

Investigating Complaints under the Code of Conduct for Council Members 2019

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1. Introduction

- 1.1 Section 63 of the *Local Government Act 1999* provides that the Governor may, by regulation, prescribe a code of conduct to be observed by members of Council.
- 1.2 A Code of Conduct for Council Members (the Code) was prescribed in accordance with the Act. The Code was Gazetted on 29 August 2013 and commenced operation on 1 September 2013. Council Members must comply with the provisions of the Code in carrying out their functions as public officials.
- 1.3 Part 2 of the Code deals with behavioural matters and the clause 2.19 of the Code provides that a complaint may be investigated and resolved in any manner which the Council deems appropriate in its process for handling alleged breaches of Part 2. This can include, but is not limited to, referral to a mediator or conciliator, the Local Government Governance Panel, a regional governance panel, or an independent investigator.
- 1.4 This procedure for Investigating Complaints (the Procedure) outlines the procedures to be observed by the Council for the purposes of addressing and processing any Complaints alleging a breach of the Code. The Procedure reflects Council's commitment to ensuring the appropriate investigation of Complaints under the Code.
- 1.5 The Procedure will apply when the Council receives a Complaint against a Council Member under the Code. A copy of the Code may be accessed on the Council's website.
- 1.6 Breaches of the Code may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Part 3 of the Code contains the mechanisms for the management of the alleged breach. This Procedure sets out the Complaint handling process for complaints made under Part 2 of the Code.
- 1.7 Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code, but are referred to in the Appendix of the Code.
- 1.8 Complaints regarding the council administration or specific employees must be directed to the Council's Chief Executive Officer for management in accordance with the Code of Conduct – Council Employees or relevant administrative procedure.

2. Purpose

The Code of Conduct Complaint Procedure has been developed to establish an agreed process for handling complaints against Council Members for alleged breaches of Part 2 of the Code of Conduct for Council Members. This process applies when Council receives a complaint against a Council Member under the Code of Conduct for Council Members.

3. Definitions

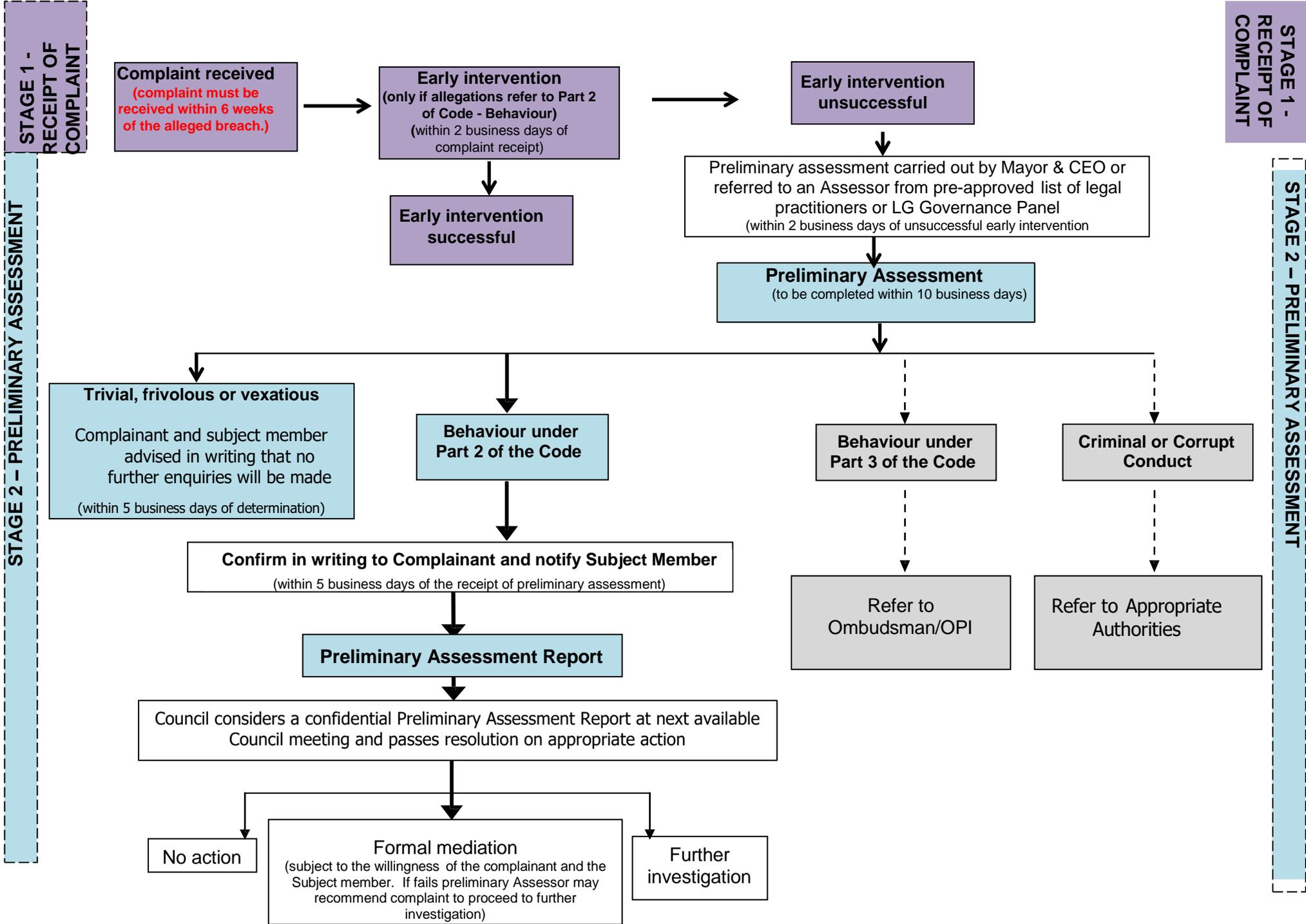
- Capitalised terms appearing in this Procedure have the same meanings as those in the Code, unless otherwise expressed.
- **Act** means the *Local Government Act 1999* (SA).
- **Affected Person** has the same meaning as that set out in paragraph 4.17.3
- **Appropriate Authorities** refers to an authority that receives disclosure of public interest information, in particular:

