



NAME OF POLICY: Elected Member Behavioural Management Policy

POLICY MANUAL: Governance

1. Introduction

- 1.1. The City of Norwood Payneham & St Peters Council (the Council) is committed to acting as a representative, informed and responsible public authority. In meeting these requirements, it supports its Elected Members to uphold the values of honesty, integrity, accountability and transparency, for the purposes of fostering community confidence and trust in the Council and Local Government more generally.
- 1.2. This Behavioural Management Policy (the Policy) sets out the process for receiving and managing alleged breaches by an Elected Member of the Behavioural Standards for Council Members (the Behavioural Standards). The Behavioural Standards are attached as Appendix 1.
- 1.3. The Behavioural Standards set out the minimum standards of behaviour that are expected of all Elected Members in the performance of their official functions and duties. The Behavioural Standards are mandatory rules which all Elected Members must comply with.

2. Purpose

- 2.1. This Policy applies to all Elected Members of the Council. It has been prepared and adopted pursuant to Section 262B of the *Local Government Act 1999* (the Act).
- 2.2. The Council recognises its responsibilities to not only support persons who make a complaint, but also to an Elected Member who is the subject of the complaint.
- 2.3. This Policy:
 - 2.3.1. Recognises that any person may make a complaint about an Elected Member and that any complaint will remain an allegation only unless found proved following an impartial investigation process.
 - 2.3.2. Sets out the process to be followed where there has been an alleged breach of the Behavioural Standards (a complaint).
 - 2.3.3. Sets out the criteria that will be applied in the receipt and assessment of a complaint.
 - 2.3.4. Specifies the manner in which the Elected Member the subject of the complaint and the Complainant, will be notified of the receipt, progress and the action taken in respect of a complaint.

3. Definitions

Behavioural Standards for Council Members - The Behavioural Standards established by the Minister for Local Government, as published in the SA Government Gazette, specifying standards of behaviour to be observed by all Elected Members of Councils.¹

Behavioural Standards Panel – Is an independent statutory body established pursuant to Section 262F of the Act which deals with complaints about the behaviour of Elected Members that cannot be resolved at the Council level, particularly 'repeated' and 'serious' misbehaviour.²

Censure motion – A proposition of disapproval of or dissatisfaction with conduct/behaviours for debate by the Council and determined by a majority vote;

Frivolous complaint - A complaint where the matter lacks substance or merit, is of little weight or importance, and/or lacking in seriousness. A frivolous complaint may be one that:

- is trivial in nature; or
- has no serious purpose or value; or
- is sufficiently meritless that further action would be a waste of time or cost; or
- the extent of the complaint is out of proportion to the significance of the matter.

Health and Safety Duties – As defined in Section 75G of the Act, an Elected Members must:

- (a) Take reasonable care that their acts or omissions do not adversely affect the health and safety of other Elected Members or employees of the Council.
- (b) Comply , so far as is reasonably able, with any reasonable direction that is given by a responsible person for the purposes of ensuring that the Elected Member's acts or omissions do not adversely affect the health and safety of other Elected Members or employees of the Council.

Independent reviewer - A person engaged by the person responsible for managing the complaint on behalf of the Council to undertake a formal investigation of a complaint and to prepare and provide a report for consideration.

Misbehaviour - Is defined in Section 262E of the Act as:

- (a) A failure by an Elected Member to comply with a requirement of the Council under Section 262C(1) (being the imposition of a sanction by the Council on a finding of breach of the *Behavioural Standards* or any Council behavioural support policies); or
- (b) A failure by an Elected Member to comply with a provision of, or a requirement under, the Council's *Behavioural Management Policy*; or
- (c) A failure by an Elected Member 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 (Sections 262A-262D) of the Act.

Person responsible for managing the complaint - Means the General Manager, Governance & Civic Affairs (or their delegate) appointed by the Council to perform the function. In the event the General Manager, Governance & Civic Affairs is unable to perform this role for any reason, then the Chief Executive Officer, in consultation with the Mayor, will appoint a suitably qualified person to undertake the role, which may include an external Consultant.

