

Behavioural Management Policy

Policy Number	B1
Responsible Officer(s)	Chief Executive Officer
Policy Adopted	March 2023
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Applicable Legislation	<i>Local Government Act 1999 s262B; Independent Commission Against Corruption Act 2012; Ombudsmen Act 1972; Public Interest Disclosure Act 2018.</i>

1. POLICY PRINCIPLE

The Behavioural Management Policy forms part of the Behavioural Management Framework for council members and sets out the approach to the management of complaints about the behaviour of council members. It sets out the process to be adopted where there has been an alleged breach of the Behavioural Standards for council members, this Behavioural Management Policy and/or any Behavioural Support Policy adopted by the Council (*the behavioural requirements*). This Policy has been prepared and adopted pursuant to section 262B of the *Local Government Act 1999* (the Act).

2. DEFINITIONS

Behavioural Management Framework – comprises four components:

- (a) The legislative framework within which all council members must operate;
- (b) The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all council members in South Australia;
- (c) The mandatory Behavioural Management Policy (this document) relating to the management of behaviour of council members and adopted pursuant to section 262B of the Act;
- (d) Optional Behavioural Support Policy (or policies) designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Act.

Behavioural Requirements – this refers collectively and individually to the Behavioural Standards for Council Members, the Behavioural Management Policy and any Behavioural Support Policies adopted by the Council.

Behavioural Standards for Council Members – established by the Minister for Local Government, and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to behaviour of members of councils.

Frivolous – includes without limitation, a matter of little weight or importance, or lacking in seriousness.

Misbehaviour – is defined in section 262E of the Act as:

- (a) A failure by a member of a council to comply with a requirement of the council under section 262C(1) of the Act; or

- b) A failure by a member of a council to comply with a provision of, or a requirement under, Council's Behavioural Management Policy; or
- c) A failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1 of the Act.

Responsible Person means the person responsible for managing the complaint, subject to any resolution of the Council to the contrary, being –

1. The Mayor;
2. If the complaint relates to or involves the Mayor, the Deputy Mayor;
3. If the complaint relates to or involves the Mayor and Deputy Mayor, another council member appointed by Council.

Repeated Misbehaviour – as defined in section 262E of the Act, a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2 of the Act ("*Member behaviour*").

Serious Misbehaviour – as defined in section 262E of the Act, a failure by a member of a council to comply with section 75G of the Act ("*Health and safety duties*").

Trivial – includes without limitation, a matter of little worth or importance; that is trifling; or insignificant.

Vexatious – includes a matter raised without reasonable grounds or for the predominate purpose of causing annoyance, delay or detriment, or achieve another wrongful purpose.

3. POLICY PRINCIPLES

The following principles will apply:

- Where a council member considers there has been behaviour that is inconsistent with the *behavioural requirements*, a council member may, in appropriate circumstances, seek to respectfully and constructively raise this issue with the member concerned, without the need to lodge a complaint under this Policy;
- If a matter proceeds to a complaint, all council members will continue to comply with the procedures set out in this Policy and support the responsible person;
- A consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate timely and efficient resolution and minimisation of costs;
- Where required, Council may engage the assistance of skilled advisors and support persons in the assessment, investigation and resolution of complaints and avoid adopting an unreasonably legalistic approach;
- Ongoing training and relevant resources will be provided to all council members to ensure they have the skills and knowledge necessary to perform their role in accordance with the *behavioural requirements* and the Act;
- Training and relevant support will be provided to persons with specific obligations under this Policy to facilitate the management, reporting and resolution of complaints alleging a breach of the *behavioural requirements*.

4. THE COMPLAINT MANAGEMENT PROCESS

Lodging a complaint

A complaint made under the Behavioural Management Policy must:

- a) Be received in writing. Subject to an alternative resolution of the Council, a complaint should be marked with "Confidential Council Member Complaint" and forwarded to:

- (via email) governance@wrc.sa.gov.au;
- (hard copy) Wakefield Regional Council, PO Box 167, Balaklava SA 5461;
- b) Provide the name of the council member who has allegedly breached the *behavioural requirements*, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint;
- c) Be specific (including identifying the *behavioural requirements* the complainant alleges have been breached);
- d) Provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint (e.g. where, when, impact of the behaviour, actions taken to try to resolve the issue, relevant records or documents);
- e) Identify the outcome being sought;
- f) Be lodged within six (6) months of the alleged conduct occurring on the basis that it is important to address alleged breaches of *behavioural requirements* in a timely manner (with discretion provided to the responsible person to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis).

