

**ELECTED MEMBERS CODE OF CONDUCT
 COMPLAINTS AND INVESTIGATIONS
 POLICY**

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1. PREAMBLE

The City of Holdfast Bay (“the Council”) is committed to ensuring that the highest levels of governance and integrity are adopted and demonstrated in all its dealings.

This includes a commitment to ensure that all investigations conducted by, or on behalf of, the Council under the Code of Conduct for Council Members are ethical, timely, objective, and respectful, taking into account legislative requirements and the principles of procedural fairness.

1.1 Background

Section 63 of the *Local Government Act 1999* (“the Act”) provides that the Governor may, by regulation, prescribe a code of conduct to be observed by members of Council.

A Mandatory “Code of Conduct for Council Members” (“the Code”) was prescribed in accordance with the Act and was published in the Government Gazette on 29 August 2013.

A copy of the Code may be accessed on the Council’s website at www.holdfast.sa.gov.au.

Part 2 of the Code deals with behavioural matters and provides for the management of the conduct of Elected Members that does not meet reasonable community expectations. Part 2 does not deal with conduct that does not, and is not likely to, constitute a breach of Part 3 of the Code, misconduct or criminal matters.

Any person may make a complaint against, or report a breach by an Elected Member under the Code.

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1.2 Purpose

- 1.2.1 This Elected Members Code of Conduct Complaints and Investigations Policy (“the Policy”) sets out the procedures to be observed for the purposes of addressing and processing Complaints received by the Council alleging a breach of the Code.
- 1.2.2 The Policy reflects the Council’s commitment to ensuring the appropriate investigation of Complaints under the Code, in accordance with the Council’s legislative responsibilities, and in a manner that provides confidence and certainty to the community.

1.3 Scope

- 1.3.1 This Policy sets out the principles that will guide all investigations conducted by a Delegated Officer, or any external provider engaged by the Council to assist in the investigation of a Complaint. These principles are underpinned by our values of Achievement, Respect, Innovation, Simplicity and Engagement.
- 1.3.2 Breaches of the Code may relate to behaviour (under Part 2 of the Code) or misconduct (under Part 3 of the Code). Part 3 of the Code sets out the mechanisms for the management of an alleged breach.
- 1.3.4 Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code, but are referred to in the Appendix to the Code.
- 1.3.5 This Policy will apply to investigations of a Complaint against an Elected Member under the Code, as well as a Complaint against a Member of a Committee (who may or may not be an Elected Member) formed under section 41 of the Act, alleging conduct which is in breach of the Code.

1.4 Definitions

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Code is a reference to the “Code of Conduct for Council Members” as published in the South Australian Government Gazette 29 August 2013.

Complaint sets out in writing the allegations against an Elected Member, said to constitute a breached the Code. A Complaint can take the form of a letter or email, but must, in every instance, be in writing.

Complainant means the person who makes a Complaint.

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Delegated Officer means an employee of the Council undertaking responsibilities delegated to them by the Council or the Chief Executive Officer (“CEO”) to investigate a Complaint received alleging a breach of the Code (whether by an Elected Member or a Committee Member).

Directions and Guidelines is a reference to the Directions and Guidelines issued pursuant to section 20 of the *Independent Commissioner Against Corruption Act 2012* (“the ICAC Act”), which are available on the Commissioner’s website www.icac.sa.gov.au.

Elected Member means any of the current Council members, which includes the Mayor.

Independent Commissioner Against Corruption (“the Commissioner”) is reference to the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act.

Inquiry Agency as defined under the ICAC Act for the purpose of Local Government is the State Ombudsman, or in matters relating to alleged breaches of Part 3 of the Code, the Electoral Commissioner (for clause 3.8) or the Office for Public Integrity.

Investigation is reference to the process of receiving an allegation and establishing the facts and circumstances to enable findings to be made, based on the evidence received.

Office for Public Integrity (“the OPI) is the office established under the ICAC Act that has functions including to:

- receive and assess complaints about public administration from members of the public;
- receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers; and
- make recommendations as to whether and by whom complaints and reports should be investigated.

Ombudsman is a reference to the Office of the Ombudsman established pursuant to the *Ombudsman Act 1972*.

