

PROCEDURE – ADMINISTRATION

Chief Executive Officer Code of Conduct Complaint Handling Administrative Procedure

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1. Document control

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2. Administrative procedure purpose

The purpose of this procedure is to outline the procedures to be observed by the Council for the purpose of addressing and processing any Complaints about the conduct of Chief Executive Officer.

Complaints about the Chief Executive Officer's conduct are to be brought to the attention of Council's Principal Member (**the Mayor**). The procedure reflects Council's commitment to ensuring the proper investigation of such Complaints under the Code.

It is acknowledged that any legislative requirement which affects Council will take precedence over Council's policies and procedures.

3. Scope

This procedure applies when the Council receives a Complaint against the Chief Executive Officer.

Allegations of serious or systemic misconduct, maladministration or corruption allegations will be referred to the Appropriate Authorities.

4. Definitions

Act	means the Local Government Act 1999 (SA), as amended.
Appropriate Authorities	refers to an authority that receives disclosure of public interest information, in particular: (i) a Minister of the Crown (ii) a member of the police force - where the information relates to an illegal activity (iii) the Auditor-General – where the information relates to the irregular or unauthorised use of public money (iv) the Ombudsman – where the information relates to a public officer (v) the Office for Public Integrity (vi) the Independent Commissioner Against Corruption; or (vii) 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.
CEO	refers to the Chief Executive Officer of the Council.
CiAnywhere	refers to the records management software used by the Council and must, regarding a Complaint against the CEO, have confidentiality restrictions to prevent the CEO, or any other unauthorised persons, from accessing information concerning the Complaint.
Code	refers to both <ul style="list-style-type: none">the Code of Conduct for Council Employees as published in the South Australian Government Gazette (and amended from time to time) and Council’s approved Code of Conduct for employees, as amended from time to time.
Complaint	can take the form of either a: (i) letter; (ii) email; or (iii) duly completed (prescribed) form under the Complaints Handling procedure but must in every instance, be in writing and comply with the requirements of paragraph 6.1 “Form of the Complaint”.
Complainant	refers to the person who makes a Complaint.
Conduct Reviewer	refers to the legal practitioner chosen from Council’s panel of legal practitioners responsible for the Preliminary Assessment of the Complaint.
Corruption in public administration	is as defined by the ICAC Act (as amended).

Council	means the city of Onkaparinga established pursuant to the Act (as amended).
Council Member	means any of the then-current elected council members, and includes the Mayor of the city of Onkaparinga.
Directions and Guidelines	is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act (as amended), 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	means the Independent Commission Against Corruption Act 2012 (SA) (as amended).
Independent Assessor	refers to a legal practitioner who is from a different law firm to the Conduct Reviewer and will be chosen from a pre-approved list of legal practitioners to assist the Council in undertaking the further investigation of a Complaint. The rationale underpinning this definition is to afford the greatest level of fairness and transparency of process to the parties involved in the Complaint
Maladministration	is as defined by the ICAC Act (as amended).
Misconduct in public administration	Is as defined under Section 5 of the ICAC Act (as amended).
Office for Public Integrity (OPI)	is the office as established under the ICAC Act (as amended).
Ombudsman	refers to the Office of the Ombudsman established pursuant to the Ombudsman Act 1972 (SA) (as amended).
Public administration	Is as defined at section 4 of the ICAC Act (as amended).
Public Officer	includes: <ul style="list-style-type: none"> (i) an elected member of the Council, including the Mayor; (ii) an Independent member of the Council's Development Assessment Panel; (iii) an Independent member of a Council Committee or a subsidiary of the Council, and an Employee or Officer of the Council.

5. Procedure

For the purpose of this procedure, a Code of Conduct complaint is a complaint that alleges conduct on the part of the CEO that on its face, if proven, would constitute a breach of conduct described under the Code.

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

Stage 1 - Receipt of Complaint

Stage 2 - Preliminary Assessment

Stage 3 - Further Investigation or Mediation

Stage 4 – Resolution

6. Stage 1 – receipt of complaint

6.1 FORM OF THE COMPLAINT

The allegation must:

- be in writing
- be addressed to the Mayor
- be specific and provide as much detail as possible
- identify the provisions of the Code which the CEO has allegedly breached
- provide as much supporting evidence as possible to assist the investigation
- be clearly identified on its face as a “complaint”.

On receipt of a complaint:

- the Mayor must refer the Complaint to the Director Corporate
- the Director Corporate must commence the process of engaging a Conduct Reviewer, with a view to referring the complaint as soon as practicable.
- The Director Corporate must advise the Chief Executive Officer that a complaint has been received; however, the Director will not disclose any details about the complaint nor the identity of the Complainant. The Director will not notify the Chief Executive Officer of the existence of the complaint if the complaint alleges conduct which relates to criminal or corrupt behaviour.