Community members can lodge a complaint with the Council in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

Dispute versus Complaint

It is important to distinguish between a dispute and a complaint. A dispute is generally a difference of opinion or disagreement between two parties. It may involve a heated discussion or some other unsatisfactory exchange between parties but may not amount to conduct inconsistent with the *behavioural requirements*. Ideally disputes will be handled directly by the parties involved and will not escalate to a complaint requiring action (even informal action) under this Policy. The Mayor (or another person) may play a role in facilitating a resolution to a dispute.

This Policy is intended to deal with matters where conduct is alleged to have been inconsistent with the *behavioural requirements*, rather than where members of council have differences of opinion, even when robustly put.

Confidentiality

Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

Access to information relating to complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Policy.

A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to a council member) that information except:

- For the purpose of dealing with the complaint;
- Where required by law;
- For the purpose of obtaining legal advice or legal representation, or medical or

psychological assistance from a medical practitioner, psychologist or counsellor;

- Where the disclosure is made to an external party, investigating the complaint, or mediator/conciliator engaged in accordance with this Policy; or
- Where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

This is not to be confused with formal consideration at a Council Meeting of any matter arising from application of this Policy. Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of section 90 of the Act.

A complainant may request their identity be kept confidential from the person complained about. This does not constitute an anonymous complaint. The responsible person will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

The total number of contraventions, the total costs incurred and any referrals made to the Behavioural Standards Panel must be reported in the Council's Annual Report pursuant to section 35 (a1) of the *Local Government (General) Regulations 2013*.

Stages of Action

This Policy has three distinct stages to the approach that will be taken to address complaints about the behaviour of Council Members:

- Stage 1: Informal Action: where the matter can be resolved directly between the parties.
- Stage 2: Formal Action: where the matter cannot be resolved using informal action and a formal process of consideration is required.
- Stage 3: Referrals to the Behavioural Standards Panel: the circumstance under which the Mayor, the Council or other authorised person(s) will make a referral.

4.1 STAGE 1: INFORMAL ACTION

Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the *behavioural requirements*. A person may therefore consider raising the matter directly with the council member concerned.

Alternatively, a concern may be raised with the responsible person on an informal basis. If the responsible person considers that access to resources to support impacted parties and facilitate early resolution of the matter should be provided, they will request the CEO to facilitate access to relevant resources.

Record Keeping

Where the responsible person addresses the matter through informal action, a record will be made setting out:

- Details of the complainant;
- Details of the person complained about;
- A summary of the matter;
- A summary of actions taken in response;
- Details of agreed actions (if any).

If informal action does not successfully resolve the matter, the record may be made available to an investigation process as provided for under this Policy or to the Behavioural Standards Panel.

4.2 **STAGE 2: FORMAL ACTION**

This Part sets out the process for formal action in response to a complaint regarding the behaviour of council members.

4.2.1 **Receipt of Complaint**

Receipt of the complaint will be acknowledged by the CEO or delegate as soon as reasonably practicable, and a copy of this Policy will be provided to the person making the complaint. The CEO or delegate does not undertake an assessment of the merits of the complaint. The complaint will be directed to the responsible person. A complainant may withdraw their complaint at any stage.

4.2.2 **Initial Complaint Assessment**

An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at this stage.

Step 1:

The responsible person will undertake an assessment to determine whether the content of the complaint relates to the ***behavioural requirements*** and whether the conduct occurred in the context of the council member carrying out their official functions and duties. In undertaking the assessment, the responsible person will have regard to the following matters, whether:

- The person that is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter;
- The complaint is trivial, frivolous or vexatious or not made in good faith;
- The complaint has been lodged with another authority;
- The subject matter of the complaint has been or is already being investigated by the Council or another body;
- It is unnecessary or unjustifiable for the Council to deal with the complaint;
- The Council has dealt with the complaint adequately.

