



## **Council Members Conduct Complaint Handling Policy**

Adopted 13 May 2015

Recommendation Number 39 / 0515

Review Date May 2017

## **1 Introduction**

The Southern Mallee District Council has adopted a Code of Conduct for Council Members. This Code of Conduct is a public declaration of the principles of good conduct and standards of behaviour that the Members of the Southern Mallee District Council have agreed to demonstrate as elected community representatives. The standards in the Code of Conduct are in addition to any statutory requirements of the *Local Government Act 1999* or any other relevant Act or Regulation applicable to Council Members in the performance of their role and responsibilities.

This policy sets out the processes to support Council members in complying with this Code of Conduct and to address any complaints relating to the Code.

## **2 Behaviour Contrary to the Code of Conduct**

The Council is committed to supporting members in complying with the Code of Conduct and to investigate and address any complaints made relating to the Code.

## **3 Complaint Handling Process**

### **3.1 Making a Complaint**

A complaint made by any person that relates to an alleged breach of this Code of Conduct must:

- 3.1.1. be made in writing; and
- 3.1.2. identify the provision(s) of this Code which it alleges have been breached and provide all available evidence that supports the allegation(s) of breach; and
- 3.1.3. be delivered to the Principal Member (which includes any person acting in the Office of Principal Member), (in the case of a complaint against a Council Member); or
- 3.1.4. be delivered to the Deputy Principal Member (in the case of a complaint against the Principal Member).

Receipt of the complaint will be acknowledged to the complainant within 3 days of receiving the complaint.

The Council Member about whom the complaint has been made will be notified within 3 days of receipt of the complaint and of its substance.

### **3 Complaint Handling Process**

The complaint will be treated with strict confidentiality until such time as it has been fully investigated and finally determined, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*. The complainant will also be expected to observe confidentiality.

On receipt of a complaint the Principal Member (or the Deputy Principal Member, as the case may be) must bring the fact of the complaint but not the detail of the allegations to the attention of the Council at the next formal meeting of the Council and it is to be received by the Council in confidence, subject to meeting one or more of the grounds under Section 90(3) of the *Local Government Act 1999*.

#### **3.2 Referral of Complaints**

##### ***Illegal Behaviour***

Where there has been an allegation of criminal or illegal behaviour, this will not be investigated by the Council under this Code of Conduct but will, instead, be referred to the appropriate authority. For example, allegations of corruption will be referred to the Anti Corruption Branch of SAPOL; allegations of other illegal behaviour may be referred to SAPOL or to the Minister for State Local Government Relations.

To ensure any future investigation is not compromised, the Council Member about whom the complaint is made will not be advised of the receipt of the complaint by the Council, or its referral to the investigation authority. The Council will not be advised until after the investigating authority has completed its investigation

##### ***Local Government Governance Panel***

Where there has been an allegation of breach of the Council's Code of Conduct by a Council Member that is not criminal or illegal, the complaint may be referred to the independent Local Government Governance Panel by the Chief Executive Officer or Principal Member/Chairperson under this policy 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.

### **3 Complaint Handling Process**

Following assessment of the complaint by the Governance Panel and after considering the results of any investigations, a report will be prepared and provided by the Chair and will recommend to the respective Council appropriate action in relation to the matter, which may include mediation, specific training or counselling, and/or the issuing of an apology. The report may also provide the Council with recommended changes to its Code of Conduct to address a particular issue.

