Code of Conduct for Council Members

Complaint Handling Procedure under Part 2

Adopted by Council 25 February 2014
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1. Purpose

1.1. The Code of Conduct for Council Members (the Code) Complaint Handling Procedure Under Part 2 (the Procedure) provides the framework for a consistent and structured approach in handling complaints against Elected Members.

1.2. The Procedure also ensures fairness and natural justice to both the person lodging a complaint and the Elected Member(s).

2. Scope

2.1. The Procedure will apply to all complaints received against Elected Members of City of Prospect.

3. Definitions


3.3. **Staff** – any person carrying out duties or performing tasks for and on behalf of City of Prospect, whether they are paid or unpaid.

3.4. **Elected Members** means the Mayor and Councillors.


3.7. **The OPI** means the Office of Public Integrity.

4. Legislative & Corporate Requirements

4.1. Section 63 of the Local Government Act 1999:

   **63—Code of conduct for members**

   (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the members of all councils.

   (2) Council members must observe the code of conduct.
5. Application of the Procedure

5.1 The Procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Council Members as gazetted on 29 August 2013.

5.2 Breaches of the Code may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Council Members but are referred to in the appendix. The Procedure covers referral of these types of complaints to other agencies.

6. Handling of Complaints

6.1 Alleged Breach

6.1.1 Where an alleged breach occurs the complainant should report the allegation, in writing, to the Council, addressed to the CEO. The allegation should:

- be specific
- provide as much supporting evidence as possible to assist an investigation
- provide the name of the Member who has allegedly breached the Code.

Complainants can, at any time, take the alternative option of lodging the complaint with either the Ombudsman or the OPI, which will direct the complaint in accordance with the ICAC Act.

6.1.2 The CEO will be responsible for receiving and managing the processing of a complaint and will advise the Mayor (or if it relates to the Mayor, the Deputy Mayor) of receipt of a complaint. The CEO will determine whether the complaint:

- should be dismissed
- relates to behavior which falls under Part 2 of the Code
- relates to misconduct which triggers action under Part 3 of the Code or
- relates to criminal or corrupt behaviour
- is trivial, vexatious or frivolous, and accordingly not investigated

6.1.3 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately. (See below at clauses 6.4 and 6.5)

6.1.4 Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Council Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this Part.

6.1.5 Within three working days of receipt of an allegation, the Member who is the subject of the complaint will be advised by the CEO of the complaint and its substance. A response will be sought at this time.
6.1.6 If a complaint is determined to be valid under Part 2 of the Code, and having regard to the seriousness of the allegation and information provided by both the complainant and the respondent, the CEO may:

a) seek to resolve the matter internally

or, if unable to be resolved internally:

b) offer mediation (this may be relevant if the complaint is between two (or more) Elected Members).

c) refer the complaint to Council

d) refer the complaint to an independent investigator

e) refer the complaint to the Local Government Governance Panel

6.1.7 The complainant and the Member will be advised of the manner in which the CEO intends to deal with the complaint.

6.1.8 Where the matter is resolved by the CEO or by mediation, the matter will be closed and no further action will be taken. The CEO will send written confirmation to all parties confirming that the matter has been resolved and provide a report to a public meeting of the Council.

6.1.9 Where the matter cannot be resolved, the CEO will refer the original complaint to Council, to an independent investigator or to the Local Government Governance Panel. The CEO will not investigate a complaint.

6.1.10 A flow chart depicting the process is provided at Attachment 1.

6.2 Part 2 – Referral to the Local Government Governance Panel

6.2.1 Where there has been an allegation that a Council Member has breached Part 2 of the Code the complaint may be referred to the Local Government Governance Panel (the Panel) by the CEO under this procedure, without further reference to Council.

6.2.2 Complaints referred to the Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Panel's procedures are available on the Panel's webpage on the LGA's website under Rules of Engagement. [www.lga.sa.gov.au]

6.2.3 The matter will be assessed initially by the Panel Chairperson who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance. Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to Council. The report may recommend to Council appropriate action including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code (see below).

