

POLICY

Policy Name	Behavioural Management Policy
Policy Category	Statutory
Department / Officer	Office of Chief Executive Officer / Chief Executive Officer
Date Adopted	23 October 2023
Date/s Reviewed	
Review Frequency	Within 12 months after the conclusion of each periodic election
Strategic Plan Reference	Aspiration 6 – We are a financially sustainable and well-governed organisation
Attachments	Attachment A – Flow Chart – Informal Action Attachment B – Flow Chart – Formal Action Attachment C – Flow Chart – Formal Action – Breach Found – No Agreed Action Attachment D – Behavioural Management Standards

1. Purpose

The Behavioural Management Policy forms part of the Behavioural Management Framework for Council Members and sets out the approach to the management of complaints about the behaviour of Council Members. It sets out the process to be adopted where there has been an alleged breach of the Behavioural Standards for Council Members and this Policy adopted by the Council.

2. Scope

Council Members must comply with all components of the Council Member Behavioural Management Framework, which includes the provisions set out within this Policy, while carrying out their functions as a public officer.

This Policy does not apply to complaints about council employees or the council as a whole.

Community members and Council Employees can lodge a complaint with the Council in accordance with this Policy but cannot lodge a complaint directly with the Behavioural Standards Panel.

3. Policy Statement (Summary)

The City of Victor Harbor is committed to assisting Council members to resolve disputes and complaints in a proactive, positive and courteous manner before they are escalated.

4. Legislation and Compliance

Independent Commission against Corruption Act 2012

Established to deal with identification, investigation, prevention, and minimisation of corruption in public administration (including Local Government)

Local Government Act 1999

- Section 62 – Establishes general duties of Council Members
- Section 70B – Establishes provisions for a council member to be suspended from office subject to an intervention order.
- Section 75E - Establishes the behavioural standards.
- Section 75F - Establishes provision for councils to adopt a behavioural support policy, as an optional policy, in addition to the behavioural management policy
- Section 75G – Establishes health and safety duties for Council Members
- Section 107 – Introduces a new principle of human resource management to protect employees from sexual harassment.
- Section 262A, 262C and 262D - Establishes the legislative requirements for complaints about Council Members behaviour.
- Section 262B - establishes the requirement for a mandatory behavioural management policy to be adopted by Councils.
- Sections 262E to 262X - establishes Behavioural Standards Panel requirements.
- Section 263A to 268 – details process, outcomes, and actions for Ombudsman and South Australian Civil and Administrative Tribunal (SACAT) complaints, investigations, and proceedings.

Ombudsman Act 1972

Established to provide for the Ombudsman with the powers, functions and duties to investigate the exercise of the administrative powers of certain agencies and allegations of misconduct or maladministration in public administration (including local government).

Public Interest Disclosure Act 2018

An Act established to encourage and facilitate disclosures of certain information in the public interest by ensuring that proper procedures are in place for making and dealing with such disclosures and by providing protection for persons making such disclosures, and for other purposes.

5. Definitions

Behavioural requirements in this document refers collectively and individually to the Behavioural Standards for Council Members, the Behavioural Management Policy and any Behavioural Support Policies adopted by the Council.

Behavioural Management Framework consists of four-part components:

- Part 1 - The legislative framework within which all Council Members must operate.
- Part 2 - The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all Council Members in South Australia

- Part 3 – The mandatory Behavioural Management Policy relating to the management of behaviour of Council Members and adopted pursuant to Section 262B of the *Local Government Act 1999*
- Part 4 – Optional Behavioural Support Policy, designed to support appropriate behaviour by Council members and adopted pursuant to Section 75F of the Local Government Act 1999.

Behavioural Standards for Council Members – established by the Minister for Local Government and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to behaviour of members of councils.

Business Day means a day that is not a Saturday, Sunday or Public Holiday in South Australia.

Complainant means a person/s who has lodged a complaint against a Council Member.

External Consultant includes but is not limited to Legal Services, Human Resources Consultant, Local Government Mutual Liability Scheme.

Frivolous includes without limitation, a matter of little weight or importance, or lacking in seriousness.

Misbehaviour is defined in section 262E of the *Local Government Act 1999* as:

- (a) A failure by a member of a council to comply with a requirement of the council under section 262C(1); 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, subject to any resolution of the Council to the contrary –

1. The Mayor;
2. If the complaint relates to or involves the Mayor, the Deputy Mayor;
3. If the complaint relates to or involves the Mayor and Deputy Mayor the Council will appoint another Council Member

Repeated misbehaviour is defined in section 262E of the *Local Government Act 1999* as a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2 (Chapter 5- Members of council, Part 4-Member integrity and behaviour, Division 2 – Member behaviour)

Respondent means the person the complainant has lodged a complaint against.

