

Behavioural Management Policy

This Policy outlines:

- The requirements relating to the management of the behaviour of Council Members; and
- The process for the receipt and management of complaints received alleging a member of the Council has contravened or failed to comply with Chapter 5 Part 4 Division 2 of the *Local Government Act 1999*..

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Related Policies:	Behavioural Standards for Council Members Behavioural Support Policy (if adopted)

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How to lodge a complaint

A complaint must:

- be made in writing;
- be addressed to the chief executive officer;
- be marked with “**Confidential Council Member Complaint**”;
- provide the name of the Council Member who has allegedly breached the Behavioural Requirements;
- provide 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 who to the knowledge of the complainant or person submitting the complaint are able to provide information about the complaint;
- be specific (including identifying the Behavioural Requirements the complainant alleges have been breached);
- 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 and resolve the issue, relevant records or documents);
- identify the outcome being sought; and
- be lodged within six (6) months of the alleged conduct occurring.
- The responsible person for managing the complaint may nonetheless accept a complaint that does not meet one or more of the above requirements. This will be assessed on a case-by-case basis having regard to such matters as the person responsible for managing the complaint considers appropriate.

For more information about Council Member Behavioural Requirements, please refer to the [Behavioural Standards for Council Members](#) and the Behavioural Support Policy (when adopted by Council) are available on Council’s website burnside.sa.gov.au.

Complaints alleging a contravention of the integrity provisions of the *Local Government Act 1999* are not dealt with by the Council and accordingly this Policy does not apply to such complaints.

Copies of the relevant sections of the *Local Government Act 1999* relating to Council Member integrity and behaviour are included in Appendix 1.

Contact Details

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Further Assistance

If you require any information regarding the operation of the Council Member Conduct Management Framework or require advice and assistance in making a complaint please contact Council on 8366 4200.

Foreword

Section 262B of the *Local Government Act 1999* requires Councils to have a Behavioural Management Policy relating to the management of behaviour of Council Members, including the process for receipt and management of a complaint received regarding the conduct of a Council Member.

Council must review the operation of the Behavioural Management Policy within 12 months after the conclusion of each periodic election.

The City of Burnside (the Council) has prepared the Behavioural Management Policy to meet the requirements of section 262B of the *Local Government Act 1999* (The Act).

Conduct Management Framework

The Council Member Conduct Management Framework, comprises the:

- **legislative framework** within which all Council Members must operate;
- **Behavioural Standards for Council Members**, determined by the Minister for Local Government which apply to all Council Members in South Australia (Appendix 2);
- **Behavioural Management Policy**, relating to the management of behaviour of Council Members and adopted pursuant to section 262B of the Act.
- **Behavioural Support Policy**, designed to support appropriate behaviour by Council Members and adopted pursuant to section 75F of the Act.

In addition to the Council, there are two other bodies which can investigate complaints regarding Council Member behaviour, namely the:

- **Ombudsman SA** – if the complaint relates to a breach of an integrity provision¹ of the *Local Government Act 1999* the Ombudsman is the investigative agency.

¹ Integrity Provisions can include, but not limited to Conflict of Interest, Gifts and Benefits, Confidentiality

- **Behavioural Standards Panel** is an independent statutory authority which I can receive complaints from the Council, the Mayor, 3 Council members or a responsible person under section 75G of the *Local Government Act 1999* about certain types of Council member conduct.

Strategic Plan Desired Outcomes

Principles: 4. Governing with Integrity

Theme: Spans all Strategic Plan Themes

Goals: Spans all Strategic Plan Goals

Priorities: Spans all Strategic Plan Priorities

1. Introduction

- 1.1 This Policy has been prepared and adopted pursuant to section 262B of the Act.
- 1.2 This Policy forms part of the Conduct Management Framework for Council Members and sets out the approach to the management of complaints about the behaviour of Council Members.
- 1.3 It outlines the process to be adopted where there has been an alleged breach of the Behavioural Standards for Council Members or the Behavioural Support Policy adopted by the Council.
- 1.4 Nothing in this Policy is intended to prevent Council Members from seeking to resolve disputes and complaints in a proactive, positive, and courteous manner before they are escalated.
- 1.5 Council will manage complaints under this Policy with as little formality and technicality and with as much expedition as the requirements of the matter and the Act allows and with proper consideration of the matter.
- 1.6 Council is not bound by rules of evidence² but will inform itself in the manner considered most appropriate given the nature of the complaint.
- 1.7 The following principles will apply:
 - 1.7.1 Where a complainant considers there has been behaviour that is inconsistent with the Behavioural Requirements, a complainant 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;
 - 1.7.2 If a matter proceeds to a formal complaint, all Council Members will continue to comply with the procedures set out in this Policy and support the Responsible Person for managing the complaint;
 - 1.7.3 A consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate timely and efficient resolution and minimisation of costs to the Council and Council Members involved;
 - 1.7.4 Where required, Council will engage the assistance of skilled advisors and support persons in the assessment, investigation and resolution

² As defined by the *Evidence Act 1929* and common law.

of complaints and Council will avoid adopting an unreasonably legalistic approach.

1.7.5 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.

1.7.6 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.