- a Minister of the Crown;
- a member of the police force - where the information relates to an illegal activity;
- the Auditor-General – where the information relates to the irregular or unauthorised use of public money;
- the Ombudsman – where the information relates to a public officer;
- the Office for Public Integrity;
- the Independent Commissioner Against Corruption; or
- any other person to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.
- **Business day** means a day that is not a Saturday, Sunday or public holiday in South Australia.
- **Bullying in the workplace** means, treatment of a person, or a group, that:
 - is unfair
 - is repeated or ongoing
 - makes people feel embarrassed, victimised, humiliated, threatened or undermined.
- **Code** refers to the Code of Conduct for Council Members as published in the South Australian Government Gazette.
- **Complaint** can take the form of either a:
 - letter;
 - email; or
 - duly completed (prescribed) form under the Procedure, but must in every instance, be in writing.
- **Complainant** refers to the person who makes a Complaint.
- **Corruption in public administration** as defined by the *Independent Commissioner Against Corruption Act 2012* means:
 - 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 basis of public office;
 - offences relating to appointment to public office;
 - any other offences (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 an attempt to commit such an offence; or
 - any of the following in relation to an offence referred to in a preceding paragraph:

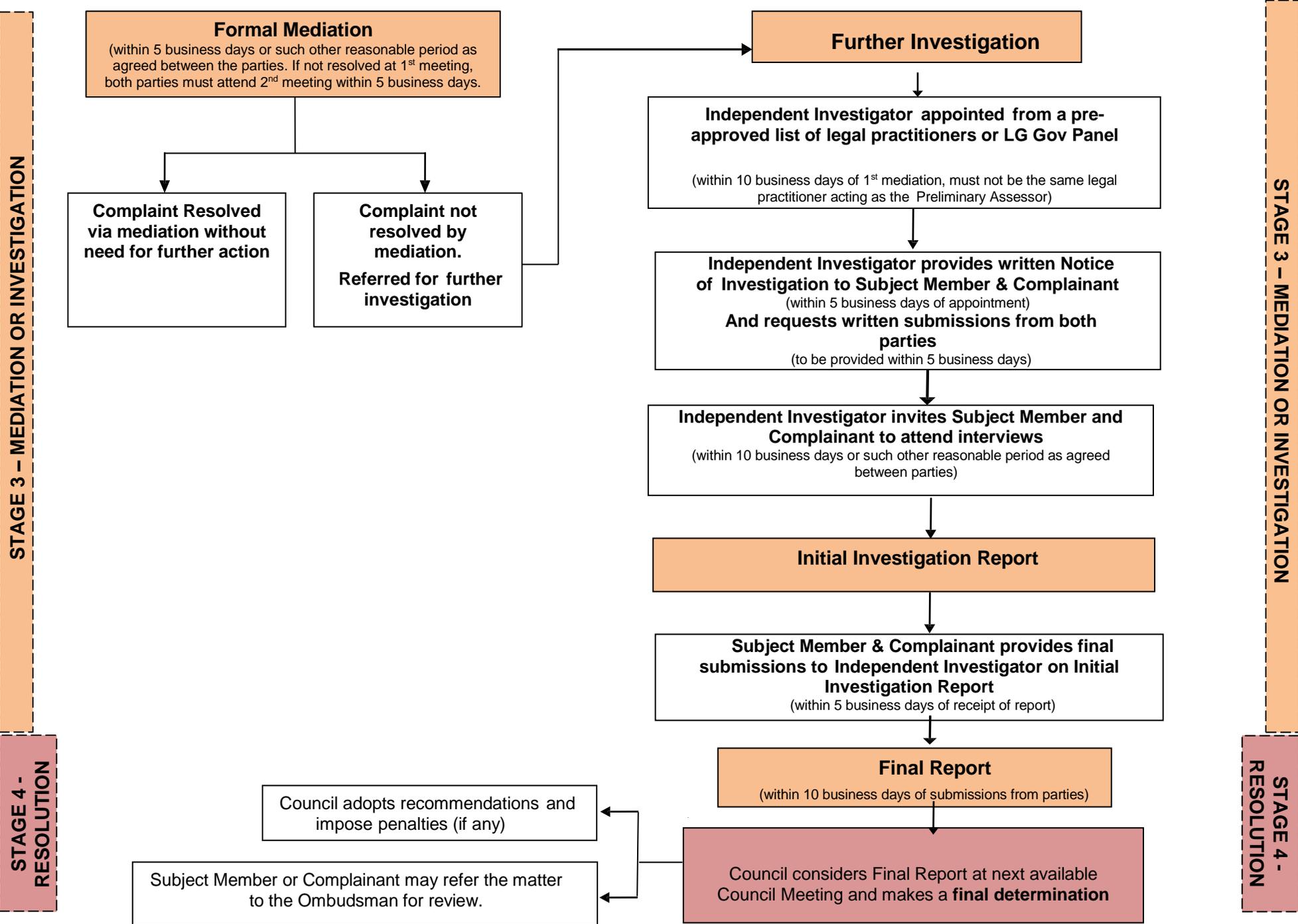
- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.
- **Council** means the Corporation of the City of Onkaparinga established pursuant to the Act.
- **Council Member** means any of the current council members, which includes the Mayor, elected to the position at the City of Onkaparinga.
- **Bullying in the workplace means:**
Treatment of a person, or a group, that:
 - is unfair
 - is repeated or ongoing
 - makes people feel embarrassed, victimised, humiliated, threatened or undermined.
- **Directions and Guidelines** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner’s website (www.icac.sa.gov.au)
- **Employee** refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity.
- **ICAC Act** is the *Independent Commissioner Against Corruption Act 2012 (SA)*
- **Independent Investigator** refers to a legal practitioner who is from a different law firm to the Preliminary Assessor, and will be chosen from a pre-approved list of legal practitioners to assist the Council in undertaking the further investigation of a Complaint. If Council chooses to utilise the services of the Local Government Association Governance Panel, a different Panel member will be appointed to the Preliminary Assessor. The rationale underpinning this position is to afford the greatest level of fairness and transparency in the process to the parties involved in the Complaint.
- **Maladministration in public administration** is defined by the ICAC Act to mean:
 - conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or conduct of a public officer involving substantial mismanagement in, or in relation to, the performance of official functions; and
 - includes conduct resulting from impropriety, incompetence or negligence; and
 - is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- **Misconduct** in public administration defined under Section 5 of the *ICAC Act* means:
 - contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or