Where considered necessary (and as authorised by the Chief Executive Officer), the person responsible for managing the complaint may engage the assistance of Consultants and/or support persons in the assessment, investigation and resolution of complaints.

Responsible person – As distinct from the Person responsible for managing the complaint under this Policy, the Responsible Person is a legislatively defined term in Section 75G(2) of the Act and is either

¹ *Local Government Act 1999*, Section 75E

² Refer to the [Behavioural Standards Panel website](#) for additional information.

the Chief Executive Officer, an Elected Member chosen by the Council or the Mayor dependent on the person whose health and safety may be adversely affected. The Responsible person has legislated responsibilities regarding giving reasonable direction(s) to an Elected Member.³

Repeated misbehaviour - Is defined in Section 262E of the Act as a second or subsequent failure by a member to comply with Chapter 5 (Members of council) Part 4 (Member integrity and behaviour) Division 2 (Member behaviour) of the Act, which covers the *Behavioural Standards* and any Council behavioural support policies.

Serious misbehaviour - Is defined in Section 262E of the Act as a failure by an Elected Member to comply with section 75G of the Act (being the health and safety duties of Elected Members).

Subject Elected Member – The Elected Member about whom the complainant has made a complaint.

Trivial complaint - Means a complaint where the matter is of little or no importance and/or insignificant, where the person responsible for managing the complaint considers it unreasonable to dedicate resources to investigate the matter.

Vexatious complaint - Includes a complaint where the matter raised is without reasonable grounds or raised for the predominate purpose of causing annoyance, delay or detriment and/or to achieve any other wrongful purpose. A complaint may be regarded as vexatious if it:

- continues to pursue a complaint that has already been addressed without providing any new information that warrants further action; or
- fails to provide additional information which would be likely to be available, relevant to and supportive of, the issues raised in the complaint; or
- comprises or includes lies or provides misleading information to the person responsible for managing the complaint.

4. Principles

- 4.1. Nothing in this Policy prevents an Elected Member seeking to resolve any dispute and/or complaint in a proactive and positive manner, without the need for a complaint to be lodged under this Policy.
- 4.2. In the event of a dispute between Elected Members, in accordance with their obligations under Section 59 of the Act, it is expected that they will, at least in the first instance, attempt to resolve their differences in a mutually acceptable manner.
- 4.3. This Policy deals with matters where conduct is alleged to have been inconsistent with/contrary to the Behavioural Standards, rather than circumstances where an Elected Member may have a difference of opinion or be in dispute with another person or persons.
- 4.4. Complaints under this Policy are to be received and managed with little formality and technicality and as efficiently as the circumstances of the matter allow, while ensuring that procedural fairness is afforded as required.
- 4.5. Where considered necessary, and as authorised by the Chief Executive Officer, the person responsible for managing a complaint may engage the assistance of consultants and/or support persons in the assessment, investigation and resolution of complaints.
- 4.6. In any aspect of the procedures identified in this Policy, where a decision may be made that might adversely affect a person, the rules of natural justice/principles of procedural fairness will operate to ensure that the person is given reasonable opportunity to present information and that their rights to be heard and to be treated without bias and decisions made based on relevant evidence, supported by reasons, are observed.

³ *Local Government Act*, Sections 75G(3)-(5)

Accordingly, natural justice/procedural fairness will in all circumstances be afforded to the Subject Elected Member and to other persons as required, according to the circumstances and impact of the decision under consideration.