Public Authority is defined under Schedule 1 of the ICAC Act and includes the Minister responsible for the administration of the Act, the Local Government Association of South Australia, and a Local Government body.

Public Officer is defined under the ICAC Act and includes (but is not limited to):

- an Elected Member;
- an Employee or Officer of the Council; and
- an independent member of a Council Committee.

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Reasonable Suspicion is defined in the ICAC Directions and Guidelines to be “something more than mere imagination and conjecture. It must be the suspicion of a reasonable man warranted by facts from which inferences can be drawn; but is something that falls short of legal proof”

Subject Member is the Elected Member (or Committee Member) whose conduct is the subject of investigation under the Code.

1.5 Strategic Reference

Culture: Providing customer-centred services

Culture: Enabling high performance

Culture: Being financially accountable

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

- 2.1 Investigations shall be conducted in an objective, timely and efficient manner, within the scope of the allegations subject of the Complaint, and in accordance with the provisions of the Code, this Policy and the principles of procedural fairness.
- 2.2 The CEO will ensure that any person carrying out an investigation is properly qualified, experienced and resourced to do so. Where deemed necessary, the CEO will seek the services of an external provider to conduct an investigation.
- 2.3 All particulars associated with an investigation, and any information and materials collected, will be held in accordance with any relevant confidentiality requirements. Any breach of confidentiality during the course of an investigation may be subject to disciplinary action and include prosecution under a relevant Act.
- 2.4 During the course of the investigation, if the Delegated Officer (or any external provider engaged by the Council to assist in the investigation of a Complaint) forms a reasonable suspicion that the allegations, subject of the Complaint, relate to maladministration, misconduct or corruption in public administration (as those terms are defined under the ICAC Act), then a report is required to be made to the OPI in accordance with the ICAC Act. In this instance the Delegated Officer (or external provider) should liaise immediately with the CEO (or delegate).
- 2.5 Where a Complaint relates to alleged criminal conduct, or where possible criminal conduct becomes apparent during the course of an investigation, the matter will be brought to the immediate attention of the CEO (or delegate) and referred directly to the South Australia Police (“SAPOL”)
- 2.6 Where a matter has been referred to SAPOL, any further Council investigation shall be deferred pending the outcome of the police inquiries. The full cooperation of the Council will be provided to any SAPOL investigation.

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2.7 Delegated Officer

- 2.7.1 Following the receipt of a Complaint by the Presiding Member or CEO (or delegate), a Delegated Officer will be appointed by the CEO (or delegate) who shall coordinate the management of the Complaint.
- 2.7.2 Any such delegation (or engagement) does not exclude the CEO (or delegate) from acting personally in a matter.
- 2.7.3 The Delegated Officer (assisted by legal advice if required) shall be responsible for:
- 2.7.3.1 Ensuring that any Complaint received, and any subsequent investigation (whether internal or external) is documented and appropriately recorded.
- 2.7.3.2 Conducting a preliminary assessment to determine whether the Complaint:
- is trivial, frivolous, vexatious or not made in good faith;
 - may relate to behaviour which falls under Part 2 of the Code;
 - may relate to maladministration, misconduct or corruption, triggering action under Part 3 of the Code and the ICAC Act; or
 - may relate to criminal behaviour.
- 2.7.3.3 Providing advice to the Principal Member and CEO (or delegate) on the appropriate management of the Complaint, including (but not necessarily limited to):
- referral to SAPOL or the OPI in accordance with the Council's statutory responsibilities;
 - internal investigation and management of the Complaint;
 - referral of the Complaint to the Local Government Governance Panel, or other external provider for further investigation;
 - that the Complaint be dismissed on the basis that it is trivial, frivolous, vexatious, or not made in good faith, or otherwise does not disclose a breach of the Code.
- 2.7.3.4 Where the Complaint is internally investigated, coordinating the internal investigation.