- other misconduct of a public officer while acting in his or her capacity as a public officer.
- **Notice of Investigation** has the meaning given to it in paragraph 4.16.1
- **Office for Public Integrity (“OPI”)** is the office established under the ICAC Act that has the function 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;
 - make recommendations as to whether and by whom complaints and reports should be investigated; and
 - perform other functions assigned to the Office by the Commissioner.
- **Ombudsman** refers to the Office of the Ombudsman established pursuant to the *Ombudsman Act 1972* (SA).
- **Preliminary Assessment Report** refers to the report produced by the Preliminary Assessor at the conclusion of the preliminary assessment.
- **Preliminary Assessor** refers to the Mayor and Chief Executive Officer or a legal practitioner chosen from a pre-approved list of legal practitioners or Local Government Association Governance Panel responsible for the Preliminary Assessment of the Complaint.
- **Public administration** is defined at section 4 of the ICAC Act and means, without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* (SA) taken to be carried out in the course of public administration.
- **Public Officer** includes:
 - an elected Member of the Council, including the Mayor;
 - an Independent member of the Council's Development Assessment Panel;
 - an Independent member of a Council Committee or a subsidiary of the Council, and
 - an Employee or Officer of the Council.
- **Subject Member** is the Council Member (which definition includes the Mayor) whose conduct is the subject of investigation under the Code and may include more than one Council Member. Reference to the singular includes the plural.

COMPLAINTS HANDLING PROCEDURE FLOWCHART



COMPLAINTS HANDLING PROCEDURE FLOWCHART



4. Procedure

4.1. Definition

For the purpose of the Procedure, a Code of Conduct Complaint is a complaint that alleges conduct on the part of a Council Member acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Code.

4.2. Complaint management

There are four steps in the management of a Complaint under the Code:

Stage 1 - Receipt of Complaint and early intervention

Stage 2 - Preliminary Assessment

Stage 3 - Mediation or Further Investigation

Stage 4 – Resolution

4.3. Form of the Complaint (Stage 1)

The allegation must:

- 4.3.1. be received by Council within six (6) weeks of the alleged breach.
- 4.3.2. be in writing to comply with the definition of a Complaint (Complaint form available at attachment 1)
- 4.3.3. be addressed to the CEO the Mayor or other nominated delegate
- 4.3.4. be specific and provide as much detail as possible
- 4.3.5. provide the name of the Council Member who has allegedly breached the Code
- 4.3.6. identify the provisions of the Code which are alleged to have been breached
- 4.3.7. provide as much supporting evidence as possible to assist the investigation.

4.3a Confidentiality

All deliberations during the complaint process in regard to an alleged breach of the Code will be conducted in confidence. The complainant, the subject of the complaint, necessary witnesses and those relevant to processing the complaint must maintain the confidentiality of the complaint.

Preliminary Assessment reports to Council will be presented in confidence.

Where a breach of the Code is determined, the Final Investigation report to Council will be presented as a public report, as required by the mandatory Code of Conduct for Council Members.

4.3b Confidentiality - Identity of complainant

The complainant will be contacted in writing to determine whether or not they consent to their identity being revealed to the subject of the complaint and/or the Council (only if a breach is determined), noting that in some instances the allegations contained in a complaint may reveal the identity of the complainant.

4.4. Receipt of complaint and early intervention

4.4.1 Within **two Business days** of receiving a Complaint, concerning allegations that relate to Part 2 (Behaviour) of the Code, the CEO, the Mayor, or nominated delegate who received the complaint will advise the subject member in writing of the complaint and the Part 2 (Behaviour) allegation(s) only contained within the complaint.