Serious misbehaviour is defined in section 262E of the *Local Government Act 1999* as a failure by a member of a council to comply with section 75G (Health and safety duties)

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

6. Policy Content

This Policy sets out the procedures for dealing with an allegation of a breach of the **behavioural requirements** applying to Council Members.

6.1 Behavioural Standards

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 *Local Government Act 1999*. 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 are established pursuant to section 75E of the *Local Government Act 1999* and are published in the [SA Government Gazette](#) . They set out minimum standards of behaviour that are expected of all elected members in the performance of their official functions and duties as public officials. The Behavioural Standards are mandatory rules, with which Council Members must comply. It is the personal responsibility of Council Members to ensure that they are familiar with, and comply with, these Standards at all times.

6.2 Dispute versus Complaint

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. Ideally disputes will be handled directly by the parties involved and will not escalate to a complaint requirement action (even informal action) under this Policy. The Mayor or Chief Executive Officer may play a role in facilitating a resolution to a dispute.

This Policy is intended to deal with matters where conduct is alleged to have been inconsistent with the behavioural requirements, rather than where members of Council have differences of opinion, even when robustly put.

6.3 Confidentiality

Complaints made in accordance with this Policy will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Policy or are otherwise lawfully made public or disclosed.

Access to information relating to complaints and information about complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Policy.¹

A person who has access to information about a complaint (including the complainant and Respondent) must not directly disclose to any person (including to a Council Member) that information except:

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

This is not to be confused with formal consideration at a Council Meeting of any matter arising from application of this Policy. Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of Section 90 of the *Local Government Act 1999*.

A complainant identity shall be kept confidential from the Respondent unless the complainant has advised otherwise. This does not constitute an anonymous complaint. The person responsible for managing the complaint will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

6.4 Principles

Nothing in this Policy prevents Council Members from seeking to resolve disputes and complaints in a proactive, positive, and courteous manner before they are escalated.

The following principles will apply:

- Where a Council Member considers there has been behaviour that is inconsistent with the behavioural requirements, a council member 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;
- If a matter proceeds to a complaint, all Council Members will continue to comply with the procedures set out in this Policy and support the person responsible for managing the complaint;
- A consistent approach to the assessment, investigation and resolution of complaints will be adopted to facilitate timely and efficient resolution and minimisation of costs;
- Where required, Council may engage of an external consultant in the assessment, investigation and resolution of complaints and avoid adopting an unreasonably legalistic approach.
- 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

¹ There are circumstances in the Work Health and Safety Act 2012 where information must not be disclosed, for example where the health and safety of employee is at risk

accordance with the behavioural requirements and the *Local Government Act 1999*.

- 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.

Council will manage complaints in a fair and transparent manner and ensure principles of natural justice and/or procedural fairness are observed.

6.5 Lodgement of a Complaint

A complaint lodged under this Policy must:

- Be lodged in writing and addressed to the Chief Executive Officer and Marked “Confidential Council Member Complaint” by either:
 - Email : localgov@victor.sa.gov.au or
 - In writing: PO Box 11, Victor Harbor SA 5211
- Provide the name of the Council Member who has allegedly breached the behavioural requirements, 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.
- 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 to resolve the issue, relevant records or documents)
- Identify the outcome being sought
- Be lodged within six months of the alleged conduct occurring on the basis that it is important to address alleged breaches of behavioural requirements in a timely manner (with discretion provided to the person responsible for managing the complaint to allow a longer time limit to apply in particular cases. This will be assessed on a case-by case basis)

6.6 Receipt of Complaint

This step is an administrative process undertaken by the Chief Executive Officer or delegate:

- Receipt of the complaint
- Acknowledging receipt of the complaint
- Record keeping; and
- Allocation of the matter to the person responsible for managing the complaint

The Chief Executive Officer or delegate does not undertake an assessment of the merits of the complaint, unless the complaint relates to the Mayor and Deputy Mayor or where the Mayor or Deputy Mayor have determined circumstances where good reason, the Chief Executive Officer.

Receipt of the complaint will be acknowledged within **four** business days or as soon as reasonably practicable and a copy of this Policy will be provided to the person making the complaint.

