


## EXECUTIVE SERVICES

 THE COPPER COAST	<b>Function:</b> GOVERNANCE	<b>Adopted:</b> 4 <sup>TH</sup> JUNE 2014
	<b>Policy Number:</b> GOV015	<b>Resolution No.:</b> C107:14
	<b>Version Number:</b> 1	<b>Last Review:</b>
	<b>Frequency of Review:</b> Within 12 months of a General Election	<b>Resolution No.:</b>
		<b>Next Review:</b> 2015
<b>COUNCIL MEMBERS' CODE OF CONDUCT COMPLAINTS POLICY</b>		

### Policy Statement

#### 1. Introduction

On 1<sup>st</sup> September 2013, a new Code of Conduct for Council Members was made by Regulation. The Code of Conduct applies to all Council Members across the Local Government sector and may be the subject of a Council investigation or an Ombudsman investigation, depending on the nature of the issue. The Code of Conduct also contains sanctions which may be imposed by Council on a Council Member where a breach of the Code is found to be sustained.

Breaches of the Code of Conduct 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 but are referred to in the Appendix of the Code. This Policy covers referral of these types of complaints to other agencies.

This Policy applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members as gazetted on 29<sup>th</sup> August 2013.

#### 2. Applicable Legislation

##### Government Gazette – 29<sup>th</sup> August 2013

The Code of Conduct for Council Members, Part 2 – Behavioural Code states that:

*'It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government Election'.*

Local Government Act 1999

Local Government (General) Variation Regulations 2013

Independent Commissioner Against Corruption Act 2012

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**3. Integration with Corporate Objectives**

Governance Objective – Leadership

To provide leadership and ensure community resources are managed effectively.

Legislation – To adhere to the requirements of the Local Government Act 1999, Local Government (General) Variation Regulations 2013 and ICAC Act 2012.

**4. Definitions**

For the purposes of this policy the following definitions apply:

CEO – refers to the Chief Executive Officer (including their delegate) of the District Council of the Copper Coast, or an Acting Chief Executive Officer of the District Council of the Copper Coast (including their delegate).

Code – Code of Conduct for Council Members.

Council Members – refers to the members of Council who are voted in by the residents and ratepayers within the District Council of the Copper Coast. Council Members includes the Mayor and the ten Councillors.

**5. Application**

The CEO will be responsible for processing any complaints and supporting the Mayor in implementing this process.

Upon receipt of an alleged breach of the Code, the Mayor will be informed or if the complaint is about the Mayor, the Deputy Mayor will replace the role of the Mayor for the purpose of this process. In the event that both the Mayor and Deputy Mayor are involved then the longest serving Member of Council, without an interest, will resume the role of the Mayor for the purpose of this process and this will be at the discretion of the CEO.

The CEO in consultation with the Mayor will determine firstly whether the complaint:

- Is related to Criminal or Corrupt behaviour
- Falls under Part 3 of the Code – Misconduct
- Falls under Part 2 of the Code – Behavioural Code
- Is unsubstantial, vexatious, frivolous or trivial.

Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.

Complaints relating to Part 3 – Misconduct of the Code must be referred by the CEO to the Ombudsman or the Office of Public Integrity (OPI).

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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.

If the complaint is considered to be unsubstantial, vexatious, frivolous or trivial the complaint may be rejected and not investigated further.

#### 5.1 Managing an Alleged Breach

Where an alleged breach occurs the complainant should report the allegation in writing, to the Council, addressed to the Mayor or 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, the name of the person submitting the complaint and any witnesses if relevant.

**Anonymous complaints will not be considered under this process.**

Attachment 1 of this process sets out a workflow chart that summarises the following written process to be followed.

Complainants can, at any time, take the alternative option of lodging the complaint with the OPI, which will direct the complaint in accordance with the Independent Commissioner Against Corruption (ICAC) Act.

Having regard to the seriousness of the allegation and information provided, the CEO in consultation with the Mayor may:

- Refer the complaint to the Local Government Governance Panel or another external consultant including mediator, conciliator or lawyer
- Seek to resolve the matter internally
- Dismiss the allegation – matter ends there and complainant advised in writing.

Within five business day of receipt of an allegation, the Council Member who is the subject of the complaint will be advised of the complaint and its substance. The Council Member will also be advised of the manner in which the Mayor intends to deal with the complaint.

All complaints will be dealt with confidentially, until such time, as they are required to be reported to Council in a public meeting.

#### 5.2 Alleged Breach of Part 2 – Internal Response

Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. The Mayor may hold meetings with the complainant and the Council Member and may seek mediation and conciliation between the parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Council Member.

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The Mayor must ensure that the principles of natural justice and procedural fairness are observed.

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

Where the matter cannot be resolved, the Mayor will refer the original complaint to the Local Government Governance Panel. Neither the Mayor nor the CEO will investigate a complaint.

#### 5.2.1 Part 2 – Referral to the Local Government Governance Panel

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

Complaints referred to the Governance 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 on the Governance Panel webpage on the LGA's website under Rules of Engagement. [www.lga.sa.gov.au]

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 the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct, (see below).

If, following investigation by the Governance Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a report to the 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.

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### 5.3 Appeals

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

### 5.4 Part 3 – Mandatory Code (Misconduct)

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

Under the Code of Conduct, 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 of the OPI.

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.

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.

