



Behavioural Management Policy

Type	Mandatory
GDS Category	Governance - Public
Responsibility	Manager Governance
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Applicable Legislation	Local Government Act 1999 s262B
Related Documents	Any optional Support Policy adopted in the future by Council
Public Consultation Required	No



1. Purpose

This Policy has been prepared and adopted pursuant to section 262B of the *Local Government Act 1999* (the Local Government Act).

This Behavioural Management Policy forms part of the Behavioural Management Framework for council members and sets out the approach to the management of complaints about the behaviour of council members. It sets out the process to be adopted where there has been an alleged breach of the Behavioural Standards for Council Members, this Behavioural Management Policy and/or any Behavioural Support Policy adopted by the Council (***the behavioural requirements***).

2. Glossary

Behavioural Management Framework – comprises four components:

- The legislative framework within which all council members must operate;
- The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all council members in South Australia;
- The Whyalla Council Behavioural Management Policy (this document) relating to the management of behaviour of council members and adopted pursuant to section 262B of the Local Government Act;
- Any optional Behavioural Support Policy adopted by Whyalla Council designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Local Government Act.

behavioural requirements – in this document refers collectively and individually to the Behavioural Standards for Council Members, the Whyalla Council Behavioural Management Policy and any behavioural support policies adopted by the Council.

Behavioural Standards for Council Members – established by the Minister for Local Government and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to the behaviour of members of councils.

frivolous – includes without limitation, a matter of little weight or importance, or lacking in seriousness.

misbehaviour – is defined in section 262E of the *Local Government Act* as:

- (a) A failure by a member of a council to comply with a requirement of the council under section 262C(1); or
- (b) A failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or
- (c) A failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1.

person responsible for managing the complaint means the Manager People and Culture (and any person acting in that position from time to time).

qualified assessor/investigator means a person external to the council who has demonstrated skills and experience in conducting assessments and investigations of behavioural complaints in the workplace.

repeated misbehaviour – is defined in section 262E of the *Local Government Act* as a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2 (Ch 5- Members of council, Pt 4-Member integrity and behaviour, Div 2-Member behaviour).

serious misbehaviour – is defined in section 262E of the *Local Government Act 1999* as a failure by a member of a council to comply with section 75G (Health and safety duties)

trivial – includes without limitation, a matter of little worth or importance; that is trifling; or insignificant.

vexatious – includes a matter raised without reasonable grounds or for the predominate purpose of causing annoyance, delay or detriment, or achieve another wrongful purpose.

3. Principles

Nothing in this Policy is intended to prevent council members from seeking to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated.

The following principles will apply:

- Where a council member considers there has been behaviour that is inconsistent with the **behavioural requirements**, a council member may, in appropriate circumstances, seek to respectfully and constructively raise this issue with the member concerned, without the need to lodge a complaint under this Policy;
- If a matter proceeds to a complaint, all council members will continue to comply with the procedures set out in this Policy and support the person responsible for managing the complaint;
- a consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate timely and efficient resolution and minimisation of costs;
- The person responsible for managing the complaint will engage the assistance of a qualified assessor/investigator and support persons in the assessment, investigation and resolution of complaints.
- Ongoing training and relevant resources will be provided to all council members to ensure they have the skills and knowledge necessary to perform their role in accordance with the **behavioural requirements** and the *Local Government Act 1999*.
- Training and relevant support will be provided to persons with specific obligations under this Policy to facilitate the management, reporting and resolution of complaints alleging a breach of the **behavioural requirements**.
- Council will manage complaints under this Policy with as little formality and technicality and with as much expedition as the requirements of the matter and the Local Government Act allow and with proper consideration of the matter. Council is not bound by rules of evidence but will inform itself in the manner considered most appropriate given the nature of the complaint.

4. The Complaint Management Process

This Policy sets out the procedures for dealing with an allegation of a breach of the **behavioural requirements** applying to council members. These procedures do not apply to complaints about council employees or the council as a whole.

A complaint made in accordance with this Policy must be lodged within 6 months of the occurrence of the behaviour that is alleged to be inconsistent with the **behavioural requirements**. A decision may be made to accept a complaint lodged more than 6 months after the alleged behaviour, on a case-by-case basis and at the absolute discretion of the person responsible for managing the complaint.