The complaint should be directed to the person responsible for managing the complaint in accordance with Clause 4 of the Policy.

A complainant may withdraw their complaint at any stage.

6.7 Complaint Management Process – Stages of Action

This policy has three distinct stages to the approach that will be taken to address complains about the behaviour of Council Members:

- **Stage 1 – Informal Action** – Where the matter can be resolved directly between the Complainant and Respondent.
- **Stage 2 – Form Action** – Where the matter cannot be resolved using informal action and a formal process of consideration is required.
- **Stage 3 – Referrals to the Behavioural Standards Panel** – the circumstances under which the Mayor, the Council or other authorised person(s) will make a referral.

6.7.1 Stage 1 – Informal Action

Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the behavioural requirements. A person may therefore consider raising the matter directly with the Council Member concerned.

Alternatively, a person may raise their concern with the Mayor or Chief Executive Officer on an informal basis. If the concerns relate to or involve the Mayor the person may raise the complaint with the Deputy Mayor or Chief Executive Officer as the person responsible for managing the complaints under this Policy.

6.5.1.1 Record Keeping

Where the Mayor or person responsible for managing the complaint addresses the matter through informal action, a record should be made setting out:

- Details of the complainant
- Details of Respondent
- A summary of the matter
- A summary of actions taken in response
- Details of agreed actions (if any)

If informal action does not successfully resolve the matter, the record may be made available for an investigation process as provided for under this Policy.

If the Complainant and Respondent do not agree to resolve the matter informally, the complaint will be subject of an Initial Assessment (refer to Clause 6.8 of the Policy).

6.7.2 Stage 2 – Formal Action

Where the matter cannot be resolved using informal action and a formal process of consideration is required.

This part sets out the process for formal action in response to a complaint regarding the behaviour of Council Members and addresses the manner in which a complaint will be:

- Received
- Assessed
- Investigated
- Resolved
- Recorded

6.7.3 Stage 3 – Referrals to the Behavioural Standards Panel

The circumstances under which the Mayor, the Council or other authorised person(s) will make a referral.

6.8 Initial complaint assessment

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.

6.8.1 Step 1

The person responsible for managing the complaint will undertake an assessment of it to determine whether the content of the complaint relates to the behavioural requirements and whether the conduct occurred in the context of the Council Member carrying out their official functions and duties.

In undertaking the assessment, the person responsible for managing the complaint will have regard to the following matters²:

- The person that is making the complaint has a sufficient interest in the matter
- The complaint is trivial, frivolous or vexatious or not made in good faith
- The complaint has been lodged with another authority
- The subject matter of the complaint has been or is already being investigated by the Council or another body
- It is unnecessary or unjustifiable for the Council to deal with the complaint
- The council has dealt with the complaint adequately

The Person Responsible will not investigate an anonymous complaint/s unless it is required by law.

6.8.2 Step 2

If the person responsible for managing the complaint considers the matter warrants further consideration, the Respondent should be advised that a complaint has been received and is undergoing an initial assessment in accordance with this Policy. They should be provided with a summary of the matter, at a sufficient level of detail, to understand the nature of the allegations

² The person responsible for managing the complaint will also have regard to whether the council has obligations to report the matter to either the Local government Mutual Liability Scheme (LGAMLS) or the Local Government Association Workers Compensation Scheme (LGAWCS), pursuant to the Rules of those Schemes and Councils agreement with those bodies.

and enable them to provide a preliminary response. This may be achieved by a discussion between the person responsible for managing the complaint and Respondent. Taking into account the principles of this policy (refer to Clause 6.4). The Respondent may have a support person present during any discussions.

The Respondent should be given a reasonable opportunity, but no more than 10 business days, to provide a response to support the initial assessment. The person responsible for managing the complaint should have regard to any response provided in determining the action resulting from the initial assessment.

6.9 Action from initial assessment

The person responsible for managing the complaint will determine what action will result from the initial assessment. A matter may proceed to formal consideration under this Policy, unless there are grounds to take one of the following actions pursuant to Section 262B(2)(b):

- Refusing to deal with the complaint³
- Determining to take no further action
- Referring to an alternative resolution mechanism or to propose training for relevant parties (e.g. facilitated discussion, provision of training, mediation, arbitration, conflict resolution etc)
- Referring the matter to another body or agency (e.g. The Ombudsman SA or the Behavioural Standards Panel.)