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- 2.7.3.5 Where the Complaint is referred outside of Council for further investigation, acting as the Council's point of contact, and coordinating support for any subsequent investigation.
 - 2.7.3.6 Reporting the outcomes of any internal or external investigation and making recommendations (as required) to the Principal Member and CEO (or delegate) on the appropriate actions to resolve the matter.
 - 2.7.3.7 Preparing any required reports for the CEO (or delegate) and/or Council.
 - 2.7.3.8 Ensuring that any confidentiality requirements relating to the Complaint and investigation are implemented and maintained, as far as reasonably practicable.
 - 2.7.3.9 Undertaking any other lawful and reasonable direction from the CEO (or delegate) in relation to the management of the Complaint.
- 2.7.4 The Delegated Officer's role will encompass the role and responsibilities of the "Responsible Officer" appointed to administer the Council's Whistleblowers Policy.
- 2.7.5 All actions involved in the management and investigation of a Complaint shall be conducted in an objective manner. If a Delegated Officer believes they have an actual or perceived bias, or conflict of interest in relation to the allegations, subject of the Complaint, they will declare this to the CEO (or delegate) and manage it accordingly.

2.8 Investigation of a Complaint – Process

- 2.8.1 A Complaint should:
- be provided in writing and addressed to the Principal Member or CEO (or delegate);
 - be specific, outlining the nature and details of the allegations;
 - provide as much supporting evidence as possible to support the allegation and assist any subsequent investigation;
 - provide the name of the Elected Member (or Committee Member) who has allegedly breached the Code; and
 - set out any information regarding earlier attempts to resolve the issue, if any.
- 2.8.2 While an anonymous Complaint will be investigated based on the information and evidence received in the first instance, as determined on a case by case basis, if a Complainant chooses to remain anonymous an investigation may not proceed where the details of the Complaint:
- are too unclear to warrant further action; and/or

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- the allegations do not establish a breach of the Code without further clarification.
- 2.8.3 Within five (5) business days of receiving a Complaint, a Complainant (where known) will be advised in writing that the Complaint has been received and the steps that will be taken in order to undertake a preliminary assessment.
- 2.8.4 Nothing in this Policy prevents a Complainant from making a complaint with the Ombudsman or OPI.
- 2.8.5 As soon as practicable after the receipt of a Complaint and in any event, within five (5) business days, the Subject Member will be advised in writing of the Complaint and the nature of the allegations, together with:
- the manner in which the Principal Member and CEO (or delegate) intends to deal with the Complaint; and
 - that they may seek independent legal advice from a member of the Council's Legal Panel, in accordance with the Elected Members Entitlements Policy; or alternatively,
 - that they may seek advice from a legal practitioner or other professional, other than a member of the Council's Legal Panel, at their own expense.
- 2.8.6 The Principal Member and CEO (or delegate) will refer any Complaint received to the Delegated Officer appointed by the CEO (or delegate) for preliminary assessment and advice.
- 2.8.7 Upon referral of any Complaint, the Delegated Officer will perform the functions set out at clause 3 above.
- 2.8.8 For the avoidance of doubt, as part of the preliminary assessment the Delegated Officer may:
- seek further particulars, evidence or clarification of the allegations from the Complainant; and/or
 - if relevant, make a determination under the Whistleblowers Policy in accordance with the Council's statutory responsibilities.
- 2.8.9 Based on the advice of the Delegated Officer, the Principal Member and CEO (or delegate) will (in conjunction with legal advice if required) determine whether the allegations, subject of the Complaint, may relate to:
- behaviour which falls under Part 2 of the Code;
 - misconduct which triggers action under Part 3 of the Code;
 - criminal or corrupt behaviour which triggers action under another Act; or

