



## Code of Conduct for Council Members - Dealing with Complaints Procedure

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<b>Department:</b>	CEO and Governance	<b>Division:</b>	Governance
<b>Function:</b>	9 - Governance	<b>Responsible Officer:</b>	Manager Governance

### A - PREAMBLE

1. The *Independent Commissioner Against Corruption Act 2012* (ICAC Act) amended section 63 of the *Local Government Act 1999* to provide for the prescription of a Code of Conduct for Council Members via regulation.
2. The *Code of Conduct for Council Members* was published in the South Australian Government Gazette by the Minister for Planning on 29 August 2013, and took effect from 1 September 2013 (the Code).
3. Council Members must comply with the provisions of the Code in carrying out their functions as public officials. It is the personal responsibility of Council Members to ensure that they are familiar with, and comply with, the standards in the Code at all times.
4. This document sets out the procedure to be followed by the Council regarding all complaints about a breach of the Code. This procedure also refers to, and incorporates, the Independent Commissioner Against Corruption Directions and Guidelines for Public Officers (the Directions and Guidelines) the Independent Commissioner Against Corruption Public Interest Disclosure Guidelines (the PID Guidelines) and the City of Salisbury Public Interest Disclosure Act 2018 Policy (The PID Policy).
5. This procedure is to be read subject to the Code, the ICAC Act, the Directions and Guidelines, the PID Guidelines the PID Policy and any direction of the Ombudsman or ICAC.

### B - SCOPE

1. This procedure applies to all Council Members of the City of Salisbury (“the Council”) arising from an alleged breach of the Code.
2. This procedure also applies to members of Committees and Sub-committees, who are not Council Members, as if they were a Council Member.

## **C - PROCEDURE PURPOSE/OBJECTIVES**

1. This procedure provides a consistent, fair and equitable approach to the investigation and resolution of complaints made under the Code.

## **D - PRINCIPLES**

1. Any complaint or referral alleging a breach of the Code will be dealt with, or referred as appropriate, in as timely a manner as practicable and in accordance with this procedure.
2. A Council Member about whom a complaint is made will be advised in writing that a complaint has been received within the timeframes provided in accordance with this procedure as are reasonably practicable to be taken.
3. All parties to a complaint will be advised of relevant steps taken to resolve and/or investigate the complaint as far as reasonably practicable.
4. The Council will, comply with the Public Interest Disclosure Act 2018 where applicable and will otherwise as far as possible, keep the identity of the person making the complaint (the Complainant) confidential, unless the Complainant consents to their identity being disclosed.
5. The Council will take all reasonable steps to ensure the Complainant is not victimised for making the complaint.
6. The Council may, in its absolute discretion, decide not to investigate an anonymous complaint.
7. The Council will not investigate complaints alleging a breach of Part 3 of the Code or criminal conduct and such matters will be referred to the Ombudsman or Office for Public Integrity (OPI) as appropriate.
8. All parties to a complaint are required to assist the Council with any investigation of the matters to which the complaint relates. The Council may, in its absolute discretion, not investigate, or may discontinue an investigation of a complaint, if the Complainant fails to assist in the investigation of the complaint.

## **E – CHIEF EXECUTIVE OFFICER RESPONSIBILITIES**

1. The role of the Chief Executive Officer (CEO) is to administer this procedure.
2. The CEO may be assisted in the management of any complaints by a delegate, being a senior employee with the Council in a position of Manager or above.
3. Where any complaint received by the CEO contains a clear allegation of a breach of Part 3 of the Code or of criminal conduct, the CEO will refer the complaint to the Ombudsman or the OPI as appropriate and may do so without causing a preliminary assessment to be undertaken.

## **F - PROCEDURE**

### **1. The Making of a Complaint**

- a. A complaint made by any person (whether a Council Member, a staff member of the Council, or a member of the public) that relates to an alleged breach of the Code must:
  - i. be made in writing;
  - ii. be addressed to the CEO or the Council's Responsible Officer under the Public Interest Disclosure Act;
  - iii. be specific and provide as much detail as possible;
  - iv. provide the name of the Council Member whom it is alleged has breached the Code;
  - v. identify the provisions of the Code which it is alleged have been breached;