6.10 Refusing to deal with the complaint / determining to take no further action

The person responsible for managing the complaint makes a decision not to proceed with formal consideration of the matter the following steps should be taken:

- The Complainant must be provided written reasons explain the decision⁴
- The Respondent should be provided with a brief summary of the complaint and the reasons for not proceeding
- A record of these steps and the decision not to proceed should be made

Whilst a matter may not proceed, the person responsible 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.

6.11 Decision to refer to alternative resolution mechanism

The person responsible for managing the complaint may form the view that the optimal way to deal with the complaint is to implement an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training.

The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the Respondent to determine whether there is support for this approach.

³ Section 270(4a)(a)(i) of the Local Government Act 1999 precludes a review of a decision to refuse to deal with the complaint

⁴ Section 262D, Local Government Act 1999

If so, the person responsible for managing the complaint should request the Chief Executive Officer take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint. The Chief Executive Officer will not refuse any reasonable request for resources made in accordance with this Policy.

The complainant and the Respondent should be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

6.12 Decision to refer to another body or agency

The person responsible 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 (Ombudsman SA or Behavioural Standards Panel) regarding what information is to be provided to the Complainant and the Respondent regarding the referral.

6.13 Decision to proceed to formal consideration

The person responsible for managing the complaint makes a decision to proceed to formal consideration the following steps should be taken:

- The Respondent should be provided with a copy of this Policy, contact details of the person responsible for managing the complaint and a summary documents setting out:
 - The specific provisions(s) of the behavioural requirements alleged to have been breached; and
 - The circumstances where this breach is alleged to have occurred.

A copy of the complaint will be provided to the Respondent in full, subject to the Complainant identity shall be kept confidential from the Respondent unless the Complainant has advised otherwise.

- The Complainant should be advised of the decision to proceed and the contact details of the person responsible for managing the complaint.

6.13.1 Formal Consideration

Where the decision to formally consider the complaint has been made the person responsible for managing the complaint will determine how to proceed:

- The person responsible for managing the complaint may determine that they are the appropriate person to formally consider the complaint; or
- The person responsible for managing the complaint may determine to engage an external consultant to formally consider the complaint, for example Lawyers,

If the person responsible for managing the complaint determines an external consultant should be engaged, they will request the Chief Executive Officer to facilitate engagement of an appropriate service provider.

The Chief Executive Officer will not refuse any reasonable request for resources made in accordance with this Policy.

The person responsible for managing the complaint will advise both the Complainant and the Respondent that they are able to have a support person accompany them during discussions relating to the complaint.

It is the expectation of Council that both the Complainant and Respondent will cooperate with any such process to consider the complaint and, if requested, participate in meetings in a timely manner.

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 Local Government Act 1999 and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

Further consideration by the person responsible for managing the complaint (or the external consultant engaged), may (at the discretion of that person) involve:

- Explore the complaint with the Complainant and the Respondent
- Speaking with other persons who have been nominated by the parties to have observed the behaviour
- Speaking directly with witnesses to the conduct complained about
- Requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

During the formal consideration of the matter appropriate records should be kept by the person responsible for managing the complaint.

6.13.2 Report

The person responsible for managing the complaint (or the external consultant engaged) should ensure a report is prepared summarising the complaint and setting out their findings, conclusions and recommendations.

The report should set out:

- Allegations made in the complaint.
- Summary of evidence to which the investigation had regard.
- Findings
- Conclusions
- Recommendations

A report will generally include a recommended action for the parties to consider and / or participate in such as, but not limited to the imposition of sanctions as per the *Local Government Act 1999*:

- Discussions with parties to the complaint to seek agreement
- Formal mediation if not already undertaken
- Conciliation
- Arbitration

- Education and further training

A copy of the draft report should be provided to the Complainant and Respondent who are then given 10 business days to make submissions in relation to the draft report.

The person responsible for managing the complaint (or external consultant engaged) may provide a longer period for lodgement of submissions to the draft report at their discretion.

The person responsible for managing the complaint (or the external consultant engaged) shall have regard to any submissions made in preparing a final report.

6.13.2.1 Outcome – No breach found

Where the finding is that no breach of the behavioural requirements has occurred, a final report should be prepared by the person responsible for managing the complaint (or external consultant engaged) and provided to the Complainant and the Respondent within five business days of completion of the final report.

The complaint will remain confidential in accordance with the requirements of this Policy, except at the request of the Respondent. If such a request is made, a copy of the final report will be tabled⁵ at the next available Ordinary Council meeting. If no such request is received, no further action will be taken, Complaint is closed.