2. Glossary

Act	Means the <i>Local Government Act 1999</i>
Behavioural Requirements	Refers collectively and individually to the Behavioural Standards for Council Members, the Behavioural Management Policy and any Behavioural Support Policy adopted by Council.
Bullying	<p>A Council Member will be considered to bully other Council Members or Council employees if: the Council Member either, as an individual Council Member or as a member of a group:</p> <ol style="list-style-type: none">repeatedly behaves unreasonably towards another Council Member, or employee; andthe behaviour could reasonably be considered to be distressing, victimising, threatening or humiliating. <p><i>Note - If this behaviour adversely affects the health and safety of another Council Member or Council Employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.</i></p>
Behavioural Standards Panel Contact Officer	Means the person appointed by the Council for the purposes of this Policy.
Business Day	Means a day that is not a Saturday, Sunday, or public holiday.
Complainant	<p>Means the person who has made the complaint about the conduct or behaviour of a Council Member including if a complaint has been made by another person on their behalf and includes a:</p> <ul style="list-style-type: none">Council Member;Member of the public; or

Chief Executive Officer CEO	<ul style="list-style-type: none"> • Council employee. <p>Means the Chief Executive Officer of the Council and includes a deputy or other person acting in the office of Chief Executive Officer.</p>
Conduct Management Framework	<p>Comprises four components:</p> <ul style="list-style-type: none"> • The relevant legislative framework in the Act within which all council members must operate; • The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all Council Members in South Australia; • The Behavioural Management Policy relating to the management of complaints regarding the behaviour of Council Members and adopted pursuant to section 262B of the Local Government Act; • The Behavioural Support Policy (if adopted) designed to support appropriate behaviour by Council Members and adopted pursuant to section 75F of the Local Government Act.
Conduct of a Sexual Nature	<p>Includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.</p>
Council Employees	<p>Include Council management, employees, volunteers, persons gaining work experience and contractors.</p>
Council Member	<p>Means a person appointed or elected as a Mayor or Councillor of a Council under the <i>Local Government Act 1999</i>.</p>
Dispute	<p>Is generally a difference of opinion or disagreement between two parties.</p>
Frivolous	<p>Includes without limitation, a matter of little weight or importance, or lacking in seriousness.</p>
Misbehaviour	<p>Is defined in section 262E of the <i>Local Government Act 1999</i> as:</p> <ol style="list-style-type: none"> a. A failure by a Council Member to comply with a requirement of the Council under section 262C(1); or b. A failure by a Council Member to comply with a provision of, or a requirement under, Council's behavioural management policy; or c. A failure by a Council Member 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.

Presiding Member

Means –

- a. the person who is the presiding member of a council or council committee (as the case may be) and includes any person who is presiding at a particular meeting; or
- b. the person presenting, delivering or facilitating an Information or Briefing session for Council Members who could be the CEO, Directors, Council Employees or Consultants.

Responsible Person for managing the complaint means

subject to any resolution of Council to the contrary is–

- a. the Mayor;
- b. if the complaint relates to or involves the Mayor or if the Mayor considers it preferable the Mayor not be the person responsible for managing the complaint, another Council Member appointed by the Council annually as a member of the panel of persons to manage complaints.

Repeated Misbehaviour

Is defined in section 262E of the *Local Government Act 1999* as a second or subsequent failure by a Council Member to comply with Chapter 5 Part 4 Division 2 (Ch 5- Members of council, Pt 4-Member integrity and behaviour, Div 2-Member behaviour).

Serious Misbehaviour

Is defined in section 262E of the *Local Government Act 1999* as a failure by a Council Member to comply with section 75G (Health and safety duties).

Sexually harass

A Council Member will be considered to sexually harass other Council Members or Council employees if:

- a. the Council Member either, as an individual Council Member or as a member of a group:
 - i. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another Council Member, or employee (the person harassed); or
 - ii. engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that

the person harassed would be offended, humiliated, or intimidated.

Note - If this behaviour adversely affects the health and safety of another Council Member or Council employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.

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. Our Approach

3.1 Scope

- 3.1.1 This Policy outlines the procedures for dealing with an allegation of a breach of the Behavioural Requirements applying to Council Members.
- 3.1.2 These procedures do not apply to complaints about Council employees or the Council as a whole.
- 3.1.3 A complaint made in accordance with this Policy must be lodged within 6 months of the behaviour that is inconsistent with the Behavioural Requirements occurring.
- 3.1.4 A decision may be made to accept a complaint lodged more than 6 months after the behaviour that is inconsistent with the Behavioural Requirements occurring on a case-by-case basis, at the discretion of the Responsible Person for managing the complaint.
- 3.1.5 Community members and Council employees can lodge a complaint with Council in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

3.2 Dispute vs Complaint

- 3.2.1 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.

- 3.2.2 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.
- 3.2.3 This Policy deals with matters where conduct is alleged to have been inconsistent with the Behavioural Requirements, rather than where Council Members have differences of opinion, even when robustly put.
- 3.2.4 The Behavioural Standards defines the following behaviour as not constituting a breach of the Standards:
 - a. Robust debate carried out in a respectful manner between Council Members; or
 - b. A reasonable direction given by the Presiding Member at a Council meeting, Council committee meeting or other council-related meeting (such as a working group or an information or briefing session); or
 - c. A reasonable direction carried out by the Council CEO/Responsible Person pursuant to section 75G of the Act in relation to the behaviour of a Council Member that poses a risk to the health or safety of a council employee.

3.3 Confidentiality

- 3.3.1 Complaints will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting or are otherwise lawfully made public or disclosed.
- 3.3.2 Information that identifies the complainant, the Council Member complained about, and any other person involved in the complaint, will not be disclosed to any person involved in the complaint except for the purposes of dealing with the complaint under this policy or to comply with a legislative obligation or lawful direction of an external person or body.
- 3.3.3 A person who has access to information or receives about a complaint (including the complainant and the Council Member complained about) must not directly, or indirectly disclose to any

person (including to another Council Member) that information except:

- a. for the purpose of dealing with the complaint;
- b. where required by law;
- c. for the purpose of obtaining legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or counsellor;
- d. where the disclosure is made to an external party, investigating the complaint, or mediator/conciliator engaged in accordance with this Policy;
- e. where the information has been made public in accordance with this Policy or this Policy otherwise authorises or requires the disclosure of the information.

3.3.4 Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of section 90 of the Act.

3.3.5 To minimise the incidence of trivial, frivolous, or vexatious complaints, the complainant's identity will be provided to the person complained about, as a matter of course unless there is a serious, compelling and significant legal reason to keep the complainant's identity confidential and this is disclosed to the person complained about.

3.3.6 Anonymous complaints, and complaints where the Responsible Person for managing the complaint is unable to contact the complainant will not be accepted.

3.4 Record Keeping

3.4.1 All records of associated with the assessment and investigation of complaints are official Council records and are required to be kept in the Council's Information Systems.