6.2.4 If, following investigation by the Panel, a breach of the Part 2 of the Code is found, the breach must be the subject of a report to a public meeting of Council (clause 2.24 of the Code). The Council may, by resolution, take any of the following actions:

- Take no action;
- Pass a censure motion in respect of the Council Member;
- Request a public apology, whether written or verbal;
• Request the Council Member to attend training on the specific topic found to have been breached;
• Resolve to remove or suspend the Council Member from a position within the Council (not including the Member’s elected position on Council)
• Request the member to repay monies to the Council.

6.3 Appeals

6.3.1 Council will not enter into any process of appeal in relation to Part 2 of the Code.

6.3.2 Any person may take their complaint to the Ombudsman or OPI if dissatisfied with the outcome.

6.4 Part 3 - Mandatory Code (Misconduct)

6.4.1 Any person may report an alleged breach of Part 3 of the Code to Council, the Ombudsman or the Office for Public Integrity. Alleged breaches of this Part made to Council or to the OPI may be referred to the Ombudsman for investigation.

6.4.2 Under the Code, a Council Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the OPI.

6.4.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.

6.4.4 A failure of a Council Member to co-operate with the Council’s process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.

6.4.5 A failure of a Council Member to comply with a finding of an investigation under Part 2 of the Code, adopted by the Council, may be referred for investigation under Part 3.

6.4.6 Repeated or sustained breaches of Part 2 of the Code by the same Council Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.

6.4.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council.

6.4.8 The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.
6.5 Criminal Matters – Appendix to the Code of Conduct

6.5.1 The matters within the Appendix to the Code are matters for which a criminal penalty attaches. These matters must be reported to the OPI. In addition, allegations of a breach of any of the offence provisions in the Local Government Act 1999 must also be reported to the OPI.

6.5.2 In compliance with the Independent Commissioner against Corruption Act 2012, referral of such complaints to the OPI will remain confidential.

7. Availability of the Procedure

7.1 The Procedure is available for public inspection on Council’s website www.prospect.sa.gov.au and Customer Service at the Civic Centre, 128 Prospect Road, Prospect and the Thomas Street Centre, 1 Thomas Street Nailsworth.

8. Review

8.1 Council will review the Procedure within twelve (12) months of each periodic general election.

8.2 Council may at any time alter the Procedure (within the confines of the Code), or substitute a new Procedure.

9. Further Information

9.1 For further information about the Procedure please contact:

Director Corporate Services

OR

Chief Executive Officer
City of Prospect
128 Prospect Road
Prospect SA 5082

Ph 8269 5355
Email admin@prospect.sa.gov.au
Attachment 1

Flow Chart for Managing Complaints under the Code of Conduct for Council Members

1. Complaint received by CEO
   - Discard the Complaint
     - Solve the matter internally
     - Offer mediation
     - Write to both parties advising of decision
     - Report to Council for noting
   - Determined as a Part 2 Complaint
     - Refer complaint to Council
     - Write to both parties advising of decision
     - Report to Council
     - Write to both parties advising decision
     - Follow up on compliance of Council's recommendation
       - Compliant
         - Report to Council recommending closure of complaint
       - Non-compliant
         - Report to Council advising complaint be elevated to OPI as a Part 3 complaint
   - Determined as a Part 3 Complaint
     - Refer the Complaint to the Independent Investigator
     - Write to both parties advising of decision
     - Receive report from Investigator
     - Write to both parties advising decision
     - Follow up on compliance of Council's recommendation
       - Compliant
         - Report to Council recommending closure of complaint
       - Non-compliant
         - Report to Council advising complaint be elevated to OPI as a Part 3 complaint
2. Complaint sent to OPI or Authority
   - Determine as a Part 3 Complaint (relates to misconduct or to criminal or corrupt behaviour)
     - Refer the Complaint to the LGGP
     - Write to both parties advising of decision
     - Receive report from LGGP
     - Write to both parties advising decision
     - Report to Council
     - Follow up on compliance of Council's recommendation
       - Compliant
         - Report to Council recommending closure of complaint
       - Non-compliant
         - Report to Council advising complaint be elevated to OPI as a Part 3 complaint

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October 2015