4.4.2 If the CEO, Mayor or nominated delegate determines that it is appropriate, they may offer to facilitate early intervention measures. Early intervention can take many forms including, but not limited to, individual mediation or joint mediation.

To facilitate early intervention, the complainant will be contacted to seek approval of their identity being revealed to the subject of the complaint, noting that in some instances the allegations will reveal the identity of the complainant.

For early intervention to progress, the subject of the complaint and the complainant must both agree to partake in early intervention.

In the event that early intervention cannot be agreed upon by both parties, the complaint will then progress to Preliminary Assessment.

4.4.3 Where the CEO, Mayor or nominated delegate has determined that it is not appropriate to offer early intervention between the complainant and the subject of the complaint, the complaint will then progress to Preliminary Assessment.

4.4.4 Should early intervention be unsuccessful, the CEO, the Mayor, or nominated delegate who received the Complaint must refer the Complaint to a Preliminary Assessor.

Any expenditure incurred in the engagement of independent experts for the unsuccessful early intervention will be detailed in the report to Council that presents the independent Preliminary Assessor's report.

4.4.5 In the event that the Complaint refers to, or concerns, the CEO or Mayor, the Council administration must refer the Complaint to a Preliminary Assessor.

4.4.6 In the event that the allegations contained within the complaint relate only to Part 3 (Misconduct) of the Code or criminal conduct, and are supported by sufficient detail, the complaint will be referred directly to the relevant authorities by the Mayor or CEO as per paragraph 4.12.

4.4.7 Complainants can, at any time, take the alternative option of lodging the Complaint with OPI or the Ombudsman, either of whom will direct the Complaint in accordance with the relevant legislation.

4.5 Preliminary Assessor (stage 2)

The Preliminary Assessor will be responsible for:

- 4.5.1 Undertaking the Preliminary Assessment of the Complaint.
- 4.5.2 Within **five (5) Business Days** of receiving the Complaint, the Preliminary Assessor must confirm receipt of the Complaint for Preliminary Assessment to the Complainant (where identifiable) and Subject Member in writing.
- 4.5.3 Communicating to both the Subject Member and the Complainant as to the status of the Complaint (subject to the Complaint not being related to misconduct under Part 3 of the Code, or criminal or corrupt conduct).
- 4.5.4 Where the complaint contains allegations relating to both Part 2 – Behaviour and Part 3- Misconduct, where possible, the relevant parts of the complaint that related to Part 3 will be redacted for the purposes of dealing with the Part 2 – Behaviour allegations.
- 4.5.5 liaising with, and providing administrative support, to the Council when required.
- 4.5.6 Should the Complaint not satisfy the requirements under paragraph 4.3, the Preliminary Assessor may request the Complainant re-submit the Complaint so that it complies with paragraph 4.3.
- 4.5.7 A Complaint made after six (6) weeks may only be accepted if the Preliminary Assessor is satisfied that there are compelling grounds for the matter to be dealt with under the Code pursuant to the Procedure.

4.6 Preliminary assessment

- 4.6.1 Within **ten (10) Business Days** of receipt of the Complaint, the Preliminary Assessor must determine whether the Complaint:
 - 4.6.1.1 is trivial, frivolous, vexatious or has not been made in good faith
 - 4.6.1.2 relates to behaviour which falls under Part 2 of the Code
 - 4.6.1.3 relates to misconduct or reasonable suspicion of corruption and/or systemic misconduct which may trigger action under Part 3 of the Code or
 - 4.6.1.4 relates to criminal or corrupt behaviour.
- 4.6.2 The preliminary assessment by the Preliminary Assessor will be conducted in accordance with the requirements of natural justice. It will involve a thorough and balanced assessment of the evidence submitted regarding the alleged breach, the relevant circumstances prevailing at the time of the alleged breach and any other factors deemed relevant to making a fair and reasonable judgement about the matter.

4.7 Complaints Assessment Criteria

In undertaking the preliminary assessment of a Complaint, the Preliminary Assessor must take the following into consideration:

- 4.7.1 whether the Complaint discloses clear and obvious evidence of a breach of the Code
- 4.7.2 whether the Complaint raises issues that would be more appropriately dealt with by another agency or body
- 4.7.3 whether there is, or was, an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of, such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology
- 4.7.4 whether the issue(s) giving rise to the Complaint have previously been addressed or resolved
- 4.7.5 whether the conduct complained of forms part of a pattern of conduct
- 4.7.6 whether there were mitigating circumstances giving rise to the conduct complained of
- 4.7.7 the seriousness of the alleged conduct
- 4.7.8 the significance of the alleged conduct or the impact for the Council
- 4.7.9 how much time has passed since the alleged conduct occurred
- 4.7.10 such other considerations that the Preliminary Assessor considers may be relevant to the preliminary assessment of the Complaint.

4.8 Allegations determined to be Trivial, Frivolous, or Vexatious Complaints

- 4.8.1 Where the Preliminary Assessor determines a Complaint is trivial, frivolous, vexatious, or not made in good faith, the Preliminary Assessor must provide the Council with a Preliminary Assessment Report (refer to paragraphs 4.10 and 4.11).
 - 4.8.1.1 The Preliminary Assessor must, within **five (5) Business Days** of making the determination, confirm in writing to the Complainant that the Council has decided not to enquire further into the matter and provide reasons for its decision.
 - 4.8.1.2 The Preliminary Assessor must also, within **five (5) Business Days** of making the determination, advise the Subject Member that the complaint has been determined as trivial, frivolous, or vexatious.

