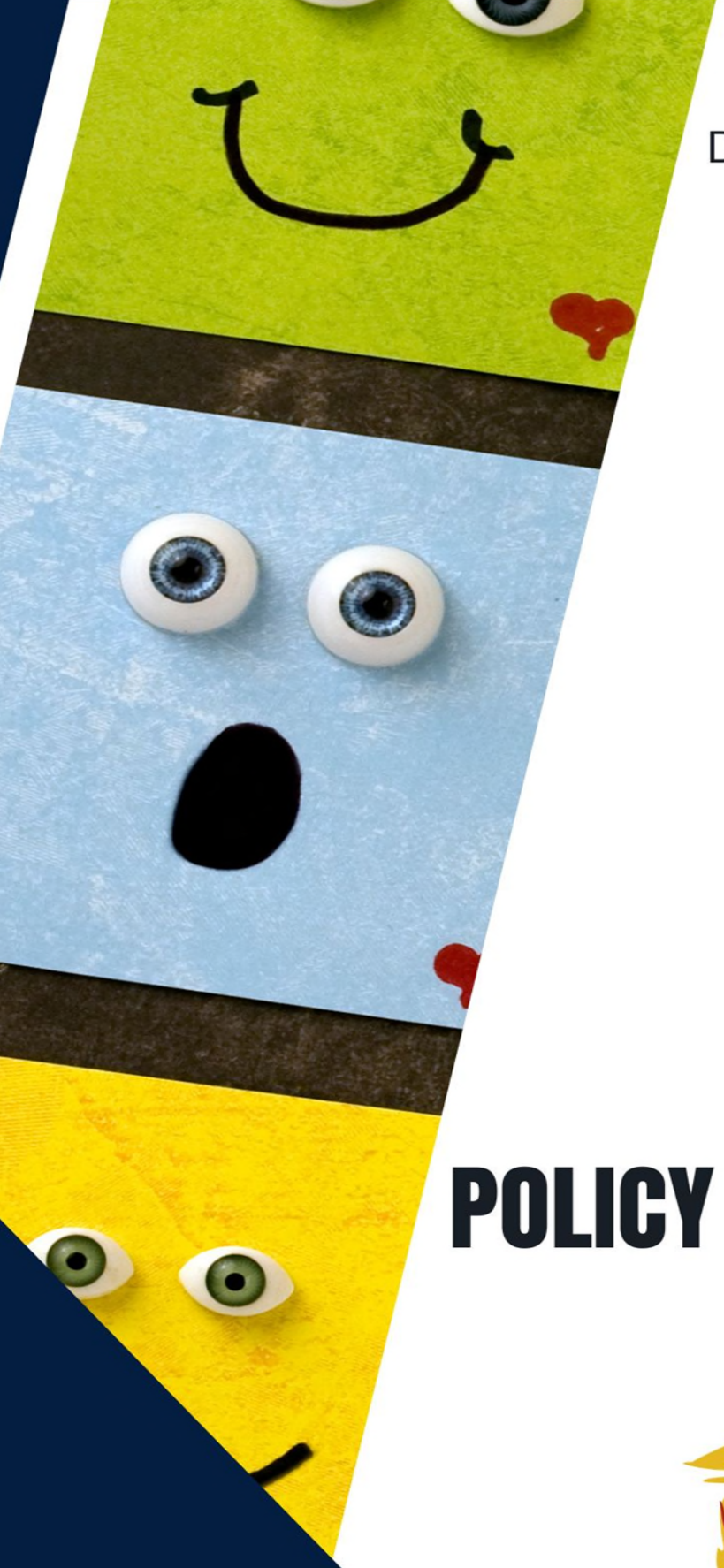


DISTRICT COUNCIL OF KIMBA

1.29 BEHAVIOURAL MANAGEMENT POLICY & FRAMEWORK

District Council of KIMBA
Est. 1924

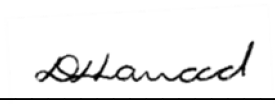
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DOCUMENT APPROVAL

This document has been endorsed and approved for use by:



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Chief Executive Officer

Date

Document Version Control

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Change History

Version	Issue Date	Author	Reasons for Change
1		D. Larwood	Document Development, adopted pursuant to Section 262B of the Local Government Act 1999
2	09/10/2024	E Maxwell	Review
3	08/10/2025	E Maxwell	Review
4	14/10/2026	E Maxwell	Review

1. Introduction

1.1 The District Council of Kimba (the **Council**) is committed to acting as a representative, informed and responsible public authority. In meeting these requirements, it supports its Elected Members to uphold the values of honesty, integrity, accountability and transparency, for the purposes of fostering community confidence and trust in the Council specifically, but also in local government generally.