Complainants can, at any time, take the alternative option of lodging the Complaint with the OPI or the Ombudsman.

6.2 CONDUCT REVIEWER

The Conduct Reviewer will be responsible for:

- confirming, in writing, the receipt of the Complaint from the Council
- undertaking the Preliminary Assessment of the Complaint
- communicating with the subject parties on the status of the Complaint (subject to the Complaint not being related to criminal or corrupt conduct)
- liaising with and providing administrative support to the Council when required
- liaising with the Ombudsman, OPI or other Appropriate Authorities where applicable.

Should the Complaint not satisfy the requirements under paragraph 6.1, the Conduct Reviewer may request the Complainant to re-submit the Complaint so that it complies with paragraph 6.1.

6.3 TIME CONSTRAINT

A Complaint must be made within three months of:

- the alleged conduct occurring or
- the Complainant becoming aware of the alleged conduct.

A Complaint made after three months may only be accepted if the Conduct Reviewer is satisfied that there are compelling grounds for the matter to be dealt with under the Code pursuant to the Council's procedures.

7. Stage 2 – Preliminary Assessment

7.1 ASSESSMENT

The Conduct Reviewer must determine whether the Complaint:

- is trivial, frivolous, vexatious or not made in good faith
- relates to behaviour which falls under the Code
- relates to criminal or corrupt behaviour.

The preliminary assessment by the Conduct Reviewer will involve an 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.

For the sake of clarity, any situation involving complaints against the Chief Executive Officer arising from alleged actions or omissions of delegates may also include a review of the relevant evidence pertaining to the conduct or performance of the delegate.

7.2 COMPLAINT ASSESSMENT CRITERIA

In undertaking the preliminary assessment of a Complaint, the Conduct Reviewer must take the following into consideration:

- whether the Complaint discloses prima facie evidence of a breach of the Code
- whether the Complaint raises issues that would be more appropriately dealt with by another agency or body
- 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
- whether the issue(s) giving rise to the Complaint have previously been addressed or resolved
- whether the conduct complained of forms part of a pattern of conduct
- whether there were mitigating circumstances giving rise to the conduct complained of
- the seriousness of the alleged conduct
- the significance of the conduct or the impact of the conduct for the Council
- how much time has passed since the alleged conduct occurred; and
- such other considerations that the Conduct Reviewer considers may be relevant to the preliminary assessment of the Complaint.

7.3 TRIVIAL, FRIVOLOUS OR VEXATIOUS COMPLAINTS

Where the Conduct Reviewer determines a complaint is trivial, frivolous, vexatious or not made in good faith the conduct reviewer must:

- provide the Mayor and Director Corporate with a preliminary assessment report
- confirm in writing to the Complainant that the Council has decided not to enquire further into the matter and provide reasons for its decision
- advise the CEO of the receipt of the trivial, frivolous, or vexatious complaint, and the

outcome.

7.4 BEHAVIOUR UNDER THE CODE

If the Conduct Reviewer determines that the Complaint is not one to which para 5.3 applies, and relates to behaviour which falls under of the Code, the Conduct Reviewer must:

- advise the CEO, in writing, of the Complaint, and the allegation(s) made against them
- ensure the record of Complaint is captured in CiAnywhere including the following details:
 - the name of the CEO who has allegedly breached the Code
 - law permitting, the name of the Complainant
 - the provisions of the Code which the complainant alleges have been breached
 - the category and where applicable, the status of the Complaint
- prepare a Preliminary assessment report containing one or more of the following recommendations:
 - take no action
 - resolve the Complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology; or
 - to refer the Complaint for further investigation
- in cases where the facts are clear and/or undisputed, present findings and recommendations; and/or
- if applicable, to refer the Complaint to the relevant Appropriate Authorities under the Code.

7.5 MANAGEMENT OF CONDUCT REVIEWER RECOMMENDATIONS

7.5.1 TAKE NO ACTION

If the Conduct Reviewer recommends taking no action and the Mayor accepts the recommendation, the Complaint will be finalised and will not be referred for further consideration by Council. In such cases, the Conduct Reviewer will provide a summary of the Preliminary Assessment and reasons for their recommendations to the Complainant and the Chief Executive Officer.

7.5.2 RESOLVE THE COMPLAINT BY ALTERNATIVE AND APPROPRIATE STRATEGIES

If the Conduct Reviewer recommends resolve the Complaint by alternative strategies and the Mayor accepts the recommendation, the Complaint will be finalised and will not be referred for further consideration by the Council.

