

CAP Complaint Handling Policy

Policy Reference Number:	4.4
Classification:	Planning & Development
First Issued/Approved:	March 2009 (Res. 272/2009)
Review Frequency:	After the general election – every 4 years
Last Reviewed:	12 August 2014 (res 40/2015) 13 January 2015 (Res 269/2015) 12 February 2019 (318/2019) 12 February 2020 (Res 232/2020)
Next Review Date:	December 2022
Responsible Officer:	Chief Executive Officer
Applicable Legislation:	<i>Local Government Act 1999</i> <i>Development Act 1993</i>
Relevant Policies:	
Related Procedures:	
Compliance Standard:	

1 Introduction

Council has established a Council Assessment Panel (CAP) under section 56A of the *Development Act 1993* (the Act).

CAP members must abide by the Code of Conduct for Panel Members established by the Minister for Planning under section 21A of the Act.

This Policy governs the way in which complaints made to the Council about a CAP member under the Code will be determined.

Complaints concerning alleged corruption, maladministration and/or misconduct by CAP members exercising their functions as a CAP member may also be made separately to the Office for Public Integrity under the *Independent Commissioner Against Corruption Act 2012*. More information about making a complaint to the OPI can be obtained from www.icac.sa.gov.au.

This Policy only concerns complaints made in respect of individual CAP members under the Code. If you have a concern regarding the assessment and/or determination of a development application, these concerns should be raised with Council's development assessment staff and/or pursuant through the appeal process, where this is available under the Act.

2. Interpretation

Independent Assessor means a person selected by the Public Officer from a list of people who are suitably qualified and have been previously approved by the Council for the purposes of undertaking the independent investigation of complaints against members of Council, a Council committee or its CAP.

Public Officer means a person appointed by the Council under section 56A(22) of the *Development Act 1993* as the Public Officer for its CAP. The functions of a Public Officer include ensuring the proper investigation of complaints about the conduct of a member of the CAP.

Presiding Member means the person appointed by the Council under section 56A(3)(b) of the *Development Act 1993* to be the Presiding Member of its CAP. The Presiding Member must not be an officer or member of the Council.

CAP member means a person appointed by Council under section 56A(3) of the *Development Act 1993* to be a member of its CAP.

3. Making a Complaint

A complaint against a CAP member must be made in writing to the Public Officer of the Council, (Chief Executive Officer, PO Box 1 Robe SA 5276) and must contain the following details:

- the name of the CAP member the subject of the complaint; and
- your name, address, telephone number and/or email address; and
- the circumstances giving rise to the complaint; and
- evidence supporting the complaint.

The Public Officer will acknowledge receipt of complaints in writing within 3 business days of its receipt.

When you make a complaint to the Public Officer, you must keep details of this complaint confidential so that it can be investigated and determined thoroughly and properly.

The Public Officer will then write to the CAP member who is the subject of the complaint to notify the CAP member that a complaint has been made concerning him/her and provide full particulars of the alleged misconduct and direct the CAP member to observe confidentiality regarding the complaint.

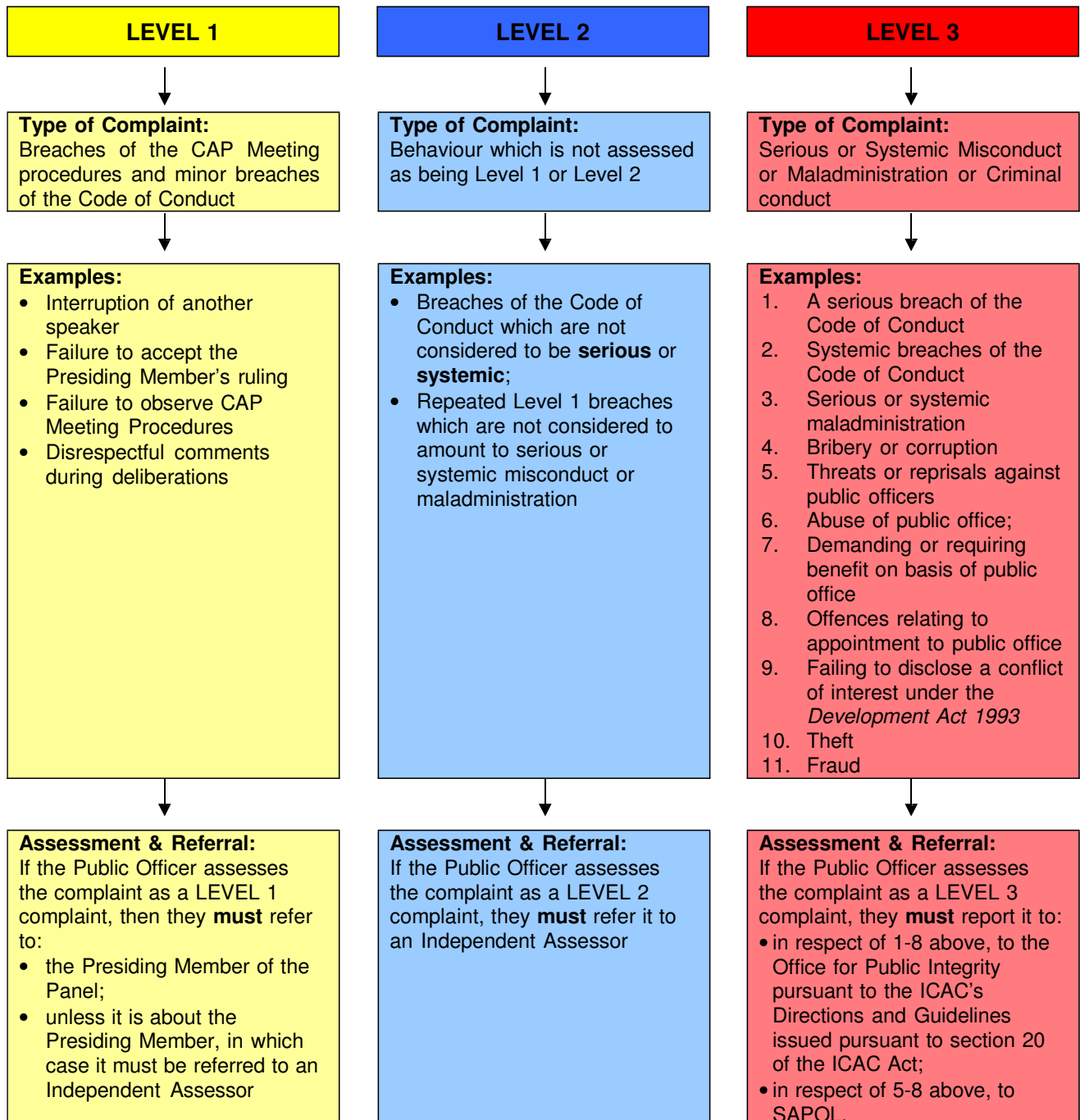
The CAP member will be given an opportunity to respond to the Public Officer on the complaint.