1.2 This Behavioural Management Policy (the **Policy**) sets out the process for receiving and managing alleged breaches of the *Behavioural Standards for Council Members* (the **Behavioural Standards**) by an Elected Member, as well as the *Behavioural Support Policy*, as adopted by the Council.

2. Purpose

2.1 This Policy applies to all Elected Members of the Council. It has been prepared and adopted pursuant to section 262B of the *Local Government Act 1999* (the **Act**).

2.2 This Policy:

2.2.1 sets out the process to be followed where there has been an alleged breach of the Behavioural Standards (a complaint);

2.2.2 sets out the criteria that will be applied in the receipt and assessment of a complaint; and

2.2.3 specifies the manner in which the Elected Member who is the subject of the complaint and the Complainant, will be notified of receipt, progress and the action taken in respect of a complaint.

2.3 The Council recognises its responsibilities to not only support persons who make a complaint, but also to an Elected Member who is the subject of the complaint.

3. Definitions

Behavioural Standards for Council Members are the Behavioural Standards established by the Minister for Local Government, as published in the SA Government Gazette, specifying standards of behaviour to be observed by all members of councils;

frivolous is a matter that lacks substance or merit, is of little weight or importance, and/or lacking in seriousness;

A frivolous complaint may be one that:

- is trivial in nature; or
- has no serious purpose or value; or
- is sufficiently meritless that further action would be a waste of time or cost; or
- the extent of the complaint is out of proportion to the significance of the matter.

independent reviewer is a person engaged by the Council to undertake a formal investigation of a complaint and to prepare and provide a report for the Mayor's/Council's consideration;

misbehaviour is defined in section 262E of the Act as:

*(a) A failure by a member of a council to comply with a requirement of the council under section 262C(1) [**Note**:* being the imposition of a sanction by the Council on a finding of breach of the Behavioural Standards*]; or*

(b) 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

(c) A failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1;

person responsible for managing the complaint means any person appointed by the Council to perform this function but, subject to any resolution of the Council to the contrary, means:

- the Mayor; or
- if the complaint relates to, or involves, the Mayor, the Deputy Mayor; or
- if the complaint relates to, or involves, the Mayor and Deputy Mayor, another Elected Member appointed by resolution of the Council.

(**Note**: where the person responsible of managing a complaint is other than the Mayor, all references herein to the Mayor will be construed as referring to that person).

repeated misbehaviour is defined in section 262E of the Act as a second or subsequent failure by a member to comply with the Behavioural Standards or this Policy;

serious misbehaviour is defined in section 262E of the Act as a failure by a member to comply with section 75G of the Act (**Note**: being the health and safety duties of Elected Members);

trivial means a matter of little or no importance and/or insignificant, where the person responsible for managing the complaint considers it unreasonable to dedicate resources to investigate the matter;

vexatious includes a matter raised without reasonable grounds or raised for the predominate purpose of causing annoyance, delay or detriment and/or to achieve any other wrongful purpose.

A complaint may be regarded as vexatious if it:

- continues to pursue a complaint that has already been addressed without providing any new information that warrants further action; or
- fails to provide additional information which would be likely to be available, relevant to and supportive of, the issues raised in the complaint; or
- comprises or includes lies or provides misleading information to the person responsible for managing the complaint.

All '**Notes**' included in this Policy are part of the Policy and are intended to provide guidance and assistance with understanding and interpreting the provision to which the Note relates.

4. Principles

4.1 Nothing in this Policy prevents an Elected Member seeking to resolve any dispute and/or complaint in a proactive and positive manner, without the need for a complaint to be lodged under this Policy.

4.2 This Policy deals with matters where conduct is alleged to have been inconsistent with/contrary to the Behavioural Standards, rather than circumstances where an Elected Member may have a difference of opinion or be in dispute with another person or persons.

4.3 In the event of a dispute between Elected Members, in accordance with their obligations under section 59 of the Act, it is expected that Elected Members will, at least in the first instance, attempt to resolve their differences in a mutually acceptable manner.

4.4 Complaints under this Policy are to be received and managed with little formality and technicality and as efficiently as the circumstances of the matter allow, while ensuring that procedural fairness is afforded as required.

