POLICY 2.29
Governance
Elected Member Behavioural Management
Version: 2 **| Next Review:** November 2030

DISTRICT COUNCIL of TUMBY BAY

1. INTRODUCTION

The District Council of Tumby Bay (the Council) is committed to its obligations to act as a representative, informed and responsible public authority and 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.

This Behavioural Management Policy (the Policy) sets out the process for receiving and managing an alleged breach of the *Behavioural Standards for Council Members* (the Behavioural Standards) by an Elected Member.

2. POLICY OBJECTIVES

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

2.2 This Policy:

a) sets out the process to be followed where there has been an alleged breach of the Behavioural Standards,

b) sets out the criteria that will be applied in the receipt and assessment of a complaint, and

c) specifies the manner in which the Member, subject of the complaint, and the Complainant, will be notified as to 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 a Member, subject of the complaint.

2.4 The Elected Member Behavioural Management Procedure Flowchart is annexed to this Policy (Annexure A).

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.

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.

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.

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); 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:

- 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 Member appointed by resolution of the Council.

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 Act, being the health and safety duties of 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 another wrongful purpose.

A complaint may be regarded as vexatious if the complainant:

- continues to pursue a complaint that has already been addressed and provides no 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
- lies or gives misleading information to the person responsible for managing the complaint.

4. LEGISLATIVE REQUIREMENTS

This Policy is made pursuant to, and must be read in conjunction with, the *Local Government Act 1999* (the *Act*), in particular Part 2 Division 1A, which provides for the establishment of Behavioural Standards and the management of complaints regarding alleged breaches by Council Members.

Without limitation, this Policy gives effect to the requirements of the Act, including section 262B, which requires councils to adopt and maintain a behavioural management policy for complaints relating to alleged breaches of the Behavioural Standards, sections 262C to 262J, which establish the processes for handling such complaints, including available actions and sanctions, section 262E, which defines misbehaviour, repeated misbehaviour and serious

misbehaviour, and section 262Q, which provides for the referral of matters to the Behavioural Standards Panel.

This Policy must also be applied consistently with other relevant legislative and regulatory obligations, including but not limited to the *Independent Commission Against Corruption Act 2012* (in relation to reporting corruption, misconduct and maladministration), the *Ombudsman Act 1972* (regarding the Ombudsman's powers to investigate administrative acts of Council and Elected Members), the *Public Interest Disclosure Act 2018* (which provides protections for appropriate disclosures of public administration information), and any applicable Work Health and Safety legislation, including the duties of Elected Members under section 75G of the Act.

Where there is any inconsistency between this Policy and the Act or other applicable legislation, the provisions of the Act or relevant legislation will prevail to the extent of the inconsistency.

Nothing in this Policy limits or affects the operation of any statutory authority or obligation to report, refer or otherwise deal with matters under any other Act, and the Council reserves the right to refer matters to external agencies where required or appropriate.

5. PRINCIPLES

5.1 Nothing in this Policy prevents Members from seeking to resolve disputes and complaints in a proactive and positive manner, without the need to lodge a complaint under this Policy.

5.2 This Policy is intended to deal with matters where conduct is alleged to have been inconsistent with the Behavioural Standards, rather than circumstances where Members may have a difference of opinion, or be in dispute.

5.3 In that instance, and in accordance with the obligations of Members under section 59 of the Act, it is expected that Members will attempt to resolve their differences in a mutually acceptable manner.

5.4 Complaints made under this Policy are to be received and managed with as little formality and technicality, and as efficiently as the circumstances of the matter allow, while affording procedural fairness to all parties in the process.

5.5 Where required, the Mayor may engage the assistance of consultants and/or support persons in the assessment, investigation and resolution of complaints.

6. CONFIDENTIALITY

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

6.2 Access to information relating to complaints, and information about complaints, will be limited to parties to the complaint and persons with a responsibility for the complaint handling process.

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

a) for the purpose of dealing with the complaint,

b) where required by law,

c) for the purpose of obtaining legal advice or legal representation, or medical or psychological assistance, or assistance from a counsellor,

d) where the disclosure is made to a person investigating the complaint, or mediator/conciliator engaged under this Policy,

e) where the information has been made public in accordance with the Policy.

6.4 Where another Member breaches the confidentiality obligations under this Policy, that may give rise to a breach of that Member's Integrity obligations under the Act, and will be reported by the Mayor to the Ombudsman's Office for consideration.

6.5 Where a member of the public breaches the confidentiality obligations under this Policy, that will be a matter taken into account by the person responsible for managing the complaint, in determining whether the complaint is to be progressed. Where it is determined that the disclosure has resulted in a denial of procedural fairness to the Member, subject of the complaint, the matter may be dismissed, without further investigation.