5. Confidentiality

- 5.1. Complaints will be managed on a confidential basis unless and until required to be reported to the Council in a public meeting under this Policy (if at all) or until the matter is otherwise lawfully made public or disclosed.
- 5.2. Whilst the matter is confidential, access to information relating to complaints and information about complaints, will be limited to the parties to the complaint and to any persons with a responsibility for the complaint handling process (including consultants and/or support persons as per Clause 4.5 of this Policy). All persons will be expressly notified by the person responsible for managing the complaint of the confidential nature of the process and the expectations of confidentiality.
- 5.3. A person who has access to information about a complaint (including the complainant and the Subject Elected Member) must not directly or indirectly, disclose to any person (including to another Elected Member) that information except:
 - 5.3.1. for the purpose of dealing with the complaint;
 - 5.3.2. where required by law;
 - 5.3.3. for the purpose of obtaining legal advice or legal representation or medical or psychological assistance or assistance from a counsellor;
 - 5.3.4. where the disclosure is made to a person investigating the complaint or mediator/conciliator engaged under this Policy; and/or
 - 5.3.5. where the information has been (lawfully) made public in accordance with the Policy.
- 5.4. Where another Elected Member breaches the confidentiality obligations identified in this Policy, that breach may give rise to a breach of the Elected Member Integrity obligations under the Act and will be reported by the person responsible for managing the complaint to the Ombudsman for consideration.⁴
- 5.5. Where the complainant is a member of the public who breaches the confidentiality obligations identified in this Policy, that will be a matter to be considered by the person responsible for managing the complaint, in determining whether the complaint is to be further progressed. Where it is determined that the disclosure has resulted in an unfair detriment to the Subject Elected Member, including a denial of procedural fairness, the matter may be dismissed, without further investigation.
- 5.6. A complainant may request that their identity be kept confidential from the Subject Elected Member. The person responsible for managing the complaint will consider such requests, having regard to any relevant legal requirements.

6. Complaint Management Process

- 6.1. A complaint must be made within three (3) months of the actions and behaviour that are said to be inconsistent with or a breach of the *Behavioural Standards*. This is on the basis that it is desirable (procedurally fair) to address alleged breaches of the *Behavioural Standards* in a timely manner.
- 6.2. In the absolute discretion of the person responsible for managing the complaint, a complaint made after three (3) months of the actions said to be inconsistent with or in breach the *Behavioural Standards*, will be received and assessed only where an extension of time is in

⁴ The Elected Member Integrity provisions are within Chapter 5 (Members of Council), Part 4 (Member Integrity and Behaviour), Division 1 (Member Integrity) of the *Local Government Act*. Section 263A of the Act relates to the Ombudsman's investigation of alleged breaches of these Integrity provisions.

the public interest and warranted in the circumstances of the matter and where there is no manifest prejudice to the Subject Elected Member.

- 6.3. There are three (3) stages in the receipt, assessment and management of a complaint under this Policy:
 - 6.3.1. **Informal Action** - Where the matter can be resolved between the parties without any Formal Action.
 - 6.3.2. **Formal Action** - Where the matter cannot be resolved using Informal Action, or it is not appropriate to do so, meaning that formal process is required.
 - 6.3.3. **Referral to the Behavioural Standards Panel** - The circumstance under which the Council, the Mayor, at least three (3) Members of the Council or a responsible person in accordance with Section 75G(5) will make the referral.⁵
- 6.4. A complaint made under this Policy must:
 - 6.4.1. Be in writing, noting that a complaint will not be unreasonably refused if it is made verbally including by telephone where evidence is provided to support a complaint under this Policy.
 - 6.4.2. Provide the name of the Elected Member who has allegedly breached the Behavioural Standards or Behavioural Support Policy, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if submitted on behalf of the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint.
 - 6.4.3. Be specific, including identifying the *Behavioural Standards* or *Behavioural Support Policy* Clause said to have been breached.
 - 6.4.4. Provide supporting evidence to assist any investigation, including the grounds and circumstances of the complaint, as well as any actions taken to try to resolve the complaint.
 - 6.4.5. Identify the outcome sought.
 - 6.4.6. Be delivered to the General Manager, Governance & Civic Affairs.
If the complaint is provided to the Chief Executive Officer or Mayor it will be forwarded to the General Manager, Governance & Civic Affairs (or their delegate).
- 6.5. Receipt of a Complaint
 - 6.5.1. The General Manager, Governance & Civic Affairs (or their delegate) will acknowledge receipt of any complaint within two (2) business days, or as soon as reasonably practicable.
 - 6.5.2. A copy of this Policy will be provided to the person who has made the complaint.
 - 6.5.3. A complainant may withdraw their complaint at any stage, in which case, the matter will not be further progressed from that point unless the complaint has progressed to Formal Action, in which case, it will be for the person / body responsible for managing the complaint at that time to determine whether the complaint may be withdrawn.

7. Informal Action

- 7.1. On receipt and consideration of any complaint, informal resolution is encouraged.