4.5 Where he/she considers it necessary, the Mayor may engage (through the CEO) the assistance of consultants and/or support persons in the assessment, investigation and resolution of complaints. The CEO must, within reason, provide the support requested by the Mayor.

5. Confidentiality

5.1 Complaints will be managed on a confidential basis until required to be reported to the Council in a public meeting under this Policy (if at all) or until the matter is otherwise lawfully made public or disclosed.

5.2 Whilst the matter is confidential, access to information relating to complaints and information about complaints, will be limited to the parties to the complaint and to any persons with a responsibility for the complaint handling process (including consultants and/or support persons as per clause 4.5 of this Policy). All persons will be expressly notified by the Mayor of the confidential nature of the process and the expectations of confidentiality.

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

5.3.1 for the purpose of dealing with the complaint;

5.3.2 where required by law;

5.3.3 for the purpose of obtaining legal advice or legal representation or medical or psychological assistance or assistance from a counsellor;

5.3.4 where the disclosure is made to a person investigating the complaint or mediator/conciliator engaged under this Policy; and/or

5.3.5 where the information has been (lawfully) made public in accordance with the Policy.

5.4 Where another Elected Member breaches the confidentiality obligations identified in this Policy, that breach may give rise to a breach of the Integrity obligations under the Act and will be reported by the Mayor to the Ombudsman for consideration.

5.5 Where the complainant is a member of the public who breaches the confidentiality obligations identified in this Policy, that will be a matter to be considered by the person responsible for managing the complaint, in determining whether the complaint is to be further progressed. Where it is determined that the disclosure has resulted in an unfair detriment to the Elected Member complained about, including a denial of procedural fairness, the matter may be dismissed, without further investigation.

5.6 A complainant may request that their identity be kept confidential from the Elected Member complained about. The person responsible for managing the complaint will consider such requests, having regard to any relevant legal requirements.

6. Complaint Management Process

6.1 A complaint must be made within six (6) months of the actions and behaviour that are said to be inconsistent with or a breach of the Behavioural Standards. This is on the basis that it is desirable (procedurally fair) to address alleged breaches of the Behavioural Standards in a timely manner.

6.2 In the absolute discretion of the person responsible for managing the complaint, a complaint made after six (6) months of the actions said to be inconsistent with or in breach the Behavioural Standards, will be received and assessed only where an extension of time is in the public interest and warranted in the circumstances of the matter and where there is no manifest prejudice to the Elected Member complained about.

6.3 There are three stages in the receipt, assessment and management of a complaint under this Policy:

6.3.1 ***Informal Action*** - where the matter can be resolved between the parties without any Formal Action;

6.3.2 ***Formal Action*** - where the matter cannot be resolved using Informal Action, or it is not appropriate to do so, meaning that formal process is required; and

6.3.3 ***Referral to the Behavioural Standards Panel*** - the circumstance under which the Mayor, the Council or the responsible person(s) will make the referral.

6.4 A complaint made under this Policy must:

6.4.1 be in writing, noting that a complaint will not be unreasonably refused if it is made verbally including by telephone where evidence is provided to support a complaint under this Policy;

6.4.2 provide the name of the Elected Member who has allegedly breached the Behavioural Standards, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if submitted on behalf of the complaint) and the name and contact details of any witnesses or other persons able to provide information about the complaint;

6.4.3 be specific, including identifying the Behavioural Standards said to have been breached;

6.4.4 provide supporting evidence to assist any investigation, including the grounds and circumstances of the complaint, as well as any actions taken to try to resolve the complaint; and

6.4.5 identify the outcome sought.

6.5 Receipt of a Complaint

6.5.1 The CEO (or delegate) will acknowledge receipt of any complaint within two (2) business days, or as soon as reasonably practicable.

6.5.2 A copy of this Policy will be provided to the person who has made the complaint.

6.5.3 The complaint will, in accordance with this Policy, be directed by the CEO to the person responsible for managing the complaint.

6.5.4 A complainant may withdraw their complaint at any stage, in which case, the matter will not be further progressed from that point.

7. Informal Action

7.1 On receipt and consideration of any complaint, informal resolution is encouraged.

7.2 A person may consider raising the matter directly with the Elected Member concerned, or may raise the complaint with the Mayor on an informal basis.

7.3 If the person responsible for managing the complaint considers that access to resources to support parties and facilitate early resolution of the matter should be provided, he/she will request the CEO to facilitate such access, which request will not be unreasonably refused.