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

7. COMPLAINT MANAGEMENT PROCESS

7.1 A complaint must be made within 6 months of the actions and behaviour, said to be inconsistent with the Behavioural Standards, on the basis that it is desirable to address alleged breaches of The Behavioural Standards in a timely manner.

7.2 In the absolute discretion of the person responsible for managing the complaint, a complaint made after 6 months of the actions said to breach the Behavioural Standards, will be received and assessed only where an extension is in the public interest, and warranted in the circumstances of the matter.

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

a) ***Informal Action*** - where the matter can be resolved between the parties.

b) ***Formal Action*** - where the matter cannot be resolved using informal action, or it is not appropriate to do so, a formal process may be required.

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

7.4 A complaint made under this Policy must:

be received in writing, but will not be unreasonably refused if it is made verbally, or by telephone and evidences a complaint made under this Policy,

provide the name of the 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 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 Standards said to have been breached,

provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint, as well as actions taken to try to resolve the complaint, and

identify the outcome sought.

7.5 Receipt of a Complaint:

a) The CEO (or delegate) will be responsible for receiving the complaint and acknowledging the same within 2 business days, or as soon as reasonably practicable.

b) A copy of this Policy will be provided to the person making the complaint.

c) The complaint will be directed by the CEO to the person responsible for managing the complaint.

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

8. INFORMAL ACTION

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

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

8.3 If the Mayor (or person responsible for managing the complaint) considers that access to resources to support parties and facilitate early resolution of the matter should be provided, the Mayor, or person responsible for managing the complaint, will request the CEO to facilitate such access, which will not by unreasonably refused.

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

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

9. FORMAL ACTION

9.1 If the matter cannot be resolved by way of the informal resolution process, the person responsible for managing the complaint will undertake an assessment to determine whether the complaint relates to behaviour that falls under the Behavioural Standards and the conduct complained of occurred in the context of the Member carrying out their official functions and duties.

9.2 An initial assessment is not an investigation and no findings as to the merits of the complaint will be made.

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

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

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

c) if the complaint has been lodged with another authority,

d) the subject matter of the complaint has been, or is already being, investigated by the Council or another body,

e) it is unnecessary or unjustifiable for the Council to deal with the complaint, and/or

f) the Council has already dealt with the complaint.

9.4 The person responsible for managing the complaint will also have regard 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.

9.5 If the person responsible for managing the complaint considers the matter warrants further consideration, the Member complained about should be advised a complaint has been received and is undergoing an initial assessment in accordance with this Policy.

9.6 The Member should be provided a summary of the allegations, with sufficient detail, to understand the nature of the allegations and enable them to provide a preliminary response within a reasonable timeframe, being not more than ten business days.

9.7 The person responsible for managing the complaint may provide a longer period of time for provision of a response at their discretion, providing reasons for extending the timeframe to respond.

9.8 The person responsible for managing the complaint will determine what action is to result from the Initial Assessment, and a matter may proceed to formal consideration under the Policy, unless there are grounds to take one of the following actions pursuant to section 262B(2)(b):

a) refuse to deal with the complaint,

b) determine to take no further action,

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

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

9.9 The outcome of the Initial Assessment will be advised to the complainant and the Member complained about in writing.

10. DETERMINING TO TAKE NO FURTHER ACTION

Where the person responsible for managing the complaint makes a decision to not proceed with formal consideration of the matter:

10.1 the complainant must be provided written reasons for the decision,

10.2 the Member should be provided with a brief summary of the complaint and the reasons for not proceeding, and

10.3 records should be kept by the Council for the decision not to proceed.

11. DECISION TO REFER TO ALTERNATIVE DISPUTE RESOLUTION

11.1 The person responsible for managing the complaint may form the view 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.

11.2 The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the Member complained about to determine whether both support this approach.

11.3 If so, the person responsible for managing the complaint should request the CEO take steps to facilitate access to appropriate internal or external support for parties to the

complaint. Any reasonable request for resources made under this Policy will not be unreasonably refused.

11.4 In the event 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 enter into to the same, this will be a relevant consideration in determining whether the complaint is to be progressed under the Policy, and if such consent is unreasonably withheld, it may result in the complaint being dismissed.

12. FORMAL CONSIDERATION

12.1 Where the person responsible for managing the complaint makes a decision to proceed to formal consideration, the Member complained about will be provided:

a) with a copy of this Policy,

b) the contact details of the person responsible for managing the complaint, and

c) 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.