4.9 Allegations determined to relate to Behaviour under Part 2 of Code

If the Preliminary Assessor determines that the Complaint relates to behaviour which falls under Part 2 of the Code, within **five (5) Business Days** of that determination, the Preliminary Assessor must:

4.9.1 As per clause 4.5.3 notify the Complainant and subject of the complaint that the Complaint is under preliminary assessment with the following details of the complaint:

- the name of the Subject Member who has allegedly breached the Code
- the name of the Complainant (law permitting)
- the provisions of the Code which the Complainant alleges to have been breached
- the category and, where applicable, the status of the Complaint.

4.10 Preliminary Assessment Report

Within **ten (10) Business Days** of receiving the Complaint, the Preliminary Assessor must provide the Council with a Preliminary Assessment Report in relation to a Complaint that relates to behaviour which falls under Part 2 of the Code or is trivial, frivolous, or vexatious.

The Preliminary Assessment report is provided to Council in confidence. Provisions will be made in the Section 91 Local Government Act 1999, confidential order clause to make available the minutes including the outcome of the preliminary assessment to Complainants who are members of the community or staff.

4.10.1 The Preliminary Assessment Report must contain the following information:

- the allegations with as much detail and supporting evidence as possible
- the name of the Subject Member who has allegedly breached the Code
- the name of the Complainant (law permitting)
- identify the provisions of the Code which it is alleged have been breached
- make a determination that the alleged conduct is:
 - trivial, frivolous, vexatious or not made in good faith; or
 - constitutes a breach of the Code; or
 - does not constitute a breach of the Code; and
- provide reasons for the determination; and
- provide recommendations to the Council for further action (if any).

4.10.2 The report to Council that presents the Preliminary Assessor's report will detail any expenditure incurred in the engagement of legal and independent experts.

4.11 Preliminary Assessment Recommendations

- 4.11.1 The Preliminary Assessor may only make the following recommendations within the Preliminary Assessment Report:
- 4.11.1.2 take no action (if the Complaint is found to be trivial, frivolous, vexatious or not made in good faith).
 - 4.11.1.3 subject to the willingness of the Complainant and the Subject Member, resolve the Complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
 - 4.11.1.4 provide a recommendation to proceed to further Investigation by an Independent Investigator, in the event that one or both of the parties is unwilling to resolve the complaint by alternative and appropriate strategies as outlined in 4.11.1.3.
 - 4.11.1.5 to refer the Complaint for further investigation.
 - 4.11.1.6 if applicable, to refer the Complaint to a relevant Appropriate Authorities under the Code.
- 4.11.2 The Council is not obliged to adopt the Preliminary Assessor’s recommendation(s) as set out in the Preliminary Assessment Report.
- 4.11.3 Where the Council does not adopt the Preliminary Assessor’s recommendation(s), the Council must resolve not to adopt the recommendation(s) and state in its resolution the reasons for its decision or alternate recommendation.
- 4.11.4 In the event that the Preliminary Assessor is unable to resolve the issue as between the parties, or both of the parties determine that they wish the matter to be subject to further investigation, then the Preliminary Assessor must prepare the brief for the Independent Investigator which will be limited to the Complaint and supporting documentation received.
- 4.11.5 The Preliminary Assessor (or the Council) will **not** provide his/her findings, the Preliminary Assessment Report, nor any recommendations made or recorded in connection with the Preliminary Assessment to the Independent Investigator. This promotes fairness and transparency of process for all parties concerned.

4.12 Allegations under Part 3 of the Code and/or Criminal or Corrupt conduct

4.12.1 Complaints relating to Part 3 – Misconduct of the Code, and where there is evidence provided within the complaint that forms a reasonable indication of alleged misconduct, will be referred to the Ombudsman or the OPI in accordance with Part 3 of the Code.

If sufficient evidence is not included within the complaint, the Complainant will be advised to direct any allegations that relate to Part 3 Misconduct to the Ombudsman or the OPI.

As per clause 4.5.4, where the complaint contains allegations relating to both Part 2 – Behaviour and Part 3- Misconduct, where possible, the relevant parts of the complaint that related to Part 3 will be redacted for the purposes of Council dealing with the Part 2 – Behaviour allegations.

4.12.2 Complaints relating to criminal or corrupt behaviour must be immediately referred to the relevant Appropriate Authorities.

4.12.3 Where the Complaint relates to Misconduct under Part 3 and/or criminal or corrupt behaviour, a Preliminary Assessment Report will **not** be produced for the Council's consideration

The Complaint and its substance will be kept strictly confidential until:

- the Ombudsman has issued his final report which has been considered by Council
- the OPI or ICAC issues a public statement or gives permission for publication of its findings in relation to a matter within its jurisdiction to be made public.

4.12.4 the Subject Member must not be advised of the existence of the Complaint nor any allegations made against the Subject Member. This is to ensure that the investigations conducted by the relevant Appropriate Authorities will not be compromised.

4.13 Mediation (Stage 3)

4.13.1 Within **five (5) Business Days** (or such other reasonable period as agreed between the parties) of Council's consideration of the Preliminary Assessor's report, the Subject Member and the Complainant, if mediation is amenable to both, the parties will commence mediation in an attempt to resolve the issue.

If mediation is successful any expenditure incurred in the engagement of independent experts for mediation will be notified to elected members by the Manager Governance. If mediation is not successful and the complaint progresses to further investigation any expenditure incurred in the engagement of independent experts for mediation will be detailed in the report to Council that presents the independent investigator's report.