Step 2:

If the responsible person considers the matter warrants further consideration, the person complained about will be advised that a complaint has been received and is undergoing an initial assessment in accordance with this Policy. They will be provided a summary of the matter, at a sufficient level of detail to understand the nature of the allegations, and given a reasonable opportunity to provide a response to support the initial assessment, at the discretion of the responsible person.

Action from initial assessment

The responsible person will determine what action will result from the initial assessment having regard to any response provided by the person complained about. This could be:

a) ***Refusing to deal with the complaint/Determining to take no further action***

Where the responsible person decides not to proceed with formal consideration of the matter the following steps will be taken:

- The complainant must be provided written reasons explaining the decision;

- The person complained about will be provided with a brief summary of the complaint and the reasons for not proceeding;
- A record of these steps and the decision not to proceed will be made.

Whilst a matter may not proceed, the responsible person may discuss the issues informally with the parties and identify strategies to build skills, facilitate positive relationship development and reduce the likelihood of repeat occurrences.

b) Decision to refer to alternative resolution mechanism

The responsible person may form the view that the optimal way to deal with the complaint is to implement an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training.

The responsible person will discuss the use of a proposed alternative resolution mechanism with the complainant and the person complained about to determine whether there is support for this approach.

If so, the responsible person will request the CEO take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint.

The complainant and the person complained about will be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

c) Decision to refer to another body or agency

Where the responsible person decides to refer the matter to another body or agency (e.g. the Ombudsman SA or the Behavioural Standards Panel), they will follow any direction from that body or agency regarding what information is to be provided to the complainant and the council member complained about regarding the referral.

d) Decision to proceed to formal consideration

Where the responsible person decides to proceed to formal consideration refer to steps set out in clause 4.2.3.

4.2.3 Formal Consideration

Where the responsible person decides to proceed to formal consideration, the following steps will be taken:

- a) The person complained about will be provided with a copy of this Policy, contact details of the responsible person and a summary document setting out:
- The specific provision(s) of the **behavioural requirements** alleged to have been breached; and
 - The circumstances where this breach is alleged to have occurred.

Note: In circumstances where the complainant has not requested their identity to be kept confidential, a copy of the complaint may be provided in full. The complainant will be advised of the decision to proceed and the contact details of the responsible person.

- b) The responsible person will determine how to proceed to formal consideration by:
- Determining that they are the appropriate person to formally consider the complaint; or by
 - Determining to engage a third party to formally consider the complaint, for example:

- an investigator who will report to the responsible person; or
- an external service provider with skills relevant to the matter who will report to the responsible person.

Note: If the responsible person determines a third party will be engaged, they will request the CEO to facilitate engagement of an appropriate service provider.

- c) The responsible person will advise both the complainant and the person complained about that they are able to have a support person accompany them during discussions relating to the complaint.

It is the expectation of Council that both the complainant and the person complained about will cooperate with any such process to consider the complaint and, if requested, participate in meetings in a timely manner.

Please note: Failure by the council member complained about to comply with this requirement may be taken into account when considering the actions to be taken under section 262B(2)(e) of the Act and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

Further consideration by the responsible person (or the third party engaged), may (at the discretion of that person) involve:

- Exploring the complaint with the complainant and the person who is the subject of the complaint;
- Speaking with other persons who have been nominated by the parties to have observed the behaviour;
- Speaking directly with witnesses to the conduct of the complaint;
- Requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

During the formal consideration of a matter, appropriate records will be kept by the responsible person.

Report

The responsible person (or the third party engaged) will ensure a report is prepared summarising the matter and setting out:

- Allegations made in the complaint;
- Summary of evidence to which the investigation had regard;
- Findings;
- Conclusions; and
- Recommendations.

A report will generally include a recommended action for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as per the Act:

- Discussions with parties to the complaint to seek agreement;
- Formal mediation (if not already undertaken);
- Conciliation;
- Arbitration;
- Education and further training.