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- that the Complaint ought be dismissed as trivial, vexatious, frivolous, not made in good faith, or otherwise, does not establish a breach of the Code.
- 2.8.10 If the Principal Member and CEO (or delegate) makes a determination that allegations are trivial, frivolous, vexatious, made in bad faith, or that they do not establish a breach of the, reasons for so determining will be provided, and communicated, to the Complainant.
- 2.8.11 Where a determination has been made that the allegations may establish conduct which falls under Part 2 of the Code, the Principal Member and CEO (or delegate) will determine (as assisted by legal advice where necessary) that the allegations should be:
- resolved through internal mediation and conciliation between the parties at the first instance;
 - referred for further internal investigation; or
 - referred to an independent person or entity for investigation such as the Local Government Governance Panel; mediator or conciliator; or other external provider.
- 2.8.12 Complaints **can only** be dealt with by internal mediation and conciliation in the following manner:
- with the agreement of all parties, which will include agreement to be bound by any agreed resolution;
 - will be chaired by the Principal Member where the matter relates to a complaint by another Elected Member, or a member of the public;
 - chaired by the CEO (or delegate) when the Complainant is an employee of the Council or a Public Officer; and
 - if resolved, no further action will be taken, with written confirmation sent to the parties and a report made to a public meeting of the Council confirming the matter has been so resolved.
- 2.8.13 Where a determination has been made that the allegations may establish conduct which falls under Part 2 of the Code, and the Principal Member and CEO (or delegate) determine that the matter should be referred to an external provider for further investigation, the following will apply:
- 2.8.13.1 the Chairperson will determine the process to be followed on the investigation of any matter referred to the Local Government Governance Panel; or
- 2.8.13.2 for a referral to an independent mediator, conciliator or investigator:
- selection shall be made from the Council's Legal Panel, or an external provider recommended by the

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- Delegated Officer based on the circumstances of the allegations; and
 - during the period of time the independent entity is acting for the Council, they are deemed to be a “Public Officer” bound by all the requirements of the Employee Code of Conduct, this Policy and the ICAC Act.
- 2.8.14 Any internal investigation of an alleged breach of Part 2 shall be coordinated by the Delegated Officer and conducted in a manner that adheres to this Policy.
- 2.8.15 Following the completion of an investigation (whether internal or external), if findings have been made that the Subject Member:
- **has** breached a provision of Part 2 of the Code, a report setting out the findings of the investigation, together with recommendations, will be forwarded to the Council for its consideration at a public meeting;
 - **did not** breach a provision of the Code, a report setting out the findings of the investigation, together with recommendations, will be forwarded to the Council for its consideration and it will be for the Council to determine whether it wishes to consider that matter in confidence; or
 - **has** breached Part 3 of the Code, the Principal Member and CEO (or delegate) will refer the matter immediately to the OPI and/or other appropriate Inquiry Agency.
- 2.8.16 On receipt of a report and any recommendations following a finding that the Subject Member **has** breached a provision of Part 2 of the Code, the Council may by resolution:
- take no action, but in doing so, must provide its reasons;
 - pass a censure motion in respect of the Subject Member;
 - request the Subject Member to make a public apology, whether written or verbal;
 - request the Subject Member to attend relevant training, as determined on a case by case basis;
 - resolve to remove or suspend the Subject Member from a position within the Council, (**not** being the Subject Member’s elected position on Council);
 - request the Subject Member to repay monies to the Council; and/or
 - refer the matter to another Inquiry Agency for further investigation and/or action.
- 2.8.17 Any Subject Member who fails to cooperate with an investigation into an alleged breach of Part 2 of the Code; and/or comply with a resolution of Council regarding the outcome of an investigation under Part 2 of the

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Code; will be referred to another Inquiry Agency for investigation under Part 3 of the Code.

2.8.18 Repeated or sustained breaches of Part 2 of the Code will be referred, by resolution of Council, to the OPI or other appropriate Inquiry Agency as a breach of Part 3 of the Code.

2.8.19 A report will be provided to a public meeting of the Council following receipt of a report from an Inquiry Agency regarding the outcome of an investigation of an alleged breach of Part 3 of the Code, at which the Council will pass resolutions giving effect to any recommendations received. Any such report will be provided within two ordinary meetings of the Council.

2.8.20 All Complaints, including any referrals, investigations and related information shall be the subject of the strictest confidentiality and will only be released:

- in accordance with the Council's statutory responsibilities; or
- where any internal or external investigation has been completed and the recommendations are required to be presented to a public meeting of the Council; or
- when any Inquiry Agency or SAPOL investigation has been completed and recommendations are provided that the outcome of the matter is to be reported at a public meeting of Council, or the Council otherwise receives directions on matters that may, or may not, be released to the public.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*
- *Elected Member Code of Conduct*
- *Ombudsman Act 1972*
- *Independent Commissioner Against Corruption Act 2013*
- *Whistleblowers Protection Act 1993*

3.2 Other References

City of Holdfast Bay Whistleblowers Protection Policy