6.13.2.2 Outcome – Agree Actions (breach Found)

Where the findings is that breach of the behavioural requirements has occurred and the Complainant and the Respondent⁶ agree to a path for resolution, that agreement will be documented including matters such as:

- Actions to be undertaken
- Responsibility for completing actions
- Timeframes for completion of actions
- What will occur if there is report of the behaviours complained about
- Monitoring arrangements for completion of actions
- What will occur if the actions aren't completed
- Confirmation that the matter is considered resolved

The agreement reached will be made in writing, including a commitment by parties to the complaint to abide by the agreement

⁵ Note that the complainant's identity may need to be redacted

⁶ Where the conduct complained about is not raised by the person directly affected by the conduct it will usually be appropriate to discuss the proposed resolution with that person prior to finalising agreement. This is intended to apply in a circumstance where the 'victim' is not the complainant to provide them a reasonable opportunity to have input into the resolution.

(which may be by electronic means). A copy of the agreement will be retained by each party and a copy held in Council records.

The complaint will remain confidential in accordance with their requirements of this Policy except at the request of the Respondent. If such a request is made, a copy of the final report will be tabled⁷ at the next available Ordinary Council meeting. The complaint must be reported in Council's Annual Report which must contain the information required by the regulations⁸.

6.13.2.3 Outcome – no agreed action (breach found)

Where the findings is that breach of behavioural requirements has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter a final report should be presented to Council for determination. The person responsible for managing the complaint should request the Chief Executive Officer to include the final report in the Council Agenda as soon as practicable.

6.13.3 Actions of Council

Where the Complainant and Respondent are not able to agree on an approach to resolve the matter, the matter will be provided to Council for determine the actions to be taken which may include:

- Taking no further action
- Passing a censure motion in respect of the member;
- Requiring the member to issue a public apology (in a manner determined by the council)
- Requiring the member to undertake a specified course of training or instruction
- Removal or suspension form one or more offices held in the members capacity as a member of the Council or by virtue of being a member of the Council – but not the office of Member of the Council.

If Council determines, to take action, a report on the matter must be considered at a meeting open to the public.⁹

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

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

⁷ Note that the complainant's identity may need to be redacted.

⁸ Schedule 4(1)(d) of the Local Government Act 1999

⁹ Section 262C(2) of the Local Government Act 1999

In making a determination under section 262C(1) of the *Local Government Act 1999*, Council should be reasonably prescriptive about the manner and time periods in which the action must be completed. Section 262E of the *Local Government Act 1999* 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.

The matter must be reported in Council’s Annual Report which must contain the information required by the regulations¹⁰.

6.14 Behavioural Standards Panel

The Behavioural Standards Panel (Panel) is an independent Statutory authority consisting of three Members and has powers to impose sanctions on Council Members who breach the behavioural requirements.

In accordance with section 262Q of the *Local Government Act 1999* a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be made to the Panel by certain persons as set out below. The Panel’s jurisdiction arises in the circumstances set out below:

Legislative Definition	Plain language explanation
<p>Misbehaviour means—</p> <p>(a) a failure by a member of a council to comply with a requirement of the council under section 262C(1); or</p> <p>(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</p> <p>(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;</p>	<p>Misbehaviour means:</p> <p>(a) a council member fails to take the action required by council; or</p> <p>(b) a council member fails to comply with this policy; or</p> <p>(c) a council member fails to comply with an agreement reached pursuant to this policy</p>
<p>repeated misbehaviour means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2;</p>	<p>A second or subsequent breach of the behavioural requirements</p>
<p>serious misbehaviour means a failure by a member of a council to comply with section 75G.</p>	<p>A breach of health and safety duties (including sexual harassment) as set out in section 75G of the <i>Local Government Act 1999</i></p>

A complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour by a Council Member may be referred to the Panel by¹¹:

- A resolution of the council;

¹⁰ Schedule 4(1)(d) of the *Local Government Act 1999*

¹¹ Section 262Q of the *Local Government Act 1999*

- the Mayor; or
- at least 3 members of the council
- Responsible person under 75G – direction not to attend meeting.

6.14.1 Behavioural Standards Panel Contact Officer

The Chief Executive Officer (or delegate) is the contact officer for matters that have been referred to the Behavioural Standards Panel.