The following processes will be followed with respect to assessment and investigation of complaints depending on the level of seriousness:

- 3.2.1 The Governance Panel Chair may determine that no further action should be taken with respect to an alleged breach where the Panel Chair determines that the allegation is frivolous or vexatious. In this case the Panel Chair will prepare a report to that effect and provide it to the Principal Member or Chairperson.
- 3.2.2 If the Panel Chair identifies issues of substance that warrant further investigation:
  - 3.2.2.1 the investigation will be a thorough and balanced assessment of the available evidence regarding the alleged breach, the relevant circumstances prevailing at the time of the alleged breach and any other factors deemed relevant to making a fair and reasonable judgement about the matter.
  - 3.2.2.2 the Council Member the subject of the allegation(s) will be provided with a reasonable opportunity to explain his/her actions and to make a written submission on the allegations. Any such submission will be provided to the Independent Assessor.
  - 3.2.2.3 the Panel Chair must provide the Council with a final written report on the investigation undertaken within fourteen days of receiving written submissions from the person who made the complaint and/or the Council Member who is the subject of the complaint, or such longer period as the Council may determine.
  - 3.2.2.4 if the final report is not received from the Panel Chair within fourteen days the Council will ascertain from the Panel Chair the time frame within which the Council may expect the final reports. If the Panel Chair forms the view that additional time will be needed to conclude the investigation and finalise the report the Panel Chair should bring this to the attention of the Council at the earliest convenience, but at the very least, before the expiration of the fourteen day timeframe.

### **3 Complaint Handling Process**

- 3.2.2.5 if the final report makes recommendations that are punitive in nature and recommends the application of penalties, the Council Member, the subject of the allegation(s), will be provided with a reasonable opportunity to comment in writing upon the contents and findings contained in the report and on the appropriateness of the proposed penalty. Such comment must be taken into account by the Council. The complainant is not able to comment, as procedural fairness attaches to the Council Member and not the complainant.
- 3.2.2.6 the report delivered to the Council is final. There is no right of appeal on the report of the Governance Panel.
- 3.2.2.7 the final report will be presented at a Council meeting in confidence (ie public excluded), subject to Section 90(3) of the *Local Government Act* 1999 being satisfied.
- 3.2.2.8 after receipt of the final report from the Governance Panel, the Council must convey to the Council Member who is the subject of the complaint and to the person who made the complaint, a copy of the investigation report and a copy of Council's resolution in relation to the report.
- 3.2.2.9 the final report can be subject to a S.91(7) order of confidentiality, with the exception that the report has been provided to both the Council Member and the complainant concerned.

#### **3.3 Penalties**

- 3.3.1 On receipt of the final report of the Governance Panel the Council will determine an appropriate penalty based on a recommendation from the Governance Panel should there be a finding that there has been a breach of this Code of Conduct.
- 3.3.2 The Council has the power to impose the following penalties in relation to a finding of a breach of the Code of Conduct.
  - 3.3.2.1 censure the member of Council;
  - 3.3.2.2 request a public apology from the Council Member in relation to the breach;
  - 3.3.2.3 recommend the Council Member undertake a particular training course or receive appropriate instruction relevant to the breach;

### **3 Complaint Handling Process**

and in any such case the Council may:

- 3.3.2.4 make a public announcement of the complaint made against the Council Member, the determination and the penalty imposed on the Council Member.

### **4 Confidentiality & Procedural Fairness**

All deliberations by the Council, and the independent assessment process in regard to an alleged breach of the Code of Conduct will 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 principles of procedural fairness must be observed from the time of receipt of the complaint and during the investigation of the complaint to final determination. The final report is to show due process and the reasons for reaching the decision.

### **5 Further Information**

Members of the public may inspect this Policy on Council's website [www.southernmallee.sa.gov.au](http://www.southernmallee.sa.gov.au) and at the principal office of the Southern Mallee District Council at Day Street, Pinnaroo SA 5304.

On payment of a fee, a copy of this Policy may be obtained from the Council, or otherwise may be downloaded for free from the Council's website.

Any queries in relation to this Policy should be directed to the Chief Executive Officer contactable at the principal office on 8577 8002.

### **6 Policy Review**

This policy will be reviewed within two years or as Council requires, in conjunction with the review of Council's Code of Conduct for Council Members.

The Council may at any time alter this policy, or substitute a new policy.

### **7 Other Relevant Policies/Procedures**

Code of Conduct for Council Members