7.4 Records of the actions taken in informally resolving or trying to informally resolve the complaint, including the details of any agreed actions (if any) are to be kept.

7.5 Any records made under the informal action process may be relied on in the formal action process.

8. Formal Action

8.1 If the matter cannot be resolved through an Informal Action process, the matter will be considered under the Formal Action provisions of this clause which includes an Initial Assessment and, if necessary, Formal Consideration.

8.2 The person responsible for managing the complaint will undertake an assessment of the complaint to determine whether it relates to behaviour that falls under the Behavioural Standards and the conduct complained of occurred in the context of the Elected Member carrying out their official functions and duties of office.

8.3 An Initial Assessment is not an investigation and findings will not be made about the merits of the complaint.

8.4 In undertaking the Initial Assessment, the person responsible for managing the complaint will have regard to the following matters:

8.4.1 the person making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter;

8.4.2 whether it could be said that the complaint is trivial, frivolous or vexatious or not made in good faith;

8.4.3 if the complaint has been lodged with another authority;

8.4.4 if the subject matter of the complaint has been, or is already being, investigated by the Council or another body;

8.4.5 if it is unnecessary or unjustifiable for the Council to deal with the complaint; and/or

8.4.6 if the Council has already dealt with the complaint.

8.5 The person responsible for managing the complaint will also give consideration as to whether the Council has obligations to report the matter to the Local Government Association Mutual Liability Scheme or to the Local Government Association Workers Compensation Scheme.

8.6 If the person responsible for managing the complaint considers that the matter warrants further consideration, the Elected Member complained about must be advised that a complaint has been received and is subject to an Initial Assessment in accordance with this Policy.

8.7 The Elected Member must be provided with a summary of the allegations, with sufficient detail, to understand the nature of them and to enable a preliminary response from him/her within a reasonably timeframe, being not more than ten (10) business days.

8.8 The person responsible for managing the complaint may, at their discretion, allow a longer period of time for a response to be provided, but must provide reasons for extending the timeframe to respond.

8.9 The person responsible for managing the complaint will determine what action is to result from the Initial Assessment. This includes proceeding to Formal Consideration

under the Policy, unless there are grounds that support one of the following actions, pursuant to section 262B(2)(b), being taken:

8.9.1 refuse to deal with the complaint;

8.9.2 determine to take no further action;

8.9.3 refer to an alternative resolution mechanism or to propose training for relevant parties, for example, mediation or conciliation; or

8.9.4 referral of the matter to another body or agency, for example, the Ombudsman, the ICAC or the Behavioural Standards Panel.

8.10 The outcome of the Initial Assessment will be advised to the complainant and to the Elected Member complained about.

9. Determining to not take Further Action

9.1 Where the person responsible for managing the complaint decides to not proceed to Formal Consideration of the matter:

9.1.1 the complainant must be provided with written reasons for this decision;

9.1.2 the Elected Member complained about must be provided with a summary of the complaint and the reasons for not proceeding; and

9.1.3 records must be kept by the Council about the decision to not proceed.

10. Decision to refer to Alternative Dispute Resolution

10.1 The person responsible for managing the complaint may decide that the complaint could be appropriately dealt with by way of an alternative dispute resolution process, such as facilitated discussion, mediation, arbitration, conflict resolution or training.

10.2 The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the Elected Member complained about to determine whether both support this approach. If either party rejects this approach that is the end of this consideration.

10.3 If the parties agree to this approach, the person responsible for managing the complaint will request the CEO to take steps to facilitate access to appropriate internal or external support for parties to the complaint. Any reasonable request for these resources will not be unreasonably refused. The complainant and the Elected Member complained about should be provided written confirmation of the alternate resolution mechanism to be used for the purposes of solving the complaint.

10.4 In the event that the person responsible for managing the complaint determines it is appropriate for the matter to be referred to an alternative dispute resolution processes, and the complainant refuses to do so, this will be relevant in determining whether the complaint is to be progressed under the Policy to Formal Consideration and, if consent is unreasonably withheld, that may result in the complaint being dismissed.

11. **Formal Consideration:**

11.1 Where the person responsible for managing the complaint decides to proceed to formal consideration, the Elected Member complained about will be provided with:

11.1.1 a copy of this Policy;

11.1.2 the contact details of the person responsible for managing the complaint; and

11.1.3 a summary document setting out the specific provision(s) of the Behavioural Standards alleged to have been breached and the circumstances where this breach is alleged to have occurred.