⁵ Local Government Act, Section 262Q

- 7.2. This may include the complainant, after consultation with the person responsible for managing the complaint, raising the matter directly with the Elected Member concerned on an informal basis.
- 7.3. If the person responsible for managing the complaint considers that access to resources to support the parties to facilitate early resolution of the matter should be provided, including after considering any such request that may be made by an Elected Member, they will facilitate such access.
- 7.4. Records of the actions taken in informally resolving or trying to informally resolve the complaint, including the details of any agreed actions (if any) are to be kept.
- 7.5. Any records made under the informal action process may be relied on in the formal action process.

8. Formal Action

- 8.1. If the matter cannot be resolved through an Informal Action process, the matter will be considered under the Formal Action provisions of this Clause which includes an Initial Assessment and, if necessary, Formal Consideration.
- 8.2. The person responsible for managing the complaint will undertake an Initial Assessment of the complaint to determine whether it relates to behaviour that falls under the Behavioural Standards and the conduct complained of occurred in the context of the Elected Member carrying out their official functions and duties of office.
- 8.3. An Initial Assessment is not an investigation and findings will not be made about the merits of the complaint.
- 8.4. In undertaking the Initial Assessment, the person responsible for managing the complaint will have regard to the following matters:
 - 8.4.1. the person making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter;
 - 8.4.2. whether it could be said that the complaint is trivial, frivolous or vexatious or not made in good faith;
 - 8.4.3. if the complaint has been lodged with another authority;
 - 8.4.4. if the subject matter of the complaint has been, or is already being, investigated by the Council or another body.
 - 8.4.5. if it is unnecessary or unjustifiable for the Council to deal with the complaint; and/or
 - 8.4.6. if the Council has already dealt with the complaint.
- 8.5. The person responsible for managing the complaint will also give consideration as to whether the Council has obligations to report the matter to the Local Government Association Mutual Liability Scheme or to the Local Government Association Workers Compensation Scheme.
- 8.6. If the person responsible for managing the complaint considers that the matter warrants further consideration, the Subject Elected Member must be advised that a complaint has been received and is subject to an Initial Assessment in accordance with this Policy.
- 8.7. The Subject Elected Member must be provided with a summary of the allegations, with sufficient detail, to understand the nature of them and to enable a preliminary response from him/her within a reasonably timeframe, being not more than ten (10) business days.
- 8.8. The person responsible for managing the complaint may, at their discretion, allow a longer period of time for a response to be provided, but must provide reasons for extending the timeframe to respond.

- 8.9. The person responsible for managing the complaint will determine what action is to result from the Initial Assessment. This includes proceeding to Formal Consideration under the Policy, unless there are grounds that support one of the following actions, pursuant to Section 262B(2)(b), being taken:
 - 8.9.1. refuse to deal with the complaint;
 - 8.9.2. determine to take no further action;
 - 8.9.3. refer to an alternative resolution mechanism or to propose training for relevant parties, for example, mediation or conciliation; or
 - 8.9.4. referral of the matter to another body or agency, for example, the Ombudsman, the Independent Commission Against Corruption or, in accordance with section 262Q of the Act, to the Behavioural Standards Panel.
- 8.10. The outcome of the Initial Assessment will be advised to the complainant and to the Subject Elected Member.

9. Determining to not take Further Action

- 9.1. Where the person responsible for managing the complaint decides to not proceed to Formal Consideration of the matter:
 - 9.1.1. the complainant must be provided with written reasons for this decision;
 - 9.1.2. the Subject Elected Member must be provided with a summary of the complaint and the reasons for not proceeding; and
 - 9.1.3. records must be kept by the Council about the decision to not proceed.

10. Decision to refer to Alternative Dispute Resolution

- 10.1. The person responsible for managing the complaint may decide that the complaint could be appropriately dealt with by way of an alternative dispute resolution process, such as facilitated discussion, mediation, arbitration, conflict resolution or training.
- 10.2. The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the Subject Elected Member to determine whether both support this approach. If either party rejects this approach that is the end of this consideration.
- 10.3. If the parties agree to this approach, the person responsible for managing the complaint will take steps to facilitate access to appropriate internal or external support for parties to the complaint.
- 10.4. In the event that the person responsible for managing the complaint determines it is appropriate for the matter to be referred to an alternative dispute resolution processes, and the complainant refuses to do so, this will be relevant in determining whether the complaint is to be progressed under the Policy to formal consideration and, if consent is unreasonably withheld, that may result in the complaint being dismissed.