- vi. be accompanied by any evidence that substantiates the breach;
  - vii. be marked as confidential;
  - viii. be delivered to the CEO; and
  - ix. be made within six (6) months of the date the Council Member is alleged to have breached the Code unless (in the case of an alleged breach of Part 2 of the Code) the Council agrees to extend the time for the making of the complaint.
- b. Upon receipt of a complaint, the CEO (or delegate) shall as far as reasonably practicable:
- i. within seven (7) days provide written acknowledgement to the Complainant of receipt of the complaint.
  - ii. within that same seven (7) days, provide written notification to the Council Member who is the subject of the complaint, advising that a complaint has been received and providing details of the nature of the complaint unless the complaint alleges a breach of Part 3 of the Code or criminal conduct in which case the CEO will refer the complaint to the Ombudsman, OPI or SAPol as appropriate.
- c. Repeated or sustained breaches of Part 2 of the Code by the same Council Member may, at the discretion of the Council, be escalated by resolution of the Council, to an allegation of misconduct under Part 3 of the Code and be reported to the Ombudsman or the OPI as appropriate.
- d. The Council must consider whether to escalate repeated or sustained inappropriate behaviour as listed in Part 2 of the Code, to an allegation of misconduct under Part 3 of the Code.
- e. Where the complaint alleges a breach of Part 3 of the Code, the CEO (or delegate) will as soon as reasonably practicable refer the matter to the Ombudsman or the OPI as appropriate. In accordance with the requirements of section 54 of the ICAC Act, and to ensure the integrity of any investigation process, no report regarding this referral by the CEO (or delegate) will be presented to Council, subject to any directions given by the ICAC.
- f. Where the complaint alleges criminal conduct (including those matters set out in the Appendix to the Code) the CEO (or delegate) will refer the matter to the OPI. In accordance with the requirements of section 54 of the ICAC Act, and to ensure the integrity of any investigation process, no report regarding this referral by the CEO (or delegate) will be presented to Council, subject to any directions given by the ICAC.
- g. Notwithstanding anything in this procedure, a Complainant can, at any time, take the alternative option of lodging a complaint directly with the OPI or Ombudsman.
- h. Clause 2.15 of the Code provides that 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 Principal Member of the Council or CEO, the Ombudsman or the OPI.
- i. A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach of Part 2 of the Code.

## **2. Assessment and Determination of Investigation Option**

- a. Having regard to the seriousness of the allegation and the information provided, the Council will determine the preferred option for investigation of the complaint.
- b. Where a complaint is received from one Elected Member about another Elected Member, and the Council considers the complaint to be of a minor nature with the potential to be adequately resolved between the Elected Members, the Council may request the parties participate in a mediated discussion in the first instance.
- c. Mediation will not be undertaken unless all parties consent.
- d. Where the Council has requested that the parties participate in mediation, and all parties consent, the CEO (or delegate) will facilitate access to mediation services.
- e. Where mediation resolves the matter to the satisfaction of all parties, the complaint will be considered resolved and no further action will be taken. The CEO (or delegate) will present a report to Council advising that the complaint was resolved via mediation.
- f. Where mediation is not able to resolve the matter to the satisfaction of all parties, or where all parties do not consent to participating in mediation, the complaint will return to the Council to determine the preferred option for investigation and resolution of the complaint.
- g. Where the Council determines that a complaint requires formal investigation, the options for investigation available to Council are:
  - i. referral to an external service provider (e.g. legal provider, consultant etc);
  - ii. referral to the Local Government Governance Panel (LGGP); or
  - iii. referral to any other body established in the Local Government sector for the purpose of considering complaints regarding Elected Member conduct.

## **3. Formal Investigation and Reporting**

- a. Where a complaint is referred for formal investigation to an external person or body, the process for investigation is to be determined by the external person or body, but must be conducted in accordance with natural justice requirements.

The external body or person will consider if a complaint is trivial, vexatious or frivolous and accordingly ought not to be investigated.
- b. A failure of a Council Member to cooperate with the Council's procedure for handling alleged breaches of Part 2 of the Code may be referred for investigation to the Ombudsman under Part 3 of the Code.
- c. At the conclusion of the formal investigation, the Council shall be provided with a written report that summarises the:
  - i. allegations made in the complaint;
  - ii. evidence to which the investigation had regard;
  - iii. factual findings;
  - iv. conclusions; and
  - v. recommendations arising from the report.
- d. Subject to the provisions of section 90 of the *Local Government Act 1999*, reports in relation to complaints made in accordance with this procedure, other than reports finding a breach of the Code has been made out, will be recommended for consideration in confidence by Council.

#### **4. Formal Investigation Findings and Remedies**

- a. Where the formal investigation has determined that a breach of Part 2 of the Code has occurred, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
  - i. take no action;
  - ii. pass a censure motion in respect of the Council Member;
  - iii. request a public apology, whether written or verbal;
  - iv. request the Council member to attend training on the specific topic found to have been breached;
  - v. resolve to remove or suspend the Council Member from a position within the Council (not including the Member's elected position on the Council);
  - vi. remove a member from their position as Council representative on an outside body where Council has resolved their appointment;
  - vii. request the member to repay monies to the Council;
  - viii. refer the matter to the Ombudsman or OPI, as appropriate; or
  - ix. any combination of the above.
- b. The Council will not enter into any process of appeal in relation to any findings of a breach of Part 2 of the Code and a person may not seek a review pursuant to section 270 of the Local Government Act 1999 of any decisions or actions undertaken under this procedure.
- c. Any report from the Ombudsman that finds a Council Member has breached Part 3 of the Code must be provided to a public meeting of the Council. The Council must pass resolutions to give effect to any recommendations received from the Ombudsman, within two (2) ordinary meetings of the Council following receipt of the report.