Community members can lodge a complaint with the Council in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

4.1. Dispute versus Complaint

It is important to distinguish between a dispute and a complaint. A dispute is generally a difference of opinion or disagreement between two parties. It may involve a heated discussion or some other unsatisfactory exchange between parties but may not amount to conduct inconsistent with the **behavioural requirements**. Ideally disputes will be handled directly by the parties involved and will not escalate to a complaint requiring action (even informal action) under this Policy. The Mayor (or another person) may play a role in facilitating a resolution to a dispute.

This Policy is intended to deal with matters where conduct is alleged to have been inconsistent with the **behavioural requirements**, rather than where members of council have differences of opinion, even when robustly put.

4.2. Confidentiality

Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

Access to information relating to complaints and information about complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Policy¹.

A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to a council member) that information except:

- For the purpose of dealing with the complaint, including gathering evidence from witnesses
- Where required by law
- For the purpose of obtaining legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor

¹ There are circumstances in the *Work Health and Safety Act 2012* where information must be disclosed, for example where the health and safety of an employee is at risk.

- Where the disclosure is made to an external party, investigating the complaint, or mediator/conciliator engaged in accordance with this Policy
- Where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

This is not to be confused with formal consideration at a Council Meeting of any matter arising from application of this Policy. Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of section 90 of the Local Government Act.

A complainant may request their identity be kept confidential from the person complained about. This does not constitute an anonymous complaint. The person responsible for managing the complaint will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

4.3. Stages of Action

This Policy has three distinct stages to the approach that will be taken to address complaints about the behaviour of Council Members:

- Part 1: Informal Action: Where the matter can be resolved directly between the parties.
- Part 2: Formal Action: Where the matter cannot be resolved using informal action and a formal process of consideration is required.
- Part 3: Referrals to the Behavioural Standards Panel: the circumstance under which the Mayor, the Council or other authorised person(s) will make a referral.

4.4. Part 1: Informal action

Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the **behavioural requirements**. A person may therefore consider raising the matter directly with the council member concerned.

Alternatively, a person may raise their concern with the Mayor on an informal basis. If the concerns relate to or involve the Mayor the person may raise the matter with the Deputy Mayor.

If the Mayor (or Deputy Mayor) considers that access to resources should be provided to support impacted parties and facilitate early resolution of the matter, the Mayor (or Deputy Mayor) will request the CEO to facilitate access to relevant resources. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

4.4.1. Record keeping

Where the Mayor (or Deputy Mayor) addresses the matter through informal action, a record should be made setting out:

- Details of the complainant
- Details of the person complained about
- A summary of the matter
- A summary of actions taken in response
- Details of agreed actions (if any)

The record will be provided to the person responsible for managing complaints under this Policy for confidential record keeping purposes.

If informal action does not successfully resolve the matter, the record may be made available to an investigation process as provided for under this Policy or to the Behavioural Standards Panel.

4.5. Part 2: Formal action

This Part sets out the process for formal action in response to a complaint regarding the behaviour of council members and addresses the manner in which a complaint will be:

- Received
- Assessed
- Investigated
- Resolved
- Recorded

A complaint made under the Behavioural Management Policy must:

- be received in writing. A complaint should be marked with “Confidential Council Member Complaint” and forwarded to:
 - (via email) council@whyalla.sa.gov.au
 - (hard copy) PO Box 126 Whyalla 5600.
- Provide the name of the council member who has allegedly breached the **behavioural requirements**, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint.
- Be specific (including identifying the **behavioural requirements** the complainant alleges have been breached)
- Provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint (e.g. where, when, impact of the behaviour, actions taken to try to resolve the issue, relevant records or documents)
- Identify the outcome being sought
- Be lodged within six (6) months of the alleged conduct occurring on the basis that it is important to address alleged breaches of **behavioural requirements** in a timely manner (with discretion provided to the person responsible for managing the complaint to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis).

4.5.1. Receipt of a Complaint

This step is an administrative process undertaken by the person responsible for managing a complaint:

- receipt
- initial acknowledgement

- record keeping; and
- allocation of the matter to the a qualified assessor/investigator.