4.13.2 If the Complaint is not resolved at the first joint meeting under paragraph 4.13.1, the parties must attend a second meeting within a **five (5) Business Days** (or such other reasonable period as agreed between the parties) in an attempt to resolve the Complaint.

4.13.3 If, within **ten (10) Business Days** (or such other reasonable period as agreed between the parties) of the first meeting under paragraph 4.13.1 the Complaint is not resolved, the Preliminary Assessor's recommendation to Council (if adopted) under paragraph 4.11.1.3 will be enacted.

4.14 Further Investigation (Stage 3)

4.14.1 Where the Preliminary Assessor determines that the Complaint should be referred for further investigation, an Independent Investigator will be appointed from the pre-approved list of legal practitioners or the Local Government Governance Panel.

4.15 Conduct of Investigations

4.15.1 Investigations are to be undertaken without undue delay.

4.15.2 Investigations are to be undertaken in the absence of the public and in confidence.

4.15.3 The Independent Investigator must make any such enquiries that may be reasonably necessary to establish the facts of the matter.

4.15.4 The Independent Investigator may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation, or the conduct of their investigation.

4.15.5 The Independent Investigator will be provided with the information set out in paragraph 4.11.4 by the Preliminary Assessor.

4.16 Written Notice of Investigation

- 4.16.1 The Independent Investigator must, at the outset of their investigation, provide a written Notice of Investigation to the Subject Member and the Complainant within **five (5) Business Days** of their appointment. The Notice of Investigation must:
- 4.16.1.1 Disclose the substance of the allegations against the Subject Member, together with a copy of the Complaint and any relevant supporting documentation;
 - 4.16.1.2 Advise the parties of the relevant provisions of the Code that apply to the alleged conduct;
 - 4.16.1.3 Advise of the process to be followed in investigating the matter, together with an indicative timeline;
 - 4.16.1.4 Request the Subject Member to provide written submissions within **five (5) Business Days** of receipt of the Notice of Investigation from the Independent Investigator, to assist the Independent Investigator to identify the substance of the allegation(s) subject to the operation of paragraph 4.16.2 below. An Independent Investigator will only be obliged to provide such information that the Independent Investigator considers reasonably necessary for the Subject Member to identify the substance of the allegation against them.
 - 4.16.1.5 Invite the Subject Member and the Complainant to separately attend a meeting, in relation to the matter within **ten (10) Business Days** (or such other reasonable period specified by the Independent Investigator in the Notice of Investigation).
 - 4.16.1.6 Specify that the Subject Member and the Complainant are each entitled to bring a support person or legal advisor who will act in an advisory or support role only (Support Person). The Support Person must not speak on behalf of the Subject Member or Complainant, or otherwise interfere with, or disrupt, the meeting.
- 4.16.2 An Independent Investigator will allow an additional **five (5) Business Days** if a request under paragraph 4.16.1.4 is acceded to, and will duly notify the parties of the revised submission date in their amended Notice of Investigation.

4.17 Initial Investigation Report

- 4.17.1 The Independent Investigator must consider any written submissions received and produce an Initial Investigation Report within **five (5) Business Days** of the meeting with the Subject Member or the Complainant, whichever it the latter.
- 4.17.2 The Independent Investigator will provide the Initial Investigation Report to the Subject Member and the Complainant. Both parties will be invited to make any further written submissions within **five (5) Business Days** of receiving the Initial Investigation Report (or such other reasonable period specified by the Independent Investigator).

- 4.17.3 Where the Independent Investigator proposes to make adverse comment about any other person (Affected Person) in the Initial Investigation Report, they must also provide the Affected Person with relevant extracts of the Initial Investigation Report containing such comment, and invite the Affected Person to make a written submission in relation to those comments within **five (5) Business Days** of the production of the Initial Investigation Report (or such other reasonable period specified by the Independent Investigator).
- 4.17.4 Where the Subject Member, the Complainant or an Affected Person, fails to make a written submission in relation to the Initial Investigation Report within the period specified by the Independent Investigator, the Independent Investigator may proceed to prepare and issue a Final Report without receiving such submissions.
- 4.17.5 The Independent Investigator may accept in only the most exceptional of circumstances, written submissions in connection with the Complaint outside the period specified by the Independent Investigator at any time, prior to issuing their Final Investigation Report. The Independent Investigator's reasons for acceptance of the late written submissions must be included in the Initial Investigation Report.
- 4.17.6 Where an Independent Investigator identifies further separate possible breaches of the Code that are not related to, or arise from, the Complaint and relate to either Part 3 of the Code or Criminal conduct, they are to report the matters separately in writing to the Mayor or CEO.

4.18 Final Investigation Report

- 4.18.1 The Independent Investigator will prepare a Final Investigation Report in relation to the matter, after finalising their consideration of the matter in accordance with the requirements of the Procedures.
- 4.18.2 The Independent Investigator will provide the Final Investigation Report to the Subject Member and invite the Subject Member to make any final written submissions within **five (5) Business Days** (or such other reasonable period specified by the Independent Investigator).
- 4.18.3 If no final written submissions are received within **five (5) Business Days** (or such other reasonable period specified by the Independent Investigator), the Final Investigation Report must be provided to the Council for consideration at its next meeting.
- 4.18.4 If the Subject Member provides final written submissions, the Independent Investigator, after having considered the final written submissions, must provide the Council with the Final Investigation Report to the Council for consideration at its next meeting.
- 4.18.5 The Final Investigation Report provided to the Council must include the final written submissions provided by the Subject Member as specified in paragraph 4.18.2 as an Appendix to the Final Investigation Report.