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.

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

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.

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.

### 5.5 Criminal Matters

The matters with the Appendix to the Code of Conduct 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 must also be reported to the OPI.

(see Council's Fraud and Corruption Prevention Policy for further information on reporting requirements of the Directions and Guidelines issued by the Independent Commissioner Against Corruption).

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

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EXECUTIVE SERVICES

6. **Delegation**

This Policy will be implemented by the Chief Executive Officer and any enquiries in relation to this Policy should be directed the CEO.

7. **Adoption and Review**

This Policy must be reviewed within 12 months after a general Local Government election in accordance with Local Government Act 1999.

8. **Availability of Policy**

This Policy will be available for inspection without charge at the Council's Principal Office and libraries during normal business hours, and on Council's website.

A copy of this Policy may be obtained on payment of a nominated fee from Councils' principal office or may be down loaded from Councils' website.

Signed \_\_\_\_\_

Mayor

Date 22nd July 2014

Signed \_\_\_\_\_

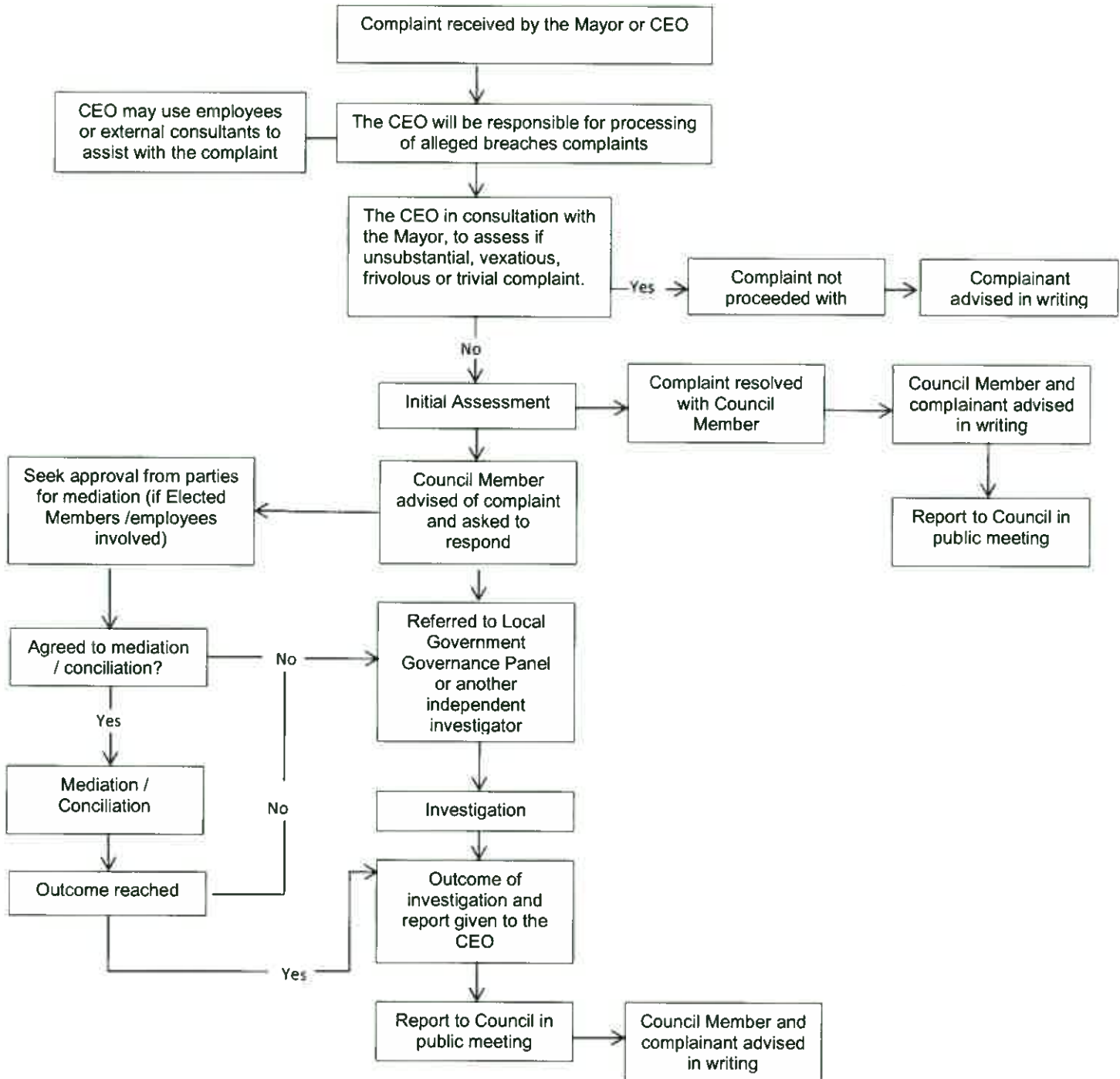
Chief Executive Officer

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**Process for handling alleged breaches against the Code of Conduct  
for Council Members**

Part 2 – Behavioural Code



NOTE:

If the Mayor is involved in the complaint, then the Deputy will replace the Mayor in the above role.  
 If the Mayor and Deputy Mayor are both involved then the complaint should be lodged with another Elected Member  
 If the Chief Executive Officer is involved in the complaint then a Director should be used to facilitate the process.