3.4.2 The Responsible Person for managing the complaint will be provided assistance by the Office of the CEO to ensure that the record keeping obligations are met.

3.4.3 Any records regarding Informal Action or Formal Investigation under this Policy will be made available to the Behavioural Standards Panel.

3.4.4 Initial Complaint

- 3.4.4.1 The CEO or delegate is responsible for the receipt of the complaint and the record keeping responsibilities involved in:
- a. receipt;
 - b. initial acknowledgement; and
 - c. allocation of the matter to the Responsible Person for managing the complaint.

3.4.5 Informal Action

- 3.4.5.1 The Responsible Person for managing the complaint is responsible for keeping records covering:
- a. details of the complainant;
 - b. details of the person complained about;
 - c. a summary of the matter;
 - d. a summary of the informal actions taken in response to the complaint; and
 - e. Details of agreed actions (if any).
- 3.4.5.2 If informal action does not successfully resolve the matter this should be recorded.

3.4.6 Formal Investigation

- 3.4.6.1 The Responsible Person for managing the complaint is responsible for keeping appropriate records covering:
- a. engagement of third party to investigate the complaint;
 - b. documents requested during the investigation;
 - c. reports;
 - d. comments on draft reports from participants in the process; and
 - e. details of agreed actions (if any).

3.5 Provision of Support to the Responsible Person for Managing the Complaint

- 3.5.1 At the request of the Responsible Person for managing the complaint the CEO to facilitate access to relevant resources.
- 3.5.2 The CEO will not refuse any reasonable request for resources made in accordance with this Policy.

3.6 Responsibilities

- 3.6.1 The Responsible Person for managing the complaint is responsible under this Policy to:
 - 3.6.1.1 Perform the tasks as the Responsible Person for dealing with the complaint pursuant to this Policy;
 - 3.6.1.2 In consultation with the CEO facilitate access to resources to that the Responsible Person for managing the complaint considers necessary or expedient to the resolution of a complaint before it proceeds to formal investigation under this policy.
 - 3.6.1.3 In consultation with the CEO, engage support and advice to assist with the management and resolution of complaints.
- 3.6.2 The CEO or their delegate is responsible under this Policy to:
 - 3.6.2.1 manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Policy; and
 - 3.6.2.2 facilitate access resources as contemplated by this Policy.
- 3.6.3 The Behavioural Standards Panel Contact Officer, is responsible under this Policy to:
 - 3.6.3.1 comply with any lawful request of the Panel for information related to a matter under consideration;
 - 3.6.3.2 receive and respond to notices relating to matters under consideration by the Panel; and
 - 3.6.3.3 where the Behavioural Standards Panel Contact Officer is not the CEO, keep the CEO informed of the status of matters under consideration by the Panel.

4. Informal Discussions

- 4.1 Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the Behavioural Requirements.
- 4.2 A person may therefore consider raising the matter directly with Council Member concerned or raise the matter with the Responsible Person for managing a complaint on an informal basis without the need to lodge a formal written complaint.

- 4.3 The Responsible Person for managing a complaint may consider the matter and raise the matter with the person complained about in an informal way to resolve the matter.
- 4.4 The Responsible Person for managing a complaint may advise the complainant that the best way to deal with the matter is by way of a formal written complaint.
- 4.5 If the complainant feels that the matter has not been resolved by raising the matter informally, they are able to raise the matter as a formal complaint.
- 4.6 The CEO is not able to handle any behavioural matters, as this is a role of the Responsible Person for managing a complaint.

5. Complaint Management Process



5.1 There are six distinct stages of action to address complaints about the behaviour of Council Members, being the:

- 5.1.1 Receipt of Complaint
- 5.1.2 Initial Assessment
- 5.1.3 Informal Action
- 5.1.4 Formal Investigation
- 5.1.5 Referral to another body for investigation
- 5.1.6 Resolution

5.3 Receipt of Complaint



- 5.3.1 Upon receipt of a complaint the CEO or delegate will, as far as practicable within 5 business days:
 - 5.3.1.1 acknowledge receipt of the complaint, including the provision of a copy of this Policy;
 - 5.3.1.2 commence the record keeping processes for the complaint; and
 - 5.3.1.3 allocate the matter to the Responsible Person for managing the complaint.

- 5.3.2 A complaint made under this Policy must:
- 5.3.2.1 be made in writing;
 - 5.3.2.2 be addressed to the CEO;
 - 5.3.2.3 be marked with “Confidential Council Member Complaint”;
 - 5.3.2.4 provide the name of the Council Member who has allegedly breached the Behavioural Requirements;
 - 5.3.2.5 provide 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;
 - 5.3.2.6 be specific (including identifying the Behavioural Requirements the complainant alleges have been breached);
 - 5.3.2.7 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 and resolve the issue, relevant records or documents);
 - 5.3.2.8 identify the outcome being sought; and
 - 5.3.2.9 be lodged within six (6) months of the alleged conduct occurring (the Responsible Person for managing the complaint may allow a longer time limit. This will be assessed on a case-by-case basis).
- 5.3.3 The Responsible Person for managing the complaint may nonetheless accept a complaint that does not meet one or more of the above requirements. This will be assessed on a case-by-case basis having regard to such matters as the person responsible for managing the complaint considers appropriate.

5.4 Initial Assessment Process



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.