The person responsible for managing a complaint does not undertake an assessment of the merits of the complaint.

Receipt of the complaint will be acknowledged within 2 business days or as soon as reasonably practicable and a copy of this Policy will be provided to the person making the complaint.

The complaint should be directed to the person responsible for managing the complaint in accordance with this Policy.

A complainant may withdraw their complaint at any stage.

4.5.2. Initial complaint assessment

An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at this stage.

Step 1

The qualified assessor/investigator will undertake an assessment of the complaint to determine whether the content of the complaint relates to the **behavioural requirements** and whether the conduct occurred in the context of the council member carrying out their official functions and duties. This assessment will be undertaken in consultation with the Mayor (or Deputy Mayor if the complaint concerns the Mayor).

In undertaking the assessment, the qualified assessor/investigator will have regard to the following matters²:

- the person who is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter
- the complaint is trivial, frivolous or vexatious or not made in good faith
- the complaint has been lodged with another authority
- the subject matter of the complaint has been or is already being investigated by the Council or another body
- it is unnecessary or unjustifiable for the Council to deal with the complaint
- the council has dealt with the complaint adequately.

Step 2

If the qualified assessor/investigator, in consultation with the Mayor (or Deputy Mayor if the complaint concerns the Mayor) considers the matter warrants further consideration, the person complained about will be advised that a complaint has been received and is undergoing an initial assessment in accordance with this Policy. They will be provided with a

² The person responsible for managing the complaint will also have regard to whether the council has obligations to report the matter to either the Local Government Association Mutual Liability Scheme (LGAMLS) or the Local Government Association Workers Compensation Scheme (LGAWCS), pursuant to the Rules of those Schemes and council's agreement with those bodies.

summary of the matter, at a sufficient level of detail to understand the nature of the allegations and enable them to provide a preliminary response. This process may include a discussion between the qualified assessor/investigator and the person complained about. The person complained about may have a support person present during any discussions.

The person complained about will be given a reasonable opportunity, but no more than ten business days, to provide a response to support the initial assessment. The qualified assessor/investigator may provide a longer period of time for provision of a response at their discretion. The qualified assessor/investigator should have regard to any response provided in determining the action resulting from the initial assessment.

Action from initial assessment

The qualified assessor/investigator will determine what action will result from the initial assessment. A matter may proceed to formal consideration under this Policy, unless there are grounds to take one of the following actions pursuant to section 262B(2)(b):

- refusing to deal with the complaint³
- determining to take no further action
- referring to an alternative resolution mechanism or to propose training for relevant parties (e.g. facilitated discussion, provision of training, mediation, arbitration, conflict resolution, etc.)
- referring the matter to another body or agency (e.g., the Ombudsman SA or the Behavioural Standards Panel)

The outcome of the initial assessment will be advised to the complainant and person complained about in writing as far as is permitted by law.

Refusing to deal with the complaint/Determining to take no further action

Where the qualified assessor/investigator makes a decision not to proceed with formal consideration of the matter the following steps will be taken:

- the complainant will be provided written reasons explaining the decision⁴
- the person complained about will be provided with a brief summary of the complaint and the reasons for not proceeding.
- A record of these steps and the decision not to proceed will be made.
- The record will be provided to the person authorised to receive complaints under this Policy for confidential record keeping purposes.

Whilst a matter may not proceed, the qualified assessor/investigator may discuss the issues informally with the parties and identify strategies to build skills, facilitate positive relationship development and reduce the likelihood of repeat occurrences.

³ Section 270(4a)(a)(i) of the *Local Government Act 1999* precludes a review of a decision to refuse to deal with the complaint

⁴ Section 262D, *Local Government Act 1999*

Decision to refer to alternative resolution mechanism:

The qualified assessor/investigator may form the view that the optimal way to deal with the complaint is to implement an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training.

The qualified assessor/investigator may discuss the use of a proposed alternative resolution mechanism with the complainant and the person complained about to determine whether there is support for this approach.

If so, the qualified assessor/investigator may request the CEO take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

The complainant and the person complained about will be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

A record of the decision to refer the matter to an alternative resolution mechanism will be made. The record will be provided to the person authorised to receive a complaint under this Policy for confidential record keeping purposes.