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

12.3 However, for the avoidance of doubt, this is not the only manner in which the Member, subject of the complaint, may be appropriately appraised of the allegations, a summary of the complaint may suffice in the circumstances, and this is a decision to be made by the person responsible for managing the complaint

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

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

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

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

a) Failure by the 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 Act, and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

b) Failure by the complainant to comply with this requirement may will be a relevant consideration in determining whether the complaint is to be progressed under the Policy, and if such cooperation is unreasonably withheld, it may result in the complaint being dismissed.

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

13. REPORT

13.1 The person responsible for managing the complaint (including any third party engaged) will prepare a draft report setting out:

a) allegations made in the complaint,

b) a summary of evidence to which the investigation had regard,

c) preliminary findings, and

d) foreshadowed recommendations.

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

13.3 The person responsible for managing the complaint (or the third party engaged) may grant an extension of time to provide submissions on the draft report, if the circumstances of the matter requires the same, but will provide reason for so extending the time to respond.

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

14. OUTCOME – NO BREACH FOUND

14.1 Where the finding is that no breach of the Behavioural Standards occurred, a final report will be prepared by the person responsible for managing the complaint (including any third party engaged) and provided to the complainant and the Member complained about.

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

14.3 If no request is received, no further action will be taken and the matter is taken to be concluded.

15. OUTCOME – BREACH FOUND

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

15.2 Any agreement reached will be documented in writing, including matters such as:

a) actions to be undertaken,

b) timeframes for completion,

c) outcomes if the actions are not completed,

d) confirmation that the matter is considered resolved, and

e) setting out a commitment by parties to the complaint to abide by the agreement.

15.3 A copy of the agreement will be retained by each party and a copy held in Council records.

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

16. FORMAL SANCTIONS

16.1 Where the parties to the complaint have failed to reach agreement as to the resolution of the matter, a report will be included in the Agenda for the next practicable Council meeting, for the Council's consideration, and determination, at a time whilst the meeting is open to the public.

16.2 For the avoidance of doubt, this is not to be read as requiring that a copy of the final report prepared on the investigation be included in the Agenda (but it may) but can include a report with sufficient details and information to enable the Council to make an informed, transparent, accountable decision on the matter.

16.3 Consideration should be given as to whether the complainant's name is required to be redacted form that report.

16.4 The Council, as a governing body, will determine the actions to be taken on the findings under the Behavioural Standards, which in accordance with section 262C(1) of the Act may include:

a) take no further action,

b) pass a censure motion in respect of the Member,

c) requiring the member to issue a private, or a public apology (in a manner determined by the Council), to be made within the next two Council meetings,

d) require the Member to undertake training,

e) remove or suspend the Member from one or more offices held in the Member's capacity as a Member of the Council, or by virtue of being a Member of the Council, other than the office of Member of the Council.

16.5 Where the Council determines to take no further action, the complainant will be advised of this decision, along with reasons.

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

17. BEHAVIOURAL STANDARDS PANEL

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

misbehaviour means:

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 to comply with a provision of, or a requirement under this Policy, or

c) a failure by a Member to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint.

repeated misbehaviour means a second or subsequent breach of the Behavioural Standards, and does not necessarily have to be the same or similar actions or behaviours to constitute a 'repeat' breach.

serious misbehaviour means a failure by a Member to comply with their health and welfare obligations under section 75G.

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

a) resolution of the Council,

b) the Mayor, or

c) at least three members of the Council.

17.3 If a reasonable direction is given under 75G(1)(b) that a Member 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.

18. POLICY REVIEW

This Policy will be reviewed every four years. The Council has the right to review this policy at any time, if considered desirable.

19. AVAILABILITY OF POLICY

This policy will be available for inspection at the Council's offices during ordinary business hours and via the Council's website www.tumbybay.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

19. FURTHER INFORMATION

File reference	R26/10265
Responsibility	Chief Executive Officer
Version	2
Effective date	14/07/2026
Last revised date	09/05/2023
Minutes reference	18c/72026
Next review date	November 2030
Applicable Legislation	*Local Government Act 1999* *Independent Commission Against Corruption Act 2012* *Ombudsman Act 1972* *Public Interest Disclosure Act 2018*
Related Policies	Policy 2.30 Elected Member Behavioural Support
Related Procedures	

AUTHORITY: Adopted by Council: 09/05/2023 {Motion 4c/52023}
Adopted by Council: 14/07/2026 {Motion 18c/72026}

SIGNED: .....

Responsible Officer

DATED: 14/07/2026

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ANNEXURE A – Elected Member Behavioural Management 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 8.3. • 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 8.8 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.