- 5.4.1 The Responsible Person for managing the complaint will undertake an assessment of it to:
 - 5.4.1.1 determine whether the content of the complaint relates to the Behavioural Requirements; and
 - 5.4.1.2 whether the conduct occurred in the context of the Council Member carrying out their official functions and duties.
- 5.4.2 In undertaking the assessment, the Responsible Person for managing the complaint will consider if:
 - 5.4.2.1 the person that is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter;
 - 5.4.2.2 the complaint is trivial, frivolous or vexatious or not made in good faith;
 - 5.4.2.3 the complaint has been lodged with another authority;
 - 5.4.2.4 the subject matter of the complaint has been or is already being investigated by Council or another body;
 - 5.4.2.5 it is unnecessary or unjustifiable for Council to deal with the complaint; and
 - 5.4.2.6 Council has dealt with the complaint adequately.
- 5.4.3 If the Responsible Person for managing the complaint considers the matter warrants further attention, the Council Member complained about should be:
 - 5.4.3.1 advised that a complaint has been received and is undergoing an initial assessment in accordance with this Policy;
 - 5.4.3.2 provided with a copy of the complaint (with any redactions necessary in circumstances where the complainant has requested, and the person responsible for managing the complaint has agreed, that their identity not be disclosed) or a summary of the matter, at a sufficient level of detail, to understand the nature of the allegations and enable them to provide a preliminary response;
- 5.4.4 This may be achieved by a discussion between the Responsible Person for managing the complaint and the Council Member complained about, taking into account the principles of this Policy.

- 5.4.5 The Council Member complained about may have a support person present during any discussions.
- 5.4.6 The Council Member complained about should be given a reasonable opportunity, but no more than ten business days, to provide a response to support the initial assessment.
- 5.4.7 The Responsible Person for managing the complaint may provide a longer period of time for provision of a response at their discretion and should have regard to any response provided in determining the action resulting from the initial assessment.

5.5 Informal Action



- 5.5.1 The Responsible Person for managing the complaint will determine what action will result from the initial assessment.
- 5.5.2 Unless there are grounds to take one of the following actions pursuant to section 262(2)(b) of the Act, being:
 - refusing to deal with the complaint;
 - determining to take no further action;
 - referring the matter to an alternate resolution mechanism³ (Informal Action);
 - propose training for relevant parties (Informal Action);
 - referring the matter to another body or agency⁴

the complaint will proceed to Formal Investigation.
- 5.5.3 The outcome of the initial assessment will be advised to the complainant and Council Member complained about in writing as far as is permitted by law.
- 5.5.4 **Refusing to deal with the complaint/Determining to take no further action**
 - 5.5.4.1 Where the Responsible Person for managing the complaint makes a decision not to proceed with formal investigation of the matter the following steps should be taken:

³ e.g., facilitated discussion, provision of training, mediation, arbitration, conflict resolution, etc.

⁴ e.g., the Ombudsman SA or the Behavioural Standards Panel

- a. the complainant must be provided written reasons explaining the decision;
- b. the Council Member complained about should be provided with a brief summary of the complaint and the reasons for not proceeding; and
- c. A record of these steps and the decision not to proceed should be made.

5.5.4.2 Whilst a complaint may not proceed to formal investigation, the Responsible Person for managing the complaint 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.

5.5.4.3 It should be noted that section 270(4a)(a)(i) of the Act precludes a review of a decision to refuse to deal with a complaint.

5.5.5 Decision to refer complaint to alternative resolution mechanism:

5.5.5.1 The Responsible Person for managing the complaint:

- a. may form the view that the best way to deal with the complaint is to refer the complaint to an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training;
- b. should discuss the use of a proposed alternative resolution mechanism with the complainant and the Council Member complained about to determine whether there is support for this approach;
- c. should contact the CEO to request access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for the parties to the complaint to resolve the matter; and
- d. should ensure that the complainant and the Council Member complained is provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

5.5.5.2 Failure by the Council Member complained about:

- to participate in the alternate resolution mechanism after agreeing to participate in the process; or
- to participate in accordance with the timing set by the Responsible Person for managing the complaint; or
- failing to undertake the agreed actions

will result in the matter to being reported to Council and the matter may be referred to formal investigation under this policy or referred to the Panel.

5.5.5.3 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.

5.5.6 Decision to refer complaint to another body or agency

5.5.6.1 Where the Responsible Person for managing the complaint makes a decision to refer the matter to another body or agency the person 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.

5.5.7 Decision to proceed to formal investigation

5.5.7.1 Where the Responsible Person for managing the complaint makes a decision to proceed to formal investigation:

- a. the Council Member complained about, should be provided in writing, a copy of this Policy, if this has not already occurred, contact details of the Responsible Person for managing the complaint, information regarding the Formal Investigation processes and, if not already provided, a copy of the complaint (with any redactions necessary in circumstances where the complainant has requested, and the person responsible for managing the complaint has agreed, that their identity not be disclosed) or a summary document outlining:
 - the specific provision(s) of the Behavioural Requirements alleged to have been breached; and

- the circumstances where this breach is alleged to have occurred.
- b. the complainant should be advised of the decision to proceed to Formal Investigation, the contact details of the Responsible Person for managing the complaint and information about the Formal Investigation processes.
 - c. inform the Council Member complained about and the complainant that they are welcome to have a support person present during the formal investigation processes.

5.6 Formal Investigation



- 5.6.1 Formal investigation is the process where the Responsible Person for managing the complaint either determines to investigate the complaint formally themselves or engages a third party to independently investigate the complaint and prepare a formal report and recommendations on the investigation undertaken.
- 5.6.2 Complaints which progress to formal investigation will be:
- Assessed;
 - Investigated;
 - Reported;
 - Resolved; and
 - Recorded.
- 5.6.3 Where a decision to formally investigate the complaint has been made the Responsible Person for managing the complaint will determine how to proceed with the investigation by:
- 5.6.3.1 determining if they are the appropriate person to formally consider the complaint; or
 - 5.6.3.2 engage a third party to investigate the complaint.
- 5.6.4 The Responsible Person for managing the complaint will request the CEO to facilitate engagement of an appropriate services provider, in accordance with the Council's procurement policies.