11. Formal Consideration

- 11.1. Where the person responsible for managing the complaint decides to proceed to formal consideration, the Subject Elected Member will be provided with:
 - 11.1.1. confirmation of the decision to proceed;
 - 11.1.2. a copy of this Policy;
 - 11.1.3. the contact details of the person responsible for managing the complaint; and
 - 11.1.4. either:
 - 11.1.4.1. a copy of the complaint in full, only where the complainant has not requested that their identity be kept confidential; or
 - 11.1.4.2. a summary document setting out the specific provision(s) of the Behavioural Standards alleged to have been breached and the circumstances where this breach is alleged to have occurred (while noting the confidentiality requirements).
- 11.2. The person responsible for managing the complaint may, in the first instance, determine that they are the appropriate person to formally consider and determine the complaint. Alternatively, the person responsible for managing the complaint may determine to engage a third party to investigate and make recommendations on the complaint, for example an investigator or an external service provider with skills relevant to the matter, who will investigate the complaint and report and make recommendations to the person responsible for managing the complaint.
- 11.3. If necessary, the Chief Executive Officer (or delegate) will facilitate the engagement of an appropriate service provider in this instance.
- 11.4. It is the expectation of the Council that both the complainant and the Subject Elected Member will cooperate with any investigation process and will participate in the process, including any meetings, in a timely manner:
 - 11.4.1. Failure by the Subject Elected Member to comply with this requirement may be considered in relation to any actions under Section 262B(2)(e) of the Act and may constitute grounds for referral of the matter to the Behavioural Standards Panel (misbehaviour).
 - 11.4.2. Failure by the complainant to comply with this requirement may be relevant in determining whether the complaint is to be further progressed under the Policy and, if such lack of cooperation is unreasonable, it may result in the complaint being dismissed.
- 11.5. During the formal consideration of a matter, appropriate records will be kept by the person responsible for managing the complaint and, subsequently, retained by the Council.

12. Report

- 12.1. The person responsible for managing the complaint (which, for these purposes, extends to any third party engaged) will prepare a draft report setting out:
 - 12.1.1. the allegations made in the complaint;
 - 12.1.2. a summary of the evidence to which the investigation had regard;
 - 12.1.3. the preliminary findings; and
 - 12.1.4. the foreshadowed recommendations.
- 12.2. A copy of the draft report will be provided to the parties to the complaint who will be given a reasonable opportunity, being no more than ten (10) business days, to make any submission in relation to the draft report.
- 12.3. The person responsible for managing the complaint (or the third party engaged) may grant an extension of time to either or both parties to provide submissions on the draft report, if the circumstances of the matter requires this, but will provide reason(s) for doing so.
- 12.4. The person responsible for managing the complaint (including any third party engaged) will have regard to any submissions received in preparing the final report on the Formal Consideration.

13. Outcome – No Breach

- 13.1. Where the finding is that a breach of the *Behavioural Standards* has not occurred, a final report will be prepared by the person responsible for managing the complaint (including any third party engaged) and this will be provided to the complainant and to the Subject Elected Member.
- 13.2. The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the Subject Elected Member. If such a request is made, a copy of the final report will be included in the public Agenda for the next practicable Council meeting, with the name of the complainant redacted, if required.
- 13.3. If a request is not received, no further action will be taken, and the matter will be taken to be concluded.

14. Outcome Breach

- 14.1. Where the finding is that a breach of the *Behavioural Standards* has occurred, the person responsible for managing the complaint will contact the complainant and the Subject Elected Member, to determine if an agreed resolution can be reached.
- 14.2. Any agreement reached will be documented, including (but not limited to) matters such as:
 - 14.2.1. actions to be undertaken;
 - 14.2.2. timeframes for completion;
 - 14.2.3. outcomes if the actions are not completed;
 - 14.2.4. confirmation that the matter is considered resolved; and/or
 - 14.2.5. any commitment by parties to abide the agreement.
- 14.3. A copy of any such agreement will be retained by each party and in Council records.
- 14.4. The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the Subject Elected Member. If such a request is made, a copy of the final report will be included in the public Agenda for the next practicable Council meeting with the name of the complainant redacted, if required.