Where one or both of the parties is unwilling to resolve the Complaint by alternative and appropriate strategies, the Conduct Reviewer must note the same in the Preliminary Assessment Report. In such cases, the Conduct Reviewer may reconsider their recommendations, which may include:

- take no further action
- apology
- such other action that the Conduct Reviewer considers may be an appropriate means to resolve and finalise the Complaint.

The Conduct Reviewer will provide a summary of the Preliminary Assessment and reasons for their recommendations to the Complainant and the Chief Executive Officer.

7.5.3 REFER THE COMPLAINT FOR FURTHER INVESTIGATION

If the Conduct Reviewer recommends referring the Complaint for further investigation, the Mayor and Director Corporate will be responsible for reporting the Preliminary Assessment Report to Council, without commentary, as soon as practicable after it is received.

The Council is not obliged to adopt the Conduct Reviewer's recommendation(s) as set out in the Preliminary Assessment Report. Where the Council does not adopt the Conduct Reviewer's recommendation(s), the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

Where the Complaint is referred to the Council for consideration for possible further investigation, the Council must consider the Complaint as soon as practicable.

During the Council meeting, and if Council is minded to refer the matter for further investigation, the Council must appoint an Independent Assessor from the pre-approved list of legal practitioners to assist the Council in undertaking the further

8. Stage 3 – Investigation

8.1 CONDUCT OF INVESTIGATION

Investigations are to be undertaken by the Independent Assessor without undue delay.

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

In cases where the Complaint involves issues relating to alleged actions or omissions of delegates, the Chief Executive Officer is free to discuss the Complaint with relevant delegates and seek assistance from such delegates in preparing a response.

In all cases, the Chief Executive Officer is free to refer to council record keeping systems in preparing a response to any Complaint but may not access records related to the management of the Complaint itself.

The Independent Assessor must make any such enquiries that they consider may be reasonably necessary to establish the facts of the matter.

The Independent Assessor may seek such advice or expert guidance that they consider may be reasonably necessary to assist them with their investigation or the conduct of their investigation.

The Independent Assessor will be provided with all relevant information in support of the complaint, including the Preliminary Assessment Report.

8.2 WRITTEN NOTICE OF INVESTIGATION

The Independent Assessor must at the outset of their investigation provide a written Notice of Investigation to the CEO and the Complainant.

The Notice of Investigation must:

- disclose the substance of the allegations against the CEO together with a copy of the complaint and any relevant supporting documentation
- advise of the relevant provisions of the Code that apply to the alleged conduct

- advise of the process to be followed in investigating the matter, together with an indicative timeline
- request the CEO to provide written submissions within a reasonable time of receipt of the Notice of Investigation from the Independent Assessor to assist the Independent Assessor to identify the substance of the allegation(s). An Independent Assessor will only be obliged to provide such information that the Independent Assessor considers reasonably necessary for the CEO to identify the substance of the allegation against them and respond accordingly
- invite the CEO and the Complainant to separately attend a meeting, in relation to the matter
- must specify that the CEO 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 CEO or Complainant or otherwise interfere with or disrupt the meeting.

8.3 INITIAL INVESTIGATION REPORT

The Independent Assessor will consider any written submissions received and produce an Initial Investigation Report, including a summary of findings and the reasons for their findings, as soon as practicable following the completion of the meetings with the CEO and the Complainant.

The Independent Assessor will thereafter provide the summary of findings, and the reasons for their findings, to the CEO. The CEO will be invited to make any further written submissions within such reasonable period specified by the Independent Assessor.

Where the Independent Assessor proposes to make adverse comment or findings about any other person (Affected Person) in the Initial Investigation Report, they must also provide the Affected Person with a summary of such comment(s) or finding(s), and invite the Affected Person to make a written submission in response within such reasonable period specified by the Independent Assessor.

Where the CEO or an Affected Person fails to make a written submission in relation to the Initial Investigation Report findings within the period specified by the Independent Assessor, the Independent Assessor may proceed to prepare and issue their Final Report without receiving such submissions.

Where an Independent Assessor identifies further separate possible breaches of the Code that are not related to or arise from the Complaint that has been referred to them, they are to report the matters separately in writing to the Mayor and/or Director Corporate, or such appropriate authorities as may be applicable.

8.4 FINAL INVESTIGATION REPORT

The Independent Assessor will prepare a Final Investigation Report in relation to the matter after they have finalised their consideration of the matter in accordance with the requirements of these procedures.

The Mayor and Director Corporate will be responsible for reporting the Final Investigation Report, without commentary, to the Council for its consideration as soon as practicable following completion.

