

	<p style="text-align: center;"><b>GOVERNANCE POLICY</b></p> <p style="text-align: center;"><b>ELECTED MEMBER CONDUCT – COMPLAINT HANDLING</b></p>	Policy Number Version Number Issued Last Review Next Review GDS	G1.5 3 July 2012 September 2017 December 2018 9.63.1.1
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## **ELECTED MEMBER CONDUCT - COMPLAINT HANDLING**

### **POLICY**

#### **1. Introduction**

The Flinders Ranges Council has adopted a Code of Conduct for Elected Members. The Code of Conduct is a public declaration of the principles of good conduct and standards of behaviour that the Members of The Flinders Ranges Council have agreed to demonstrate as elected community representatives. The standards in the Code of Conduct are in addition to any statutory requirements of the *Local Government Act 1999* or any other relevant Act or Regulation applicable to Council Members in the performance of their role and responsibilities.

This policy sets out the processes to support Elected Members in complying with the Code of Conduct and to address any complaints relating to the Code.

#### **2. Behaviour Contrary to the Code of Conduct**

The Council is committed to supporting members in complying with the Code of Conduct and to investigate and address any complaints made relating to the Code.

#### **3. Complaint Handling Process**

##### **3.1 Making a Complaint**

A complaint made by any person that relates to an alleged breach of the Code of Conduct must:

- be made in writing; and
- identify the provision(s) of the Code which it alleges have been breached and provide all available evidence that supports the allegation(s) of breach; and
- be delivered to the **Mayor** (which includes any person acting in the Office of **Mayor**, (in the case of a complaint against a Council Member); or
- be delivered to the **Deputy Mayor** (in the case of a complaint against the Mayor).

Receipt of the complaint will be acknowledged to the complainant within 3 days of receiving the complaint.

The Elected Member about whom the complaint has been made will be notified within 3 days of receipt of the complaint and of its substance.

The complaint will be treated with strict confidentiality until such time as it has been fully investigated and finally determined, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*. The complainant will also be expected to observe confidentiality.

On receipt of a complaint the Mayor (or the Deputy Mayor as the case may be) must bring the fact of the complaint, but not the detail of the allegations, to the attention of the Council at the next formal meeting of the Council and it is to be received by the Council in confidence; subject to meeting one or more of the grounds under Section 90(3) of the *Local Government Act 1999*.

##### **3.2 Referral and Assessment of Complaints**

An allegation of criminal or illegal behaviour will not be investigated by the Council under the Code of Conduct but will, instead, be referred to the appropriate authority. Allegations of corruption will be referred to the Anti Corruption Branch of SAPOL. Allegations of other illegal behaviour may be referred to the Minister for State Local Government Relations or the Office for Public Integrity.


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To ensure any future investigation is not compromised, the Elected Member about whom this complaint is made will not be advised of the receipt of the complaint by the Council, or its referral to the investigation authority. Council will not be advised until after the investigating authority has completed its investigation.

Where there has been an allegation of breach of the Council's Code of Conduct by an Elected Member that is not criminal or illegal, the complaint will be investigated by the Mayor or Deputy Mayor as the case maybe, and at their discretion referred to the independent Local Government Governance Panel without further reference to Council.

The following processes will be followed with respect to assessment and investigation of complaints depending on the level of seriousness:

- 3.2.1 The Governance Panel Chair may determine that no further action should be taken with respect to an alleged breach where the Governance Panel Chair determines that the allegation is frivolous or vexatious. In this case the Governance Panel Chair will prepare a report to that effect and provide it to the Mayor.
- 3.2.2 If the Governance Panel Chair identifies issues of substance that warrant further investigation:
- (a) the investigation will be a thorough and balanced assessment of the available evidence regarding the alleged breach, the relevant circumstances prevailing at the time of the alleged breach and any other factors deemed relevant to making a fair and reasonable judgement about the matter.
  - (b) the Elected Member the subject of the allegation(s) will be provided with a reasonable opportunity to explain his/her actions and to make a written submission on the allegations. Any such submission will be provided to the Governance Panel Chair.
  - (c) the Governance Panel Chair must provide the Council with a final written report on the investigation undertaken within fourteen days of receiving written submissions from the person who made the complaint and/or the Elected Member who is the subject of the complaint, or such longer period as the Council may determine.
  - (d) if the final report is not received from the Governance Panel Chair within fourteen days the Council will ascertain from the Governance Panel Chair the time frame within which the Council may expect the final reports. If the Governance Panel Chair forms the view that additional time will be needed to conclude the investigation and finalise the report the Governance Panel Chair should bring this to the attention of the Council at the earliest convenience, but at the very least, before the expiration of the fourteen day timeframe.
  - (e) if the final report makes recommendations that are punitive in nature and recommends the application of penalties, the Elected Member, the subject of the allegation(s), will be provided with a reasonable opportunity to comment in writing upon the contents and findings contained in the report and on the appropriateness of the proposed penalty. Such comment must be taken into account by the Council. The complainant is not able to comment, as procedural fairness attaches to the Elected Member and not the complainant.
  - (f) the report delivered to the Council is final. There is no right of appeal on the report of the Governance Panel Chair.
  - (g) the final report will be presented at a Council meeting in confidence (ie public excluded), subject to Section 90(3) of the *Local Government Act 1999* being satisfied.
  - (h) after receipt of the final report from the Governance Panel Chair, the Council must convey to the Elected Member who is the subject of the complaint and to the person who made the complaint, a copy of the investigation report and a copy of Council's resolution in relation to the report.
  - (i) the final report can be subject to a Section 91(7) order of confidentiality, with the exception that the report has been provided to both the Elected Member and the complainant concerned.

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- (j) The final report from the Governance Panel should recommend appropriate action in relation to the matter, and may also recommend changes to the to the Code of Conduct to address a particular issue.

### 3.3 Penalties

- 3.3.1 On receipt of the final report of the Governance Panel the Council will determine an appropriate penalty should there be a finding that there has been a breach of this Code of Conduct.
- 3.3.2 The Council has the power to impose the following penalties in relation to a finding of a breach of the Code of Conduct:
- (a) censure the member of Council;
  - (b) request a public apology from the Elected Member in relation to the breach;
  - (c) recommend the Elected Member undertake a particular training course or receive appropriate instruction relevant to the breach;  
and, in any such case the Council may
  - (d) make a public announcement of the complaint made against the Elected Member, the determination and the penalty imposed on the Elected Member.

## 4. Confidentiality and Procedural Fairness

All deliberations by the Council, and the independent assessment process in regard to an alleged breach of the Code of Conduct will be conducted in confidence, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*, and maintained as confidential until finally determined, at which time the Council must decide the ongoing status of the confidentiality order. The principles of procedural fairness must be observed from the time of receipt of the complaint and during the investigation of the complaint to final determination. The final report is to show due process and the reasons for reaching the decision.

## 5. Further Information

Members of the public may inspect this Code of Conduct for Elected Members on Council's website [www.frc.sa.gov.au](http://www.frc.sa.gov.au) and at the principal office of The Flinders Ranges Council at 1 Seventh Street, Quorn, SA, 5333. Telephone 08 8620 0500 or email to [council@frc.sa.gov.au](mailto:council@frc.sa.gov.au)

On payment of a fee, a copy of this Code of Conduct may be obtained from the Council, or otherwise may be downloaded for free from the Council's website.

Any queries in relation to this Code of Conduct should be directed to the Chief Executive Officer at the Council Office.

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## RESPONSIBILITIES

The Mayor and / or Deputy Mayor are accountable for ensuring the proper operation of this Policy.

## LEGISLATION

*Local Government Act 1999*

*Independent Commissioner Against Corruption Act 2012*

## REFERENCES

Policy G1.2 – Code of Conduct for Elected Members

## REVIEW

To be reviewed within 12 months after a General Election, in line with legislation and any legislative changes or by resolution of Council.

Adopted by Council      14 August 2012  
Resolution 164/2012

Review Date	Version Number	Change	Resolution
13 August 2013	1	Nil	180/2013
17 February 2015	2	Amended to include reference to the ICAC Act 2012 (Reviewed by Policy Review Reference Committee – Minutes endorsed by Council)	038/2015
21 April 2015	2	Nil - Adopted	110/2015
30 June 2015	3	3.2 amended to reflect 'complaint will be investigated by Mayor or Deputy Mayor as case maybe, and at their discretion referred.....' Review – standard policy wording (Reviewed by Policy Review Reference Committee – Minutes endorsed by Council; public consultation process approved 21 July 2015)	229/2015