- 5.6.5 The Responsible Person for managing the complaint will advise both the complainant and the Council Member complained about that they are able to have a support person accompany them during discussions relating to the complaint. Access to Council's Employee Assistance Program should also be offered to Council Members involved.
- 5.6.6 It is the expectation of Council that both the complainant and the person complained about will cooperate with any such process and requests to investigate the complaint and, when required, participate in meetings in a timely manner.
- 5.6.7 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.
- 5.6.8 The investigation by the Responsible Person for managing the complaint or the third party engaged, may at their discretion:
 - 5.6.8.2 speak with other persons who have been nominated by the parties to have observed the behaviour;
 - 5.6.8.3 contact witnesses to the conduct complained about;
 - 5.6.8.4 request the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.
- 5.6.9 During the formal investigation appropriate records should be kept by the Responsible Person for managing the complaint.
- 5.6.10 At the conclusion of the investigation the Responsible Person for managing the complaint, or the third party engaged, should ensure a report is prepared summarising the matter and setting out their findings, conclusions and recommendations.
- 5.6.11 The report should set out:
 - 5.6.11.1 allegations made in the complaint;
 - 5.6.11.2 summary of evidence to which the investigation considered;
 - 5.6.11.3 findings;
 - 5.6.11.4 conclusions; and

5.6.11.5 recommendations

5.6.12 The report will include recommended actions for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as outlined in the Act which include:

5.6.12.1 discussions with parties to the complaint to seek agreement;

5.6.12.2 formal mediation, conciliation, arbitration and further training if not already undertaken

5.6.13 The Responsible Person for managing the complaint is responsible to ensure that the draft report is provided to the parties to the complaint who will be given ten business days or such longer period as the person responsible for managing the complaint considers appropriate, to make submissions in relation to the draft report.

5.6.14 The Responsible Person for managing the complaint or the third party engaged will consider any submissions made when preparing the final report.

5.7 Referral to another body for investigation



5.7.1 The Responsible Person for managing the complaint may at anytime when assessing or investigating the complaint refer the complaint to either the Behavioural Standards Panel or Ombudsman SA if they form the opinion that either of these agencies are the best agency to conduct the investigation into the complaint.

5.7.2 Ombudsman SA

5.7.2.1 Is responsible for the investigation of complaints regarding behaviours which breach the integrity provisions of the Act and complaints and reports regarding misconduct and maladministration in public administration.

5.7.3 Behavioural Standards Panel

5.7.3.1 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 commit misbehaviour, repeated misbehaviour or serious misbehaviour.

5.7.3.2 In accordance with section 262Q of the Act a complaint alleging misbehaviour⁵, repeated misbehaviour⁶ or serious misbehaviour⁷ may be made to the Panel by either:

- a. a resolution of the Council;
- b. the Mayor; or
- c. at least 3 Council Members;
- d. a Responsible Person under section 75G of the Act who has given a direction not to attend a meeting.

5.8 Resolution



5.8.1 Outcome – No breach found

- 5.8.1.1 Where the finding is that no breach of the Behavioural Requirements has occurred a final report should be prepared by the Responsible Person for managing the complaint or the third party engaged and provided to the complainant and the Council Member complained about.
- 5.8.1.2 The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the Council Member complained about.
- 5.8.1.3 If a request is made, a copy of the final report will be tabled⁸ at the next practicable Council meeting as a publicly available report. If no such request is received, no further action will be taken.

⁵ **Misbehaviour** means - a failure by a member of a council to comply with a requirement of the council under section 262C(1); or a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or 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

⁶ **Repeated misbehaviour** means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2

⁷ **Serious misbehaviour** means a failure by a member of a council to comply with section 75G.

⁸ Note that the complainants identity and the identity of other persons identified in the report may need to be redacted.

5.8.2 Outcome – Breach found and agreed actions made

5.8.2.1 Where the finding is that a breach of the Behavioural Requirements has occurred and the complainant and the Council Member complained about agree to a path for resolution, that agreement will be documented including matters such as:

- a. actions to be undertaken;
- b. responsibility for completing actions;
- c. timeframes for completion of actions;
- d. what will occur if there is a repeat of the behaviours complained about;
- e. monitoring arrangements for completion of actions;
- f. what will occur if the actions aren't completed; and
- g. confirmation that the matter is considered resolved.

5.8.2.2 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.

5.8.2.3 The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the Council Member complained about but subject to any requirements to keep the identity of the complainant or any other person confidential.

5.8.2.4 If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting as a publicly available report. As agreed actions have been entered into the Council does not have the ability to amend the outcome of the investigation.

5.8.2.5 The matter must be reported in the Council's Annual Report which must contain the information required by the regulations.

5.8.3 Outcome – no agreed action and breach found

5.8.3.1 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 or the person responsible for managing the complaint does not consider such an agreement would be reached, a final report should be presented to Council for determination.

5.8.3.2 The Responsible Person for managing the complaint will request the CEO to include the final report in the Council Agenda as a publicly available report as soon as practicable subject to any requirements to keep the identity of the complainant or any other person confidential.

5.8.4 Actions of Council

5.8.4.1 Where the parties have not agreed on an approach to resolve the matter, the matter will be provided to Council for determine the actions to be taken which may include:

- a. taking no further action;
- b. passing a censure motion in respect of the member;
- c. requiring the member to issue a public apology, in a manner determined by Council;
- d. requiring the member to undertake a specified course of training or instruction;
- e. removal or suspension from one or more offices held in the member's capacity as a member of Council or by virtue of being a member of Council – but not the office of Member of the Council;

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

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

- c. that Council has dealt with the complaint adequately.

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

Section 262E of the Act defines a failure to comply with a requirement of the council under 262C(1) as 'misbehaviour' which may result in a referral to the Behavioural Standards Panel.

5.8.4.4 The matter must be reported in Council's Annual Report which must contain the information required by the regulations.

6. Reimbursement of Expenses

- 6.1 Council Members involved in formal investigation of a complaint by a third party under clause 5.6 of this policy are entitled to be reimbursed legal expenses up to \$2,500 actually incurred by the Council Member, if the final report, presented to Council, finds that they have not breached the Behavioural Standards for Council Members or the Behavioural Support Policy.
- 6.2 A reimbursement of legal expenses to a Council Member involved in formal investigation of a complaint by a third party under clause 5.6 of this policy in excess of \$2,500 actually incurred by the Council Member, can only be granted by resolution of Council taking into account such matters as Council considers appropriate.
- 6.3 Council delegates the authority to the CEO the reimbursement of legal expenses of up to \$2,500.
- 6.4 The amount reimbursed to Council Members for their legal expenses will be included in the Register of Council Member Allowances and Benefits, Register of Gifts and Benefits and in the Annual Report.