6.15 Responsibilities

6.15.1 Responsible Person

The Responsible Person is responsible for managing complaints and is responsible under this Policy to:

- Perform the tasks bestowed upon the person responsible for dealing with a complaint pursuant to this Policy.
- The Mayor or Deputy Mayor in consultation with the Chief Executive Officer, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter being serious, or escalating to a formal complaint;
- The Mayor or Deputy Mayor in consultation with the Chief Executive Officer, engage external resources to assist with investigation and resolution of matters.

6.15.2 Chief Executive Officer

The Chief Executive Officer (or delegate) is responsible under this Policy to:

- Manage the administrative receipt, acknowledgement, record keeping, and allocation of a complaint lodged in accordance with this Policy
- Facilitate access to external resources to support the resolution of complaints lodged in accordance with this Policy.
- Will not refuse any reasonable request for resources made by the Mayor or Deputy Mayor to resolve a complaint.

6.15.3 Behavioural Standards Panel – Contact Officer

The Chief Executive Officer is the Behavioural Standards Panel Contact Officer and is responsible under this Policy to:

- Comply with any lawful request of the Panel for information related to a matter under consideration.
- Receive and respond to notices relating to matters under consideration by the Panel.

7 Risk Management

This Policy has been developed to meet Councils statutory obligations to adopt a Behavioural Management Policy relating to the management of behaviour of Council Members and adopted pursuant to Section 262B of the *Local Government Act 1999*.

8 Implementation/Delegations

The Chief Executive Officer is the delegated person to implement this Policy.

9 Related Documents

Behavioural Management Standards

Behavioural Management Register

Caretaker Policy

Fraud, Corruption, Maladministration and Misconduct Prevention Policy

10 Availability of Policy

This policy is available on Council's website at www.victor.sa.gov.au.

Behavioural Management Policy Flowchart: Part 1 - Informal Action

Council receives complaint. CEO to acknowledge receipt of the complaint within 5 business days and a copy of the Behavioural Management Policy (Policy) is provided to the complainant. Clause 6.6 of the Policy

The CEO will refer the complaint to the *Responsible Person* for managing the complaint – refer to Clause 5 – Definitions and Clause 6.6 of the Policy

Responsible Person conducts an initial assessment to consider if the complaint warrants further consideration – refer to Clause 6.8 of the Policy

Action from Initial Assessment
Responsible Person Determines what action will result from the initial assessment. Refer to Clause 6.8 of the Policy

Warrants Further Consideration
If the complaint warrants further consideration the *Responsible Person* to provide a summary of the matter to the *Respondent* within 10 business days for the *Respondent* to provide a preliminary response

On receipt of preliminary response the *Responsible Person* Shall make a determination.

Determines to take no further action
e.g., trivial, vexatious, exceeds six months since action refer to Clause 6.10 of the Policy

Complainant provided written reason for decision within 10 business days of the complaint received

Respondent provided a brief summary of the complaint within 10 business days of the complaint received

Refer to clause 6.4.1.1 for Details on Record Keeping

Complaint Closed

OPTION 1

Determines to refer to alternative resolution (Clause 6.11)

Contact the *Complainant* and *Respondent* to gain support of the alternative resolution

Resolution Supported

Supported by the *Complainant* and *Respondent*

The *Complainant* and *Respondent* are provided written confirmation of alternative resolution to be used

CEO to facilitate access to appropriate internal or external support

Refer to clause 6.5.1.1 for Details on Record Keeping

Complaint Closed

Resolution Not Supported

Not Supported by the *Complainant* and *Respondent*. **Formal Action required**

Formal Action
Proceed to Attachment B

OPTION 2

Determines to refer to another body or agency (Clause 6.12)

