training on the specific topic found to have been breached.
   - Resolve to remove or suspend the Elected Member from a position within the Council (not as an Elected Member)
   - Request the Elected Member to repay money to the Council.

6. If an Elected Member fails to co-operate with an investigation or fails to comply with a finding the Elected Member may be referred by Council for investigation under Part 3.

Appeals
   - Council will not enter into any process or appeal in relation to Part 2 of the Code.
PART 3 – MANDATORY CODE (MISCONDUCT)

1. Any person may report to an alleged breach of Part 3 of the Code to the Council, the Ombudsman or the OPI. Alleged breaches of this Part made to Council or to the OPI and may be referred by those bodies to the Ombudsman for investigation.

2. In relation to complaints that are not serious or systemic Misconduct or criminal behaviour, regard will be given to the seriousness of the complaint and may result in:
   1. Dismissal of the complaint as trivial and vexatious
   2. Seeking resolution matter internally, which may involve the use of a Mediator
   3. Refer the complaint to Office of Public Integrity

3. Under mandatory reporting guidelines issued by the ICAC an Elected Member or Council staff member who reasonably suspects a serious or systemic breach of the Code must report that suspicion to the OPI.

4. Part 2 of the Code requires an Elected Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, to report the matter to the Mayor or the Chief Executive Officer, the Ombudsman or the Office of Public Integrity. A failure to report a breach of Part 3 of the Code is itself a breach under Part 2 of the Code.

5. A failure of an Elected 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.

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

8. A report from the Ombudsman that finds an Elected Member has breached Part 3 of the Code must by the subject of a report to a public meeting of the Council. The Council may pass a resolution to give effect to any recommendations received the Ombudsman, at the next available meeting of the Council following receipt of these recommendations.

CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT

The matters described within the Appendix to the Code are matters for which a criminal penalty attaches. A reasonable suspicion that any offence has been committed by a public officer while acting in his or her capacity as a public officer must be reported to the OPI. This includes the offences described in the appendix to the Code and any other offence provisions in the Local Government Act must be reported to OPI.

In compliance with the ICAC Act 2012, referral of such complaints to the OPI will remain confidential.

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DELEGATIONS / BUDGET

The Chief Executive Officer has delegation to engage an external party in liaison with the Mayor and or Deputy Mayor in relation to the intent of the procedure.

An annual budget will not be included however expenses will be managed through budget variances report to Council quarterly.