15. Formal Sanctions

- 15.1. Where the parties to the complaint fail to reach agreement about the resolution of the matter, a report will be included on the public Agenda for the next practicable Council meeting, for the Council to consider and determine the matter whilst the meeting is open to the public.
- 15.2. For the avoidance of doubt, this is not to be considered to amount to a requirement that a copy of the final report as prepared on the investigation to be included in the Agenda. It can include a report with sufficient details and information to enable the Council to make an informed, transparent, accountable decision on the matter with regard to process, merits and outcomes.
- 15.3. Consideration must be given as to whether the complainant's name is required to be redacted from any report to a public Council meeting.
- 15.4. The Council will determine what, if any, actions are to be taken on the findings and recommendations having regard to those set out in the Behavioural Standards which, in accordance with Section 262C(1) of the Act, may include:
 - 15.4.1. no further action;
 - 15.4.2. a censure motion;
 - 15.4.3. a requirement to issue a private or public apology (in a manner determined by the Council), to be made within the next two (2) Council meetings;
 - 15.4.4. a requirement to undertake training; and/or
 - 15.4.5. the removal or suspension from one or more offices held as an Elected Member of the Council or by virtue of being an Elected Member of the Council, other than the office of Elected Member of the Council.
- 15.5. Where the Council determines not to take any further action, the complainant will be advised of this decision, with supporting reasons.
- 15.6. A failure to comply with a sanction imposed by the Council under Section 262C(1) of the Act is misbehaviour and may result in a referral to the Behavioural Standards Panel.⁶

16. Referral to the Behavioural Standards Panel (the Panel)

- 16.1. In accordance with Section 262Q of the Act, a complaint alleging *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* may be made to the Panel. Refer to legislated Definitions of each of these in this Policy.⁷
- 16.2. A complaint alleging *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* by an Elected Member may be referred to the Panel by any of the following acting on advice:
 - 16.2.1. resolution of the Council; or
 - 16.2.2. the Mayor; or
 - 16.2.3. at least three Elected Members of the Council.

⁶ *Local Government Act*, Section 262E and 262Q

⁷ Refer to the [Behavioural Standards Panel – Guidance Paper – Types of Behavioural Matters that may be referred to the Panel](#) for further information available from the [Behavioural Standards website](#).

- 16.3. If a reasonable direction is given by a Responsible Person pursuant to Section 75G(1)(b) of the Act (under the Health and Safety Duties for Elected Members) that an Elected Member not attend a meeting of the Council⁸, the Responsible Person who gave that direction must ensure the matter is referred to the Panel.⁹
- 16.4. In addition, if an Elected Member is reasonably able to comply with any reasonable direction made under Section 75G of the Act but does not comply, this constitutes serious misbehaviour within the meaning of Section 262E of the Act. A complaint may then be referred to the Panel in accordance with Section 262Q of the Act and the Practice Directions of the Panel.¹⁰

17. Relevant Legislation

Independent Commission Against Corruption Act 2012

Local Government Act 1999

Ombudsman Act 1972

Public Interest Disclosure Act 2018

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is the Council's General Manager, Governance & Civic Affairs, telephone 8366 4549.

ADOPTION OF THE POLICY

This Policy was adopted by the Council on 2 September 2024.

TO BE REVIEWED

In accordance with Section 262B(7) of the *Local Government Act 1999*, this Policy must be reviewed within 12 months after the conclusion of each Local Government Election. The next Local Government Elections will conclude in November 2026.

⁸ *Local Government Act*, Section 75G(3) and (4)

⁹ *Local Government Act*, Section 75G(5)

¹⁰ Refer to [Behavioural Standards Panel – Practice direction 1: lodgement of complaint](#) available from the [Behavioural Standards Panel website](#).