Decision to refer to another body or agency

Where the qualified assessor/investigator makes a decision to refer the matter to another body or agency the qualified assessor/investigator will follow any direction from that body or agency regarding what information is to be provided to the complainant and the council member complained about regarding the referral.

A record of the decision to refer the matter to another body or agency will be made. Pending any direction from the relevant body or agency, the record will be provided to the person authorised to receive a complaint under this Policy for confidential record keeping purposes.

Decision to proceed to formal consideration:

Where the qualified assessor/investigator makes a decision to proceed to formal consideration the following steps will be taken:

- the person complained about will be provided with a copy of this Policy, contact details of the qualified assessor/investigator and a summary document setting out:
 - the specific provision(s) of the ***behavioural requirements*** alleged to have been breached; and
 - the circumstances where this breach is alleged to have occurred.

In circumstances where the complainant has not requested their identity be kept confidential, a copy of the complaint may be provided in full.

- the complainant will be advised of the decision to proceed and the contact details of the qualified assessor/investigator.

4.5.3. Formal consideration

Where a decision to formally consider the complaint has been made the qualified assessor/investigator will determine how to proceed including whether any additional external service provider is required to assist with the formal consideration of the complaint.

If the qualified assessor/investigator determines a third party should be engaged, they will request the CEO to facilitate engagement of an appropriate service provider. The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

The qualified assessor/investigator will advise both the complainant and the person complained about that they are able to have a support person accompany them during discussions relating to the complaint.

It is the expectation of Council that both the complainant and the person complained about will cooperate with any process to consider the complaint and, if requested, participate in meetings in a timely manner.

Failure by the council member complained about to comply with this requirement may be taken into account when considering the actions to be taken under section 262B(2)(e) of the Local Government Act and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

Further consideration by the qualified assessor/investigator (or the third party engaged), may (at the discretion of that person) involve:

- explore the complaint with the complainant and the person who is the subject of the complaint
- speaking with other persons who have been nominated by the parties to have observed the behaviour
- speaking directly with witnesses to the conduct complained about
- requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

During the formal consideration of a matter appropriate records should be kept by the qualified assessor/investigator. All records will be provided to the person responsible for receiving a complaint for record keeping purposes.

4.5.4. Report

The qualified assessor/investigator (or the third party engaged) should ensure a report is prepared summarising the matter and setting out their findings, conclusions and recommendations. The report should set out:

- Allegations made in the complaint
- Summary of evidence to which the investigation had regard
- Findings
- Conclusions

- Recommendations

A report will generally include a recommended action for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as per the Local Government Act:

- discussions with parties to the complaint to seek agreement
- formal mediation if not already undertaken
- Conciliation
- Arbitration
- Education and further training

A copy of the draft report will be provided to the parties to the complaint who will be given a reasonable opportunity, but no more than ten business days, to make submissions in relation to the draft report. The qualified assessor/investigator (or the third party engaged) may provide a longer period of time for lodgement of submissions to the draft report at their discretion. qualified assessor/investigator (or the third party engaged) will have regard to any submissions made in preparing a final report.

Outcome – No breach found

Where the finding is that no breach of the *behavioural requirements* has occurred a final report should be prepared by the qualified assessor/investigator (or third party engaged) and provided to the complainant and the person complained about.

The final report will also be provided to the person authorised for receiving a complaint for the purposes of confidential record keeping.

Outcome – agreed actions (breach found)

Where there is a finding that a breach of the *behavioural requirements* has occurred and the complainant and the person complained about⁵ agree to a path for resolution, that agreement will be documented including matters such as:

- actions to be undertaken
- responsibility for completing actions
- timeframes for completion of actions
- what will occur if there is a repeat of the behaviours complained about
- monitoring arrangements for completion of actions
- what will occur if the actions aren't completed
- confirmation that the matter is considered resolved

⁵ Where the conduct complained about is not raised by the person directly affected by the conduct it will usually be appropriate to discuss the proposed resolution with that person prior to finalising agreement. This is intended to apply in a circumstance where the 'person affected' is not the complainant to provide them a reasonable opportunity to have input into the resolution.