Referral to be made to the body or agency within 10 business days

Ombudsman SA or Behavioural Standards Panel

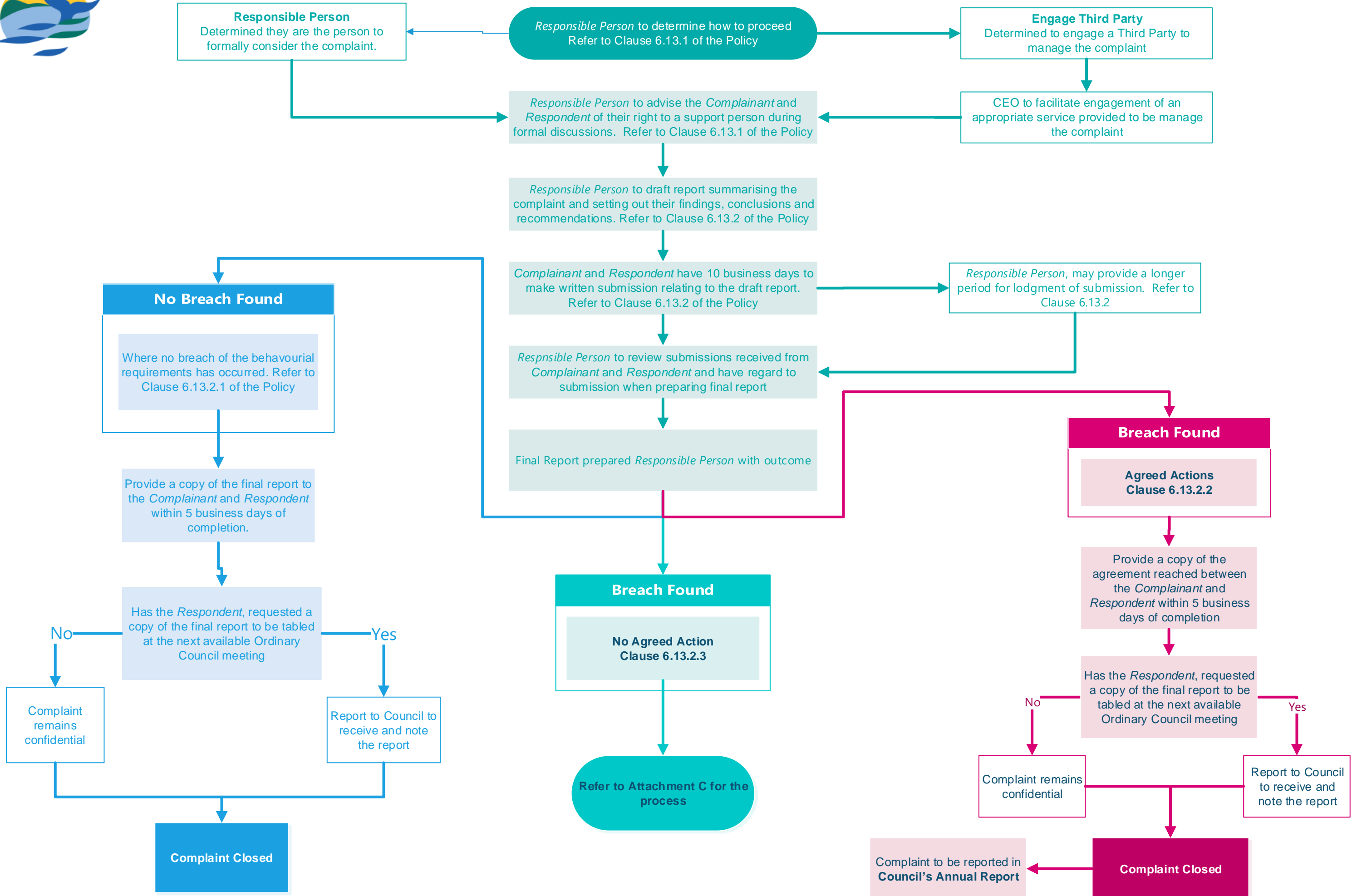
OPTION 3

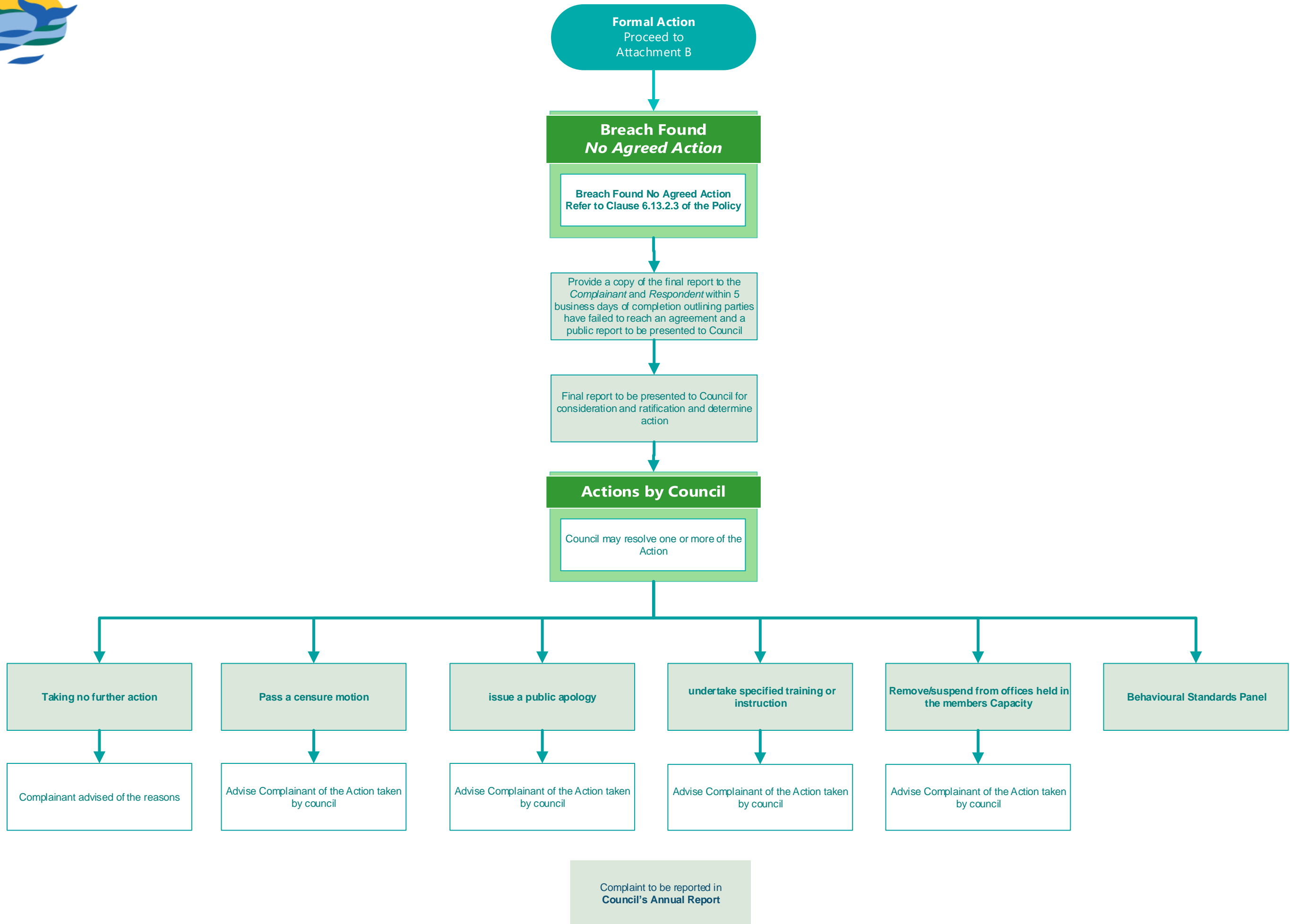
Determines that **Formal Action** is required (Clause 6.13)

Contact the *Complainant* and *Respondent* to advise the complaint will proceed to formal action (Clause 6.13)

Formal Action
Proceed to Attachment B

Behavioural Management Policy Flowchart: Part 2 – Formal Action





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:

- 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

LOCAL GOVERNMENT ACT 1999
DETERMINATION UNDER SECTIONS 72A(2) AND 119A(2)
Register of Gifts and Benefits

For the purposes of sections 72A(2) and 119A(2) of the *Local Government Act 1999*, I, Geoffrey Graeme Brock, **Minister for Local Government** in the State of South Australia, hereby **DETERMINE** the amount of \$50.

This determination will come into operation on the day on which section 36 of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

Dated: 3 November 2022

HON GEOFF BROCK MP
Minister for Local Government

LOCAL GOVERNMENT ACT 1999
SCHEDULE 3 CLAUSE 2(A1) OF THE LOCAL GOVERNMENT ACT 1999
REGULATION 9 OF THE LOCAL GOVERNMENT (GENERAL) REGULATIONS 2013

Determination of Form of Returns—Register of Interests for Members and Officers of a Council

I, Geoffrey Graeme Brock, **Minister for Local Government** in the State of South Australia, under Schedule 3 clause 2(a1) of the *Local Government Act 1999* (the Act) and Regulation 9 of the *Local Government (General) Regulations 2013* (the Regulations), hereby **DETERMINE**:

- the form of the return in Annexure 1 as the form for a primary return under section 65 of the Act;
- the form of the return in Annexure 2 as the form for an ordinary return under section 66 of the Act;
- the form of the return in Annexure 3 as the form for a primary return under regulation 9(5) of the Regulations;
- the form of the return in Annexure 4 as the form for an ordinary return under regulation 9(6) of the Regulations

Dated: 3 November 2022

HON GEOFF BROCK MP
Minister for Local Government