7. Review and Authority

- 7.1 This Policy will be reviewed every four years or earlier in line with Council's Policies and Protocols Framework.

8. Availability

- 8.1 The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au

8.2 The Policy will be available for inspection, free of charge, at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

8.2.1 City of Burnside Civic Centre; 401 Greenhill Road, Tusmore SA 5065
Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au Office
hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)

9. Further Information

9.1 For further information about this policy please contact:

City of Burnside Civic Centre; 401 Greenhill Road, Tusmore SA 5065

Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au

Appendices

Appendix 1 – Local Government Act 1999

6 – Principal Role of a Council

A council is, under the system of local government established by this Act, established to provide for the government and management of its area at the local level and, in particular—

- (a) to act as a representative, informed and responsible decision-maker in the interests of its community; and
- (b) to provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and
- (c) to encourage and develop initiatives within its community for improving the quality of life of the community; and
- (d) to represent the interests of its community to the wider community; and
- (e) to exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted.

7 – Functions of a Council

The functions of a council include—

- (a) to plan at the local and regional level for the development and future requirements of its area;
- (b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area;
- (ba) to determine the appropriate financial contribution to be made by ratepayers to the resources of the council;
- (c) to provide for the welfare, well-being and interests of individuals and groups within its community;
- (d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;
- (e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;
- (f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);
- (g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;
- (h) to establish or support organisations or programs that benefit people in its area or local government generally;
- (i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;
- (j) to manage, improve and develop resources available to the council;
- (k) to undertake other functions and activities conferred by or under an Act.

8 – Principles to be observed by Council

A council must act to uphold and promote observance of the following principles in the performance of its roles and functions—

- (a) provide open, responsive and accountable government;
- (b) be responsive to the needs, interests and aspirations of individuals and groups within its community;
- (c) participate with other councils, and with State and national governments, in setting public policy and achieving regional, State and national objectives;
- (d) give due weight, in all its plans, policies and activities, to regional, State and national objectives and strategies concerning the economic, social, physical and environmental development and management of the community;
- (e) seek to co-ordinate with State and national government in the planning and delivery of services in which those governments have an interest;
- (ea) seek to collaborate, form partnerships and share resources with other councils and regional bodies for the purposes of delivering cost-effective services (while avoiding cost-shifting among councils), integrated planning, maintaining local representation of communities and facilitating community benefit;
- (f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;
- (g) manage its operations and affairs in a manner that emphasises the importance of service to the community;
- (h) seek to ensure that council resources are used fairly, effectively and efficiently and council services, facilities and programs are provided effectively and efficiently;
- (i) seek to provide services, facilities and programs that are adequate and appropriate and seek to ensure equitable access to its services, facilities and programs;
- (ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers;
- (j) achieve and maintain standards of good public administration;
- (k) ensure the sustainability of the council's long-term financial performance and position.

51 – Principal member of council

- (1) A council must be constituted on the basis that the principal member is to be appointed¹ or elected as a representative of the area as a whole (in which case the principal member is to be called a mayor).
- (3) If the council so resolves, there may also be a deputy mayor.
- (4) If there is to be a deputy mayor, he or she will be chosen by the members of the council from amongst their own number and will hold office for a term determined by the council.

The term must not exceed 4 years.

- (5) On the expiration of a term of office, a deputy mayor is eligible to be chosen for a further term.
- (6) In the absence of the mayor, a deputy mayor may act in the office of mayor.
- (7) If the mayor is absent from official duties and there is no deputy mayor, or the deputy mayor is not available to act in the office of mayor, a member chosen by the council may act in the office of mayor during the relevant period.
- (8) If a person is to be chosen by the members of the council to fill an office under this section and the votes for two or more candidates for the office are equal, lots must be drawn to determine which candidate or candidates will be excluded.
- (9) The mayor of the City of Adelaide is entitled to the rank and title of Lord Mayor.
- (10) In the event of a casual vacancy in the office of mayor, subsections (6) and (7) operate subject to any appointment made by the council under section 54(8).

Note—

- 1 An appointment may occur under section 10 of this Act or section 8 of the *Local Government (Elections) Act 1999*.

52 – Councillors

- (1) The members of a council, other than the principal member, will be known as councillors.
- (2) A councillor will (depending on how the council is constituted)—
 - (a) be appointed¹, or elected by the electors for the area, as a representative of the area as a whole (whether or not the area is divided into wards); or
 - (b) if the area is divided into wards—be appointed¹, or elected by the electors of a particular ward, as a representative of the ward.

Note—

- 1 An appointment may occur under section 10 of this Act or section 8 of the *Local Government (Elections) Act 1999*.

58 – Specific roles of principal member

- (1) Subject to this Act, the role of the principal member of a council as leader of the council is—
 - (a) to provide leadership and guidance to the council; and
 - (b) to lead the promotion of positive and constructive working relationships among members of the council; and
 - (c) to provide guidance to council members on the performance of their role, including on the exercise and performance of their official functions and duties; and
 - (d) to support council members' understanding of the separation of responsibilities between elected representatives and employees of the council; and
 - (e) to preside at meetings of the council; and
 - (f) to liaise with the chief executive officer between council meetings on the implementation of a decision of the council; and
 - (g) to act as the principal spokesperson of the council; and
 - (h) to exercise other functions of the council as the council determines; and
 - (i) to carry out the civic and ceremonial duties of the office of principal member.
- (2) Subsection (1)(g) does not apply in circumstances where a council has appointed another member to act as its principal spokesperson.