#### **5. Criminal Matters – Appendix to the Code of Conduct for Council Members**

- a. The matters within the Appendix to the *Code of Conduct for Council Members* are matters for which a criminal penalty applies. 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 1999* must also be reported to the OPI.
- b. In compliance with the ICAC Act, referral of such complaints to the OPI will remain confidential.

#### **6. Further Information and Review of Procedure**

- a. This procedure will be available for inspection at the Council offices during ordinary business hours. Copies are also available at the principal office of the Council upon payment of the fee, if any, set by the Council. This procedure is also available to be downloaded, free of charge from the City of Salisbury website: [www.salisbury.sa.gov.au](http://www.salisbury.sa.gov.au).
- b. Copies of the 'Code of Conduct for Council Members – Dealing with Complaints' will be provided upon request. Please contact the City of Salisbury via:
  - Email: [city@salisbury.sa.gov.au](mailto:city@salisbury.sa.gov.au); or
  - Phone: 8406 8222; or
  - Post: PO Box 8, Salisbury SA 5108.
- c. This procedure may be reviewed at any time, and must be reviewed within 12 months of a general election.

## **G - LEGISLATION**

Local Government Act 1999  
Local Government (General) Regulations 2013  
Independent Commission Against Corruption Act 2012  
Criminal Law Consolidation Act 1935  
Equal Opportunities Act 1984  
Public Interest Disclosure Act 2018

## **H – ASSOCIATED POLICIES AND PROCEDURES**

1. Code of Conduct for Council Members
2. City of Salisbury – Elected Member Training and Development Policy
3. City of Salisbury – Elected Members Allowances, Facilities and Support Policy
4. City of Salisbury – Code of Practice for Meeting Procedures

### **Document Control**

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## **Code of Conduct for Council Members**

*Published by the Minister for Planning for the purpose of Section 63(1) of the Local Government Act 1999.*

**This Code of Conduct is to be observed by all Council members.**

Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

### **PART 1 – PRINCIPLES**

#### **1. Higher principles – Overarching Statement**

*This part does not constitute separate enforceable standards of conduct.*

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

## **PART 2 – BEHAVIOURAL CODE**

### **2. Behavioural Code**

In line with ‘Part 1-Higher Principles’ of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3-Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

#### **General behaviour**

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

#### **Responsibilities as a member of Council**

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

#### **Relationship with fellow Council Members**

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

#### **Relationship with Council staff**

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council’s Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council’s Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

### **Requirement to report breach of Part 3**

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)- has occurred, or is currently occurring, must report the breach to the Principal Members of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

### **Complaints**

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigations under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

### **Findings**

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
- 2.25.1 Take no action;
  - 2.25.2 Pass a censure motion in respect of the Council member;
  - 2.25.3 Request a public apology, whether written or verbal;
  - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
  - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
  - 2.25.6 Request the member to repay monies to the Council.

## PART 3 – MISCONDUCT

### 3. Misconduct

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the *Local Government Act 1999*. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the *Local Government Act 1999*, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

#### **Members duties**

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Performance and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 No release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

### **Gifts and benefits**

- 3.7 Council members must not:
  - 3.7.1 Seek gifts or benefits of any kind;
  - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
  - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the *Local Government (Elections) Act 1999*.
- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
  - 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
    - 3.9.1.1 Council work related events such as training, education sessions workshops and conferences;
    - 3.9.1.2 Council functions or events;
    - 3.9.1.3 Social functions organised by groups such as Council committees and community organisations.
  - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the Government Gazette by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

### **Register of Interests**

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

### **Campaign donation returns**

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

### **Conflict of interest**

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the *Local Government Act 1999*.

### **Misuse of Council resources**

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

**Repeated or sustained breaches of Part 2**

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

## APPENDIX – CRIMINAL MATTERS

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outline in this Appendix should be reported to the Office for Public Integrity in the first instance.

### ***Breaches of the Local Government Act 1999***

#### **Member duties**

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62(3)).

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62(4)).

#### **Provision of false information**

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the *Local Government Act 1999*, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

#### **Restrictions on publication of information from Register of Interests**

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

### ***Breaches of other Acts***

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the *Independent Commissioner Against Corruption Act 2012*, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:

- Bribery or corruption of public officers;
- Threats or reprisals against public officers;
- Abuse of public office;
- Demanding or requiring benefit on the basis of public office;
- Offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- Aiding, abetting, counselling or procuring the commission of the offence;
- Inducing, whether by threats or promises or otherwise, the commission of the offence;
- Being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- Conspiring with others to effect the commission of the offence.