The other CAP members will not be informed of the complaint.

The Public Officer may request further information from the complainant.

4. Initial Assessment and Referral by the Public Officer

Once the above process has been undertaken, the Public Officer must then assess the level of severity of the Complaint.



5. Investigation of Level 1 complaints

The Presiding Member may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations the subject of the complaint. The Presiding Member must report this determination in writing to the Public Officer.

The Presiding Member may determine that the complaint has substance and make recommendations as to the consequences that should follow. The Presiding Member must report this determination in writing to the Public Officer within 2 weeks from the date of receipt of the complaint.

The recommended consequences may include a request that the CAP member withdraw remarks, a request that the CAP member offer an apology, a request that the CAP member receive training, and/or a request that the CAP member receive counselling from the Presiding Member or another suitable experienced and qualified person.

The Presiding Member may determine that the complaint requires referral to an Independent Assessor for investigation. The Presiding Member must report this determination in writing to the Public Officer.

Where a Level 1 complaint has been referred an Independent Assessor for investigation the determination should be reported to the Public Officer within 4 weeks from the date of referral of the complaint.

Where a Level 1 complaint has been made against the Presiding Member, then the complaint will be referred an Independent Assessor for investigation.

6. Investigation of Level 2 complaints and Level 1 complaints referred to an Independent Assessor

The Independent Assessor may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations that are the subject of the complaint. The Independent Assessor must report this determination in writing to the Public Officer.

If the Independent Assessor identifies issues of substance that warrant investigation:

- The investigation shall be through a thorough and balanced assessment of the evidence and all circumstances relevant to making a fair and reasonable judgement about the matter.
- The CAP member the subject of the complaint shall be provided with a reasonable opportunity to respond to the complaint, explain his/her actions and to make a written submission on the allegations. The member also has the right to have a representative attend any meeting about the complaint with them (including legal counsel).
- The Independent Assessor may, for the purposes of an investigation, request the complainant and/or the CAP member the subject of the complaint and/or a third party to answer questions which may assist the investigation.
- The Independent Assessor may determine that the complaint has substance and make recommendations as to the consequences that should follow. The Independent Assessor must report this determination in writing to the Public Officer.

- The recommended consequences may include suspension or removal of the CAP member from the Panel (requires a Council resolution), provision of training to the CAP member, and/or provision of counselling to the CAP member from the Presiding Member or another suitably experienced and qualified person to the CAP member.
- The Independent Assessor may determine that the complaint requires referral to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body. The Independent Assessor must report this determination in writing to the Public Officer who will refer the complaint to the relevant investigating authority.
- Level 2 complaints investigated and determined by the Independent Assessor must be reported to the Public Officer within 4 weeks from the date of the referral. If the Independent Assessor forms the view that additional time will be required to conclude the investigation and finalise the report the Independent Assessor should bring this to the attention of the Public Officer at the earliest opportunity, and at the very least, before the expiration of the 4 week timeframe.

7. Level 3 Complaints (and level 2 complaints referred to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body)

The relevant body will determine the processes by which these complaints will be handled in accordance with relevant legislation and their own internal processes.

8. Determinations

Level 1 complaints:

The Public Officer must report the determination in writing to the complainant and the CAP member who is the subject of the complaint. The Presiding Member may request that the recommended consequences be implemented.

Level 2 complaints:

The Public Officer must report the determination in writing to the complainant, the CAP member who is the subject of the complaint and the Presiding Member.

The Public Officer must report the determination to the Council if the determination requires a Council resolution. All deliberations by the Council must be conducted in confidence, subject to satisfying the requirements of section 90(3) of the *Local Government Act 1999*, and maintained as confidential until finally determined, at which time the Council must decide the ongoing status of the confidentiality order. The Council may enforce any recommended consequences within its powers.

Note: The section 21 Minister's code of conduct provides that where an allegation of misconduct is made out, the Council may:

- (a) remove the person from the CAP;
- (b) suspend the person from the CAP for a period of time; or
- (c) take any other reasonable action deemed appropriate.

Otherwise, the Presiding Member may request that the recommended consequences be implemented.

Level 3 complaints and complaints referred to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body:

The relevant body will, in accordance with relevant legislation, determine how a complaint is processed and determined and who is notified in this regard.

FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.robe.sa.gov.au

Royal Circus, Robe SA 5276

Copies will be provided to interested parties upon request. Email council@robe.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

POLICY REVIEW

This policy may be amended at any time and must be reviewed at least every four years since its adoption (or latest amendment).