4.18.6 The Final Investigation Report must:

- 4.18.6.1 make findings of fact in relation to the matter investigated; and,
- 4.18.6.2 make a determination that the conduct investigated either,
 - (a) constitutes a breach of the Code, (Public report)
 - (b) does not constitute a breach of the Code, (Confidential report)
- 4.18.6.3 provide reasons for the determination;
- 4.18.6.4 provide recommendations in the event that paragraph 4.18.6.2(a) applies.

4.18.7 The report to Council that presents the final Investigation report will detail any expenditure incurred in the engagement of legal and independent experts.

4.19 Final Investigation Report Recommendations

4.19.1 Where the Independent Investigator determines that the conduct investigated constitutes a breach of the Code, the Independent Investigator may make one or more of the following recommendations:

- 4.19.1.1 take no action;
- 4.19.1.2 pass a censure motion in respect of the Council Member;
- 4.19.1.3 request a public apology, whether written or verbal;
- 4.19.1.4 request the Subject Member to attend training on the specific topic found to have been breached;
- 4.19.1.5 resolve to remove or suspend the Subject Member from a position within the Council (does not extend to the Subject Member's elected position on Council);
- 4.19.1.6 request the member to repay monies (e.g. legal fees, investigation or mediation costs etc) to the Council;
- 4.19.1.7 refer the matter to the relevant Appropriate Authorities for further investigation and/or action;
- 4.19.1.8 any other relevant action in the Independent Investigators opinion would be an appropriate response to the breach.

4.19.2 Where the Independent Investigator determines that the conduct investigated does not constitute a breach of the Code, the Independent Investigator may make one or more of the following recommendations:

- 4.19.2.1 that the Council takes no action;
- 4.19.2.2 that the Council revise any of its policies or procedures; or
- 4.19.2.3 that a person or persons undertake any training or other education.

4.19.3 In making a recommendation under paragraph 4.19.1, the Independent Investigator may have regard to the following:

- 4.19.3.1 the seriousness of the breach;
- 4.19.3.2 whether the breach can be easily remedied or rectified;
- 4.19.3.3 whether the Subject Member has remedied or rectified their conduct;
- 4.19.3.4 whether the Subject Member has expressed contrition;
- 4.19.3.5 whether there were any mitigating circumstances;
- 4.19.3.6 the age, physical or mental health or special infirmity of the Subject Member or the Complainant;
- 4.19.3.7 whether the breach is technical or trivial only;
- 4.19.3.8 any previous breaches committed by the Subject Member;
- 4.19.3.9 whether the breach forms part of a pattern of conduct;
- 4.19.3.10 the degree of reckless intention or negligence of the Subject Member;
- 4.19.3.11 the extent to which the breach has affected other parties, or the Council as a whole;
- 4.19.3.12 the harm or potential harm to the reputation of the Council or local government arising from the conduct;
- 4.19.3.13 whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;
- 4.19.3.14 whether an educative approach would be more appropriate than a punitive one;
- 4.19.3.15 the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action; and
- 4.19.3.16 what action or remedy would be in the public interest even if there are no adverse findings against the Subject Member, but where it has been identified that training or other education may improve the quality of communications for the Subject Member in the future.

4.19.4 The Council must provide a copy of the Final Investigation Report to the Subject Member and the Complainant following the determination of the Final Investigation Report and the passing of the relevant resolution by the Council.

4.20 Council's Consideration of the Final Report (Stage 4)

- 4.20.1 A breach of Part 2 of the Code must be the subject of a Final Investigation Report to a public meeting of the Council. For the avoidance of doubt, when the Final Investigation Report is considered by the Council, the Subject Member (and, if applicable, the Complainant if the Complainant is a Council Member) has a material conflict of interest in the matter pursuant to section 73 of the *Local Government Act, 1999*. The Subject Member and the Complainant must disclose the interest, leave the Chamber and not participate in the Council's discussion, and consideration of the matter.
- 4.20.2 The role of the Council in relation to a Final Investigation Report is to consider imposing the recommended sanction (if any) where the Independent Investigator has determined that there has been a breach of the Code (or where it has been determined that training or education could benefit the Subject Member) and has made a recommendation in the Final Investigation Report.
- 4.20.3 The Council is not obliged to adopt the Independent Investigator's recommendation(s) as set out in the Final Investigation Report. Where the Council does not adopt the Independent Investigator's recommendation(s), the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 4.20.4 If, following investigation by the Independent Investigator, a breach of Part 2 of the Code is found, the Council may resolve within a specified time, pursuant to clause 2.25 of the Code, take any of the following actions:
- take no action;
 - pass a censure motion in respect of the Subject Member;
 - request a public apology, whether written or verbal;
 - request the Subject Member to attend training on the specific topic found to have been breached;
 - resolve to remove or suspend the Subject Member from a position within the Council (which does not extend to the Subject Member's elected position on Council);
 - request the member to repay costs to the Council; and
 - for the avoidance of doubt, it is also open to the Council to resolve to refer the matter to the relevant Appropriate Authority for further investigation and/or action.
- 4.20.5 If the Subject Member fails to comply with the sanctions imposed by the Council within a specified time, this will result in the Council elevating the Complaint to the Ombudsman under Part 3 of the Code.
- 4.20.6 The Council must not invite oral submissions from other persons for the purpose of seeking to re-hear evidence previously considered by the Independent Investigator.
- 4.20.7 Prior to imposing a sanction (if any), the Council has the capacity to ask the

Independent Investigator additional questions. The Council may, by resolution, request that the Independent Investigator make additional enquiries and/or provide additional information to it in the form of a Supplementary Report (Supplementary Report).