59 – Roles of members of councils

- (1) The role of a member of a council is—
 - (a) as a member of the governing body of the council—
 - (i) to act with integrity; and
 - (ii) to ensure positive and constructive working relationships within the council; and
 - (iii) to recognise and support the role of the principal member under the Act; and
 - (iv) to develop skills relevant to the role of a member of the council and the functions of the council as a body; and
 - (v) to participate in the deliberations and activities of the council; and
 - (vi) to keep the council's objectives and policies under review to ensure that they are appropriate and effective; and
 - (vii) to keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review; and
 - (viii) to ensure, as far as is practicable, that the principles set out in section 8 are observed; and
 - (ix) to participate in the oversight of the chief executive officer's performance under the council's contract with the chief executive officer; and
 - (x) to serve the overall public interest; and
 - (b) as a person elected to the council—to represent the interests of residents and ratepayers of the council, to provide community leadership and guidance, and to facilitate communication between the community and the council.
- (2) A member of a council may, with the principal member's authorisation, act in place of, or represent, the principal member.
- (3) A member of a council has no direct authority over an employee of the council with respect to the way in which the employee performs his or her duties.

62 –General Duties

- (1) A member of a council must at all times act honestly in the performance and discharge of official functions and duties.
- (2) A member of a council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.
- (3) A member or former member of a council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.
- (4) A member of a council must not, whether within or outside the State, make improper use of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.
- (4a) A member or former member of a council must not disclose information or a document—
 - (a) in relation to which there is an order of a council or council committee in effect under section 90 or 91(7) requiring the information or document to be treated confidentially; or
 - (b) that the member or former member knows, or ought reasonably to know, is information or a document that is otherwise required to be treated confidentially.
- (4b) Nothing in subsection (4a) prohibits the disclosure of information or a document that is required or authorised by law.
- (4c) A member of a council must not direct or seek to influence an employee of the council in the exercise or performance of a power or function delegated to or performed by the employee.
- (4d) Without limiting subsection (4c), a member of a council must—
 - (a) ensure that a request for information or a document from a person engaged in the administration of the council is made in accordance with the requirements of the chief executive officer of the council; and
 - (b) ensure that a request for the performance of work or the taking of action by an employee of the council is made in accordance with the requirements of the chief executive officer of the council.
- (4e) A member of a council must comply with any requirements prescribed by the regulations relating to the conduct of members that are expressed to be integrity provisions.

- (7) Subject to the regulations, the provisions of this section extend—
- (a) to committees and to members of committees established by councils as if—
 - (i) a committee were a council; and
 - (ii) a member of a committee were a member of a council; and
 - (b) to subsidiaries and to board members of subsidiaries as if—
 - (i) a subsidiary were a council; and
 - (ii) a board member of a subsidiary were a member of a council.

75E – Behavioural standards

- (1) The Minister may, by notice published in the Gazette and on a website determined by the Minister, establish standards (the *behavioural standards*) that—
- (a) specify standards of behaviour to be observed by members of councils; and
 - (b) provide for any other matter relating to behaviour of members of councils.
- (2) The behavioural standards may also specify requirements applying to behavioural support policies and behavioural management policies of councils.
- (3) A member of a council must comply with the behavioural standards.
- (4) The Minister may, by further notice published in the Gazette and on the website referred to in subsection (1), vary or substitute the behavioural standards.
- (5) The Minister must, before establishing, varying or substituting the behavioural standards—
- (a) consult with the LGA; and
 - (b) undertake such other consultation as the Minister thinks fit,
- on the behavioural standards, variation or substitute behavioural standards (as the case may be).
- (6) A notice published under subsection (1) or (4) may come into operation on the day on which it is published in the Gazette or on a later day or days specified in the notice.
- (7) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply to a notice published under subsection (1) or (4) (and a reference in those provisions to a regulation will be taken to be a reference to a notice published under subsection (1) or (4) (as the case requires)).

75F – Council behavioural support policies

- (1) A council may prepare and adopt policies designed to support appropriate behaviour by members of the council (*behavioural support policies*).
- (2) A behavioural support policy may—
 - (a) specify directions relating to behaviour that must be observed by members of the council; and
 - (b) set out guidelines relating to compliance by members with the behavioural standards and directions under paragraph (a); and
 - (c) include any other matter relating to behaviour of members considered appropriate by the council.
- (3) A behavioural support policy—
 - (a) must not be inconsistent with the behavioural standards; and
 - (b) must comply with any requirement specified by the behavioural standards.
- (4) A member of a council must comply with the council's behavioural support policies.
- (5) A council may from time to time alter a behavioural support policy, or substitute a new policy.
- (6) Before a council—
 - (a) adopts a behavioural support policy; or
 - (b) alters, or substitutes, a behavioural support policy,the council must undertake public consultation on the behavioural support policy, alteration or substituted policy (as the case may be).
- (7) A council must, within 6 months after the conclusion of each periodic election—
 - (a) in the case of a council that has 1 or more behavioural support policies in effect under this section—review the operation of the behavioural support policies and consider whether it should adopt additional behavioural support policies; or
 - (b) in any other case—consider whether it should adopt behavioural support policies.

75G – Health and safety duties

- (1) A member of a council must—
 - (a) take reasonable care that the member's acts or omissions do not adversely affect the health and safety of other members of council or employees of the council; and
 - (b) comply, so far as the member is reasonably able, with any reasonable direction that is given by a responsible person for the purposes of ensuring that the member's acts or omissions do not adversely affect the health and safety of other members of the council or employees of the council.
- (2) For the purposes of subsection (1)(b), the *responsible person* is—
 - (a) if the person whose health and safety may be adversely affected is an employee of the council—the chief executive officer of the council; or
 - (b) if the person whose health and safety may be adversely affected is the principal member of the council—the deputy or another member chosen by the council; or
 - (c) if the person whose health and safety may be adversely affected is another member or the chief executive officer of the council—
 - (i) unless subparagraph (ii) applies, the principal member of the council; or
 - (ii) if the relevant acts or omissions are those of the principal member of the council—the deputy or another member chosen by the council.
- (3) Without limiting subsection (1)(b), a reasonable direction may include a direction that a member of a council not attend a meeting of the council or a council committee (and a member the subject of such a direction will be taken to have been granted leave of absence from attending council meetings for the duration of the direction).
- (4) However, a reasonable direction under subsection (1)(b) that a member not attend a meeting of a council may only be given if there are no other reasonable directions considered appropriate in the circumstances to ensure the health and safety of the affected person.
- (5) If a reasonable direction under subsection (1)(b) that a member not attend a meeting of a council is given, the responsible person must ensure that a complaint relating to the matter is referred to the Behavioural Standards Panel.
- (6) This section is in addition to and does not limit the operation of the *Work Health and Safety Act 2012*.
- (7) In this section—

health has the same meaning as in the *Work Health and Safety Act 2012*.