11.2 In circumstances where the complainant has not requested that their identity be kept confidential, a copy of the complaint will be provided in full.

11.3 However, for the avoidance of doubt, this is not the only manner in which the Elected Member the subject of the complaint, may be reasonably appraised of the allegations. A summary of the complaint may suffice in the particular circumstances and this decision will be made by the person responsible for managing the complaint.

11.4 The complainant will be advised of the decision to proceed and the contact details of the person responsible for managing the complaint.

11.5 The person responsible for managing the complaint may, in the first instance, determine that they are the appropriate person to formally consider and determine the complaint. Alternatively, the person responsible for managing the complaint may determine to engage a third party to investigate and make recommendations on the complaint, for example an investigator or an external service provider with skills relevant to the matter, who will investigate the complaint and report and make recommendations to the person responsible for managing the complaint.

11.6 The CEO will facilitate the engagement of an appropriate service provider in this instance.

11.7 It is the expectation of the Council that both the complainant and the Elected Member complained about will cooperate with any investigation process and will participate in the process, including any meetings, in a timely manner.

11.7.1 Failure by the Elected Member complained about to comply with this requirement may be considered in relation to any actions under section 262B(2)(e) of the Act and may even constitute grounds for referral of the matter to the Behavioural Standards Panel (*misbehaviour*).

11.7.2 Failure by the complainant to comply with this requirement may be relevant in determining whether the complaint is to be further progressed under the Policy and, if such lack of cooperation is unreasonable, it may result in the complaint being dismissed.

11.8 Both the complainant, and the Elected Member complained about, are entitled to have a support person present at any meeting with respect to the complaint, as long as the

support person is not a witness to the allegation, or otherwise, has a material role to play in the assessment and investigation of the complaint.

11.9 During the formal consideration of a matter, appropriate records will be kept by the person responsible for managing the complaint and, subsequently, retained by the Council.

12. Report

12.1 The person responsible for managing the complaint (which, for these purposes, extends to any third party engaged) will prepare a draft report setting out:

12.1.1 the allegations made in the complaint;

12.1.2 a summary of the evidence to which the investigation had regard;

12.1.3 their preliminary findings; and

12.1.4 their foreshadowed recommendations.

12.2 A copy of the draft report will be provided to the parties to the complaint who will be given a reasonable opportunity, being no more than ten (10) business days, to make a submission in relation to the draft report.

12.3 The person responsible for managing the complaint (or the third party engaged) may grant an extension of time to either or both parties to provide submissions on the draft report, if the circumstance of the matter requires this, but will provide reason for doing so.

12.4 The person responsible for managing the complaint (including any third party engaged) will have regard to any submissions received in preparing the final report on the Formal Consideration.

13. Outcome – No Breach

13.1 Where the finding is that a breach of the Behavioural Standards has not occurred, a final report will be prepared by the person responsible for managing the complaint (including any third party engaged) and this will be provided to the complainant and to the Elected Member complained about.

13.2 The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the Elected Member complained about. If such a request is made, a copy of the final report will be included in the public Agenda for the next practicable Council meeting, with the name of the complainant redacted, if required.

13.3 If a request is not received, no further action will be taken, and the matter will be taken to be concluded.

14. Outcome – Breach

14.1 Where the finding is that a breach of the Behavioural Standards has occurred, the person responsible for managing the complaint will contact the complainant and the Elected Member complained about, to determine if an agreed resolution can be reached.

14.2 Any agreement reached will be documented, including (but not limited to) matters such as:

14.2.1 actions to be undertaken;

14.2.2 timeframes for completion;

14.2.3 outcomes if the actions are not completed;

14.2.4 confirmation that the matter is considered resolved; and/or

14.2.5 any commitment by parties to abide the agreement.

14.3 A copy of any such agreement will be retained by each party and in Council records.

14.4 The complaint will remain confidential in accordance with the requirements of this Policy except at the request of the Elected Member complained about. If such a request is made, a copy of the final report will be included in the public Agenda for the next practicable Council meeting.

15. Formal Sanctions

15.1 Where the parties to the complaint fail to reach agreement about the resolution of the matter, a report will be included on the public Agenda for the next practicable Council meeting, for the Council to consider and determine the matter whilst the meeting is open to the public.