- 4.20.8 The Council may, by resolution, defer further consideration of the matter pending the receipt of a Supplementary Report from the Independent Investigator.
- 4.20.9 The Independent Investigator may make additional enquiries for the purpose of preparing a Supplementary Report.
- 4.20.10 Where the Independent Investigator prepares a Supplementary Report, they must provide copies of this Supplementary Report to the Council.
- 4.20.11 The Independent Investigator is not obliged to notify or consult with any person prior to submitting the Supplementary Report to the Council.
- 4.20.12 Where the Council passes a resolution of its final determination in connection with the Final Investigation Report, and the sanctions (if any), that will be imposed, the Council must notify the Subject Member and the Complainant of its decision in writing in accordance with paragraph 4.19.4.

5. Rights of Review

In the event that the Subject Member or the Complainant disagrees with the final determination (resolution) of the Council, it is open to either party to refer the matter to the Ombudsman for review.

6. Pre-approved Preliminary Assessors and Independent Investigator

- 6.1 Legal practitioners will be appointed on a rotational basis and be selected from the legal practices included in Council's legal services agreement with Council Solutions to assist the Council in the investigation of the Complaint.
- 6.2 The Local Government Governance Panel may also be selected to conduct preliminary investigations and/or investigations as an alternative.
- 6.3 Legal practitioners appointed to the pre-approved list will hold senior positions within their respective firms and will have specialised knowledge of the legislation applicable to Local Government.
- 6.4 The Preliminary Assessor, or the practice which employs the Preliminary Assessor, who undertook the Preliminary Assessment of the Complaint must not be involved in Stage 3 – Mediation or Further Investigation.

7. Relevant legislation and references

Local Government Act 1999

8. Further information

This Code is available for inspection, during business hours at:
City of Onkaparinga, Ramsay Place, NOARLUNGA CENTRE SA 5168.

It is also available for inspection, downloading or printing from our website
www.onkaparingacity.com.au.

Any legislative changes will be made automatically. Council will be informed of any automatic changes via Weekly News.

9. Document control

| | | |
|--|----------------------|--|
| Author (to whom changes are to be recommended): | | |
| Position | Name | |
| Team Leader Civic Governance | Karyn Ryan | |
| Stakeholders (audience): | | |
| Elected members | | |
| Reviewed by: | | |
| Position | Name | Date reviewed |
| Director Corporate and City Services | Alison Hancock | September 2019 |
| Approved by (document owner): | | |
| Position / Group | Approval date | Approval ECM number |
| Council | 15 October 2019 | 5012443 – Council agenda attachment |
| Current version: | | |
| Current version number | Release date | Review cycle |
| V1.0 | 15 October 2019 | A review will be conducted during each Council term. |
| History: | | |

| Date | DSID | Nature of change |
|----------------------------|-------------|--|
| 24 September 2013 | 2493625 | Code of Conduct for Council Members Gazetted August 2013 |
| 9 December 2014 | 2937140 | General review and adoption within 12 months of an election |
| 18 October 2016 | 3725635 | City of Onkaparinga's Procedure for investigating complaints under the code of Conduct for Council Members 2016 adopted by Council on 18 October 2016 |
| 19 September 2017 | 4129189 | Inclusion of reporting details to Council on legal and independent expert expenditure 19 September 2017. |
| 15 October 2019 | 5024363 | General review and adoption within 12 months of an election |
| Document location: | | |
| Published location | | Original in ECM |
| Onkanet and public website | | 5024363 |

Attachment – 1 Code of Conduct Complaint Form

Please note that ALL fields must be filled in.

| COMPLAINANT DETAILS | |
|---|--|
| Title: | |
| Given Name: | |
| Family name: | |
| Street Address: | |
| Postal Address: (if different to street address) | |
| Contact Number: | |
| Mobile Number: | |
| Email Address: | |

| COMPLAINT DETAILS | |
|--|--|
| *Please note that the complaint must be made in relation to the Conduct of a Council Member. | |
| Council Members name: | |
| Please provide the section(s) of the Code of Conduct for Council Members which the complaint relates: | |
| Details of the Complaint: (attach additional pages if required) | Date of the alleged incident: |
| | Location of the alleged incident: |
| | Other parties involved: |

| | |
|--|---|
| | Potential witnesses who may be contacted to corroborate the Complaint: |
| | Details of the incident: |

| | |
|--|--|
| <p>List and provide a brief description of the supporting documentation attached to this Complaint:</p> <p>(Please attach any relevant supporting documentation to this application. Adequate material to support the allegation and investigate the Complaint is required.)</p> | |
| <p>Acknowledgement</p> <p>I _____ acknowledge that the information contained herein is true and correct.</p> <p>.....</p> <p>Signature</p> <p>.....</p> <p>Date</p> <p>Privacy Statement: <i>Please note that the Corporation of the City of Onkaparinga is committed to protecting your privacy and takes reasonable steps to comply with all relevant legislation. The information is collected by the Council for the purpose of processing your application. Your personal information will be stored in accordance with relevant legislation and will only be accessed by authorised Council Staff. If you do not provide information, Council may not be able to process your application.</i></p> | |