The agreement reached will be made in writing, including a commitment by the parties to the complaint to abide by the agreement (which may be by electronic means). A copy of the agreement will be retained by each party

The final report and a copy of the agreement will also be provided to the person managing the complaint for the purposes of confidential record keeping.

The complaint will remain confidential in accordance with the requirements of this Policy. However, the matter must be reported in the Council's Annual Report which must contain the information required by the regulations.⁶

Outcome – no agreed action (breach found)

Where the finding is that a breach of the *behavioural requirements* has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter a final report, including a recommendation for any action to be taken, should be presented to Council for determination. The CEO must include the final report on the agenda at a public meeting of the Council as soon as practicable.

4.5.5. Actions of Council

Where the parties are not able to agree on an approach to resolve the matter, the Council must determine the action to be taken which may include:

- taking no further action
- passing a censure motion in respect of the Council Member;
- requiring the Council Member to issue a public apology (in a manner determined by the Council)
- requiring the Council Member to undertake a specified course of training or instruction;
- removal or suspension from one or more offices held in the Council Member's capacity as a member of the Council or by virtue of being a member of the Council – but not the office of Member of the Council;

Where Council determines to take no further action, the complainant will be advised of this along with reasons, which may include:

- (a) the ground that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the Council to deal with or continue to deal with the complaint;
- (b) the ground that the subject matter of the complaint has been or is already being investigated, whether by the Council or another person or body; or
- (c) the ground that the Council has dealt with the complaint adequately.

In making a determination under section 262C(1) Council should be reasonably prescriptive about the manner and time periods in which the action must be completed. Section 262E

⁶ Local Government Act 1999, Schedule 4, cl 1(d)

defines a failure to comply with a requirement of the council under 262C(1) as ‘misbehaviour’ which may result in a referral to the Behavioural Standards Panel.

The matter must be reported in the Council’s Annual Report which must contain the information required by the regulations.⁷

4.6. Behavioural Standards Panel

The Behavioural Standards Panel is an independent authority consisting of three members and has powers to impose sanctions on council members who breach the **behavioural requirements**.

In accordance with section 262Q of the Local Government Act a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be referred to the Panel by:

- A resolution of the Council;
- the Mayor; or
- at least 3 members of the council
- Responsible person under 75G(3b) – direction not to attend meeting on health or safety grounds.

The Panel’s jurisdiction arises in the circumstances set out below:

Legislative definition	Plain language explanation
<p>misbehaviour means—</p> <p>(a) a failure by a member of a council to comply with a requirement of the council under section 262C(1); or</p> <p>(b) a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or</p> <p>(c) a failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1;</p>	<p>Misbehaviour means:</p> <p>(a) a council member fails to take the action required by council; or</p> <p>(b) a council member fails to comply with this policy; or</p> <p>(c) a council member fails to comply with an agreement reached pursuant to this policy</p>
<p>repeated misbehaviour means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2;</p>	<p>A second or subsequent breach of the behavioural requirements</p>
<p>serious misbehaviour means a failure by a member of a council to comply with section 75G.</p>	<p>A breach of health and safety duties (including sexual harassment and bullying) as</p>

⁷ Schedule 4(1)(d), *Local Government Act 1999*

	set out in section 75G of the <i>Local Government Act 1999</i>
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5. Responsibilities

The qualified assessor/investigator is responsible under this Policy to:

- Perform the tasks bestowed upon the person responsible for dealing with a complaint pursuant to this Policy
- In consultation with the CEO, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter becoming serious, or escalating to a formal complaint.
- In consultation with the CEO, engage external resources to assist with investigation and resolution of matters.

The person responsible for managing a complaint is responsible under this Policy to:

- manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Policy to the qualified assessor/investigator
- To undertake the role of the Behavioural Standards Panel contact officer
- Comply with any lawful request of the Panel for information related to a matter under consideration by the Panel.
- Receive and respond to notices relating to matters under consideration by the Panel.
- Keep the CEO informed of the status of matters under consideration by the Panel.

The CEO (or delegate) is responsible under this Policy to:

- facilitate access to external resources to support the resolution of complaints lodged in accordance with this Policy.

6. Related Legislation

Independent Commission Against Corruption Act 2012

Local Government Act 1999

Ombudsman Act 1972

Public Interest Disclosure Act 2018