The Final Investigation Report must:

- make findings of fact in relation to the matter investigated, and,
- decide that the conduct investigated either

- constitutes a breach of the Code, or
- does not constitute a breach of the Code
- provide reasons for the determination
- provide recommendations.

8.5 RECOMMENDATIONS

The Independent Assessor may make one or more of the following recommendations as part of the Final Investigation Report:

- take no action
- pass a censure motion in respect of the CEO
- request a public apology, whether written or verbal
- request the CEO to attend training on the specific topic found to have been breached
- resolve to issue a warning to, terminate the appointment of, or suspend the CEO
- refer the matter to the relevant Appropriate Authorities for further investigation and/or action
- that the Council takes no action
- that the Council revise any of its policies or procedures; or
- that a person or persons undertakes any training or other education.

In making a recommendation, the Independent Assessor may have regard to the following:

- the seriousness of the breach
- whether the breach can be easily remedied or rectified
- whether the CEO has remedied or rectified their conduct
- whether the CEO has expressed contrition
- whether there were any mitigating circumstances
- the age, physical or mental health or special infirmity of the CEO
- whether the breach is technical or trivial only
- any previous breaches
- whether the breach forms part of a pattern of conduct
- the degree of reckless intention or negligence of the CEO
- the extent to which the breach has affected other parties or the Council as a whole
- the harm or potential harm to the reputation of the Council or local government arising from the conduct
- whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- whether an educative approach would be more appropriate than a punitive one
- the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- what action or remedy would be in the public interest even where there are no adverse findings against the CEO but where training or other education may improve the quality of communications for the CEO in the future.

The Council must provide a copy of the Final Investigation Report to the CEO following the determination of the Final Investigation Report and the passing of the relevant resolution. Should the Final Investigation Report include references to witnesses or

evidence of a nature that, if disclosed, may present a risk to any person, Council must first ensure that the Independent Assessor be given an opportunity to redact the report in order to mitigate such risks prior to the report being provided to the CEO.

The Independent Assessor will provide a summary of the findings of the Final Investigation Report to the Complainant at the completion of the matter.

9. Stage 4 – Resolution

9.1 COUNCIL CONSIDERATION OF THE FINAL REPORT

For the avoidance of doubt, when the Final Investigation Report is considered by the Council, the CEO (and, if applicable, the Complainant if the Complainant is a Council Member) has a prescribed interest in the matter pursuant to section 73 of the *Local Government Act 1999*. The CEO and the Complainant must disclose the interest, leave the Chamber and not participate in the Council's consideration of the matter.

The CEO may make an oral submission prior to leaving the Chamber.

9.2 ROLE OF THE COUNCIL

The role of the Council in relation to a Final Investigation Report is to consider imposing the recommended sanction(s) (if any) where the Independent Assessor determines that there has been a breach of the Code (or where training or education could benefit the CEO), and makes a recommendation in their Final Investigation Report.

The Council is not obliged to adopt the Independent Assessor's recommendation(s) as set out in the Final Investigation Report.

Where the Council does not adopt the Independent Assessor's recommendation(s), the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

The Council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the Independent Assessor.

Prior to imposing a sanction (if any), the Council has the capacity to ask the Independent Assessor additional questions. The Council may, by resolution, request that the Independent Assessor make additional enquiries and/or provide additional information to it in the form of a Supplementary Report (**Supplementary Report**).

The Council may, by resolution, defer further consideration of the matter pending the receipt of a Supplementary Report from the Independent Assessor.

The Independent Assessor may make additional enquiries for the purpose of preparing a Supplementary Report

Where the Independent Assessor prepares a Supplementary Report, they must provide copies to the Council.

The Independent Assessor is not obliged to notify or consult with any person prior to submitting the Supplementary Report to the Council.

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 Independent Assessor must notify the CEO and the Complainant of Council's decision in writing.

10. Reimbursement of Costs

Any request for reimbursement of legal expenses by the CEO in relation to responding to a complaint under this procedure may only be considered by Council at the conclusion of a process.

Such requests are to be made to the Mayor and reported to Council in confidence by the Mayor and the Director Corporate.

Council must consider any such request on its merits, in accordance with the circumstances applicable.

Any decision to reimburse, or not to reimburse, is at Council's absolute discretion.

If a decision to reimburse is made, receipts reflecting the sum (or partial sum) to be reimbursed must be presented.

11. Relevant Legislation and References

Local Government Act 1999

Code of Conduct as published in the South Australian Government Gazette (as amended).

Code of Conduct for employees, as amended from time to time

Independent Commissioner Against Corruption Act 2012

Directions and Guidelines issued by ICAC