A copy of the draft report will be provided to the parties to the complaint, who should be given a reasonable opportunity to make submissions in relation to the draft report, at the discretion of the responsible person. The responsible person (or the third party engaged) will have regard to any submissions made in preparing a final report.

4.2.4 Resolution

Outcome – No breach found

Where the finding is that no breach of the *behavioural requirements* has occurred, a final report should be prepared by the responsible person (or third party engaged) and provided to the complainant and the person complained about.

The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken.

Outcome – agreed actions (breach found)

Where the finding is that a breach of the *behavioural requirements* has occurred and the complainant and the person complained about agree to a path for resolution, that agreement will be documented including matters such as:

- Action(s) to be undertaken and the responsibility attached for completing the action(s);
- Timeframes and monitoring arrangements for completion of action(s);
- Consequences if action(s) aren't completed and/or consequences if there is a repeat of the behaviour complained about.;
- Confirmation that the matter is considered resolved.

The agreement reached will be made in writing, including a commitment by parties to the complaint to abide by the agreement (which may be by electronic means). A copy of the agreement will be retained by each party and a copy held in Council records.

The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting.

Outcome – no agreed action (breach found)

Where the finding is that a breach of the *behavioural requirements* has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter a final report will be presented to Council for determination. The responsible person should request the CEO to include the final report in the Council Agenda as soon as practicable.

4.2.5 Actions of Council

Where the parties are not able to agree on an approach to resolve the matter, the matter will be provided to Council to determine the actions to be taken which may include:

- Taking no further action;
- Passing a censure motion in respect of the member;
- Requiring the member to issue a public apology (in a manner determined by the Council);
- Requiring the member to undertake a specified course of training or instruction;
- Removal or suspension from one or more offices held in the member's capacity as a

member of the Council or by virtue of being a member of the Council – but not the office of Member of the Council;

- Referral to the Behavioural Standards Panel.

If Council determines to take action, a report on the matter must be considered at a meeting open to the public.

Where Council determines to take no further action, the complainant will be advised of this along with reasons, which may include:

- (a) The ground that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the council to deal with or continue to deal with the complaint;
- (b) The ground that the subject matter of the complaint has been or is already being investigated, whether by the council or another person or body; or
- (c) The ground that the council has dealt with the complaint adequately.

In making a determination under section 262C(1) of the Act, Council should be reasonably prescriptive about the manner and time periods in which the action must be completed.

4.3 **STAGE 3: REFERRALS TO THE BEHAVIOURAL STANDARDS PANEL**

The Behavioural Standards Panel is an independent statutory authority consisting of three members and has powers to impose sanctions on council members who breach the behavioural requirements.

In accordance with section 262Q of the Act, a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be made to the Panel by certain persons as set out below:

- A resolution of the council; or
- The Mayor; or
- At least 3 members of the council; or
- Responsible person under 75G (2) of the Act.

Behavioural Standards Panel Contact Officer

Council must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. Alisha Senior, Acting Manager Governance, HR & Risk is appointed as contact officer for the purposes of this Policy, and will be responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

5. RESPONSIBILITIES

The person responsible for managing complaints is responsible under this Policy to:

- Perform the tasks bestowed upon them pursuant to this Policy;
- In consultation with the CEO, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter becoming serious, or escalating to a formal complaint;
- In consultation with the CEO, engage external resources to assist with investigation and resolution of matters.

The CEO (or delegate) is responsible under this Policy to:

- Manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Policy;
- Facilitate access to external resources to support the resolution of complaints lodged in

accordance with this Policy.

The Behavioural Standards Panel Contact Officer (appointed by the council) is responsible under this Policy to:

- Comply with any lawful request of the Panel for information related to a matter under consideration;
- Receive and respond to notices relating to matters under consideration by the Panel.

Where the Behavioural Standards Panel Contact Officer is not the CEO, the Contact Officer will keep the CEO informed of the status of matters under consideration by the Panel.

6. REVIEW

This Policy shall be reviewed every 48 months, or more frequently if required by legislation or Council.

Document history:

Version	Adopted	Description of Change
1.0	March 2023	New Policy