15.2 For the avoidance of doubt, this is not to be considered to amount to a requirement that a copy of the final report as prepared on the investigation is be included in the Agenda. It can include a report with sufficient details and information to enable the Council to make an informed, transparent, accountable decision on the matter with regard to process, merits and outcomes.

15.3 Consideration must be given as to whether the complainant's name is required to be redacted form any report to a public Council meeting.

15.4 The Council will determine what, if any, actions are to be taken on the findings and recommendations having regard to those set out in the Behavioural Standards which, in accordance with section 262C(1) of the Act, may include:

15.4.1 no further action;

15.4.2 a censure motion;

15.4.3 a requirement to issue a private or public apology (in a manner determined by the Council), to be made within the next two (2) Council meetings;

15.4.4 a requirement to undertake training; and/or

15.4.5 the removal or suspension from one or more offices held as an Elected Member of the Council or by virtue of being an Elected Member of the Council, other than the office of Elected Member of the Council.

15.5 Where the Council determines not to take any further action, the complainant will be advised of this decision, with supporting reasons.

15.6 A failure to comply with a sanction imposed by the Council under 262C(1) of the Act is *misbehaviour* and may result in a referral to the Behavioural Standards Panel.

16. Behavioural Standards Panel

16.1 In accordance with section 262Q of the Act, a complaint alleging *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* may be made to the Panel.

16.2 A complaint alleging *misbehaviour*, *repeated misbehaviour* or *serious misbehaviour* by an Elected Member may be referred to the Panel by:

16.2.1 resolution of the Council;

16.2.2 the Mayor; or

16.2.3 at least three Elected Members of the Council.

16.3 If a reasonable direction is given under 75G(1)(b) that an Elected Member does not attend a meeting of a Council, the responsible person who gave that direction must ensure that a complaint relating to the matter is referred to the Behavioural Standards Panel.

17. Related Legislation

Independent Commission Against Corruption Act 2012

Local Government Act 1999

Ombudsman Act 1972

Public Interest Disclosure Act 2018

Behavioural Management Policy

Procedure Flowchart

Receipt of Complaint

- CEO (or delegate) will acknowledge receipt as soon as reasonably practicable, but within 2 days of receipt
- complaint made within 6 months of the actions and/or behaviours said to breach the Standards; or discretion exercised by the person responsible for managing the complaint to extend time to make complaint

Informal Action

- person responsible for managing the complaint to determine if the matter can be resolved by Informal Action
- if both parties agree, Informal Action outcome to be documented in writing
- if parties do not agree, complaint is to be the subject of an Initial Assessment

Initial Assessment

- person responsible for managing the complaint to determine whether the matter falls for consideration under the Policy, taking into account matters under clause 8.4
- if the complaint warrants further action, Member complained about should be advised, provided a summary of allegations, and invited to respond, not more than 10 business days, unless extended with reasons

Outcome

- on receipt of any submission on Initial Assessment, person responsible for managing the complaint to determine what action is to be taken
- matter may proceed to a formal consideration under the Policy, unless ground(s) under clause 8.9 apply
- if no action to be taken, complainant and Member to be advised in writing, with reasons

Alternative Resolution

- if a decision is made to refer the matter for Alternative Dispute Resolution, person responsible for managing the complaint to contact the Member and complainant to seek consent to process
- if complainant does not agree, may be a relevant consideration in dismissing the complaint
- otherwise, consider Investigation

Investigation

- Member complained about will be provided a copy of this Policy, contact details of person responsible for managing complaint and full allegations (which may include copy of original complaint)
- invited to respond to allegations, not more than 10 business days

Report

- on completion of the investigation, draft report to be provided to both parties, and a reasonable opportunity to respond, not more than 10 business days
- any submission received to be considered in preparation of Final Report

No Breach

- where no breach is found, parties advised in writing
- matter remains confidential, unless Member requests a report be included in the public Agenda for the next practicable Council meeting

Breach

- where a breach is found, person responsible for managing complaint to contact parties to determine if an agreed resolution can be reached
- if so, document in writing, remains confidential unless Member requests a report be included in public Agenda for the next practicable Council meeting
- if no agreement reached, report to be placed on public Agenda for next practicable Council Meeting

Formal Sanctions

- where parties have failed to reach agreement on a breach, a report will be included on the public Agenda for the next practicable Council meeting
- Council will determine the sanction to be applied in accordance with section 262C(1) of the Act
- where Council determines to take no further action, complainant to be advised, with reasons