Appendix 2 - Behavioural Standards for Council Members

No. 79 p. 6658

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

17 November 2022

LOCAL GOVERNMENT ACT 1999

SECTION 75E OF THE LOCAL GOVERNMENT ACT 1999

Behavioural Standards for Council Members

The Behavioural Standards for Council Members (Behavioural Standards) are established by the Minister for Local Government pursuant to section 75E of the *Local Government Act 1999* (the Act). These Behavioural Standards form part of the conduct management framework for council members under the Act.

Statement of Intent

Upon election, council members in South Australia undertake to faithfully and impartially fulfil the duties of office in the public interest, to the best of their judgment and abilities and in accordance with the Act. Council members are required to act with integrity, serve the overall public interest and provide community leadership and guidance.

The community expects council members to put personal differences aside, to focus on the work of the council and to engage with each other and council employees in a mature and professional manner.

Behavioural Standards

These Behavioural Standards set out minimum standards of behaviour that are expected of all council members in the performance of their official functions and duties. The Behavioural Standards are mandatory rules, with which council members must comply.

Adherence to the Behavioural Standards is essential to upholding the principles of good governance in councils.

Councils may adopt Behavioural Support Policies which, amongst other things, may include additional matters relating to behaviour that must be observed by council members. A breach of these Behavioural Standards or a council's Behavioural Support Policy:

- will be dealt with in accordance with the council's Behavioural Management Policy; and
- may be referred to the Behavioural Standards Panel in accordance with section 262Q of the Act.

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

These Behavioural Standards are in addition to, and do not derogate from, other standards of conduct and behaviour that are expected of council members under the Act, or other legislative requirements. Conduct that constitutes, or is likely to constitute, a breach of the integrity provisions contained in the Act, maladministration, or which is criminal in nature, is dealt with through alternative mechanisms.

These Behavioural Standards are designed to ensure council members act in a manner consistent with community expectations and form the basis of behaviour management for council members.

Constructive and effective relationships between council members, council employees and the community are essential to building and maintaining community trust and successful governance in the local government sector.

Council members must:

1. General behaviour

- 1.1 Show commitment and discharge duties conscientiously.
- 1.2 Act in a way that generates community trust and confidence in the Council.
- 1.3 Act in a manner that is consistent with the Council's role as a representative, informed and responsible decision maker, in the interests of its community.
- 1.4 Act in a reasonable, just, respectful and non-discriminatory way.
- 1.5 When making public comments, including comments to the media, on Council decisions and Council matters, show respect for others and clearly indicate their views are personal and are not those of the Council.

2. Responsibilities as a member of Council

- 2.1 Comply with all applicable Council policies, codes, procedures, guidelines and resolutions.
- 2.2 Take all reasonable steps to provide accurate information to the community and the Council.
- 2.3 Take all reasonable steps to ensure that the community and the Council are not knowingly misled.
- 2.4 Take all reasonable and appropriate steps to correct the public record in circumstances where the Member becomes aware that they have unintentionally misled the community or the Council.
- 2.5 Act in a manner consistent with their roles, as defined in section 59 of the Act.
- 2.6 In the case of the Principal Member of a Council, act in a manner consistent with their additional roles, as defined in section 58 of the Act.
- 2.7 Use the processes and resources of Council appropriately and in the public interest.

3. Relationship with fellow Council Members

- 3.1 Establish and maintain relationships of respect, trust, collaboration, and cooperation with all Council members.
- 3.2 Not bully other Council members.
- 3.3 Not sexually harass other Council members.

4. Relationship with Council employees

- 4.1 Establish and maintain relationships of respect, trust, collaboration, and cooperation with all Council employees.
- 4.2 Not bully Council employees.
- 4.3 Not sexually harass Council employees.

Definitions

For the purposes of these Behavioural Standards, a Council's Behavioural Support Policy (if adopted) and a Council's Behavioural Management Policy, the following definitions apply:

An elected member will be considered to **bully** other Council members or Council employees if:
the Council member either, as an individual Council member or as a member of a group:

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- a) repeatedly behaves unreasonably towards another Council member, or employee; and
- b) the behaviour could reasonably be considered to be distressing, victimising, threatening or humiliating.

Note -

If this behaviour adversely affects the health and safety of another council member or council employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.

An elected member will be considered to *sexually harass* other Council members or Council employees if:

the Council member either, as an individual Council member or as a member of a group:

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another Council member, or employee (the person harassed); or
- b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated, or intimidated.

Note -

If this behaviour adversely affects the health and safety of another council member or council employee, it must be addressed under section 75G of the Act and may be referred to the Behavioural Standards Panel as 'serious misbehaviour' under sections 262E and 262Q of the Act.

Conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Council employees include volunteers, persons gaining work experience and contractors.

The following behaviour **does not** constitute a breach of these Standards:

- robust debate carried out in a **respectful** manner between Council Members; or
- A reasonable direction given by the Presiding Member at a council meeting, council committee meeting or other council-related meeting (such as a working group or an information or briefing session); or
- A reasonable direction carried out by the Council CEO/responsible person pursuant to section 75G of the Act in relation to the behaviour of a Council Member that poses a risk to the health or safety of a council employee.

Requirement applying to behavioural management policies of councils

Behavioural management policies of councils must provide for a Behavioural Standards Panel contact officer. Councils must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. The contact officer is responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

Commencement

The Behavioural Standards come into operation on the day on which it is published in the Gazette.

Dated: 3 November 2022

HON GEOFF BROCK MP
Minister for Local Government

Appendix 3 – Complaint Management Process Flow Chart

