

OFFICIAL

# Behavioural Standards Panel



# GUIDANCE PAPER

GENERAL INFORMATION

COUNCIL MEMBER CONDUCT MANAGEMENT  
FRAMEWORK

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of South Australia

# Behavioural Standards Panel



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## What is the council member conduct management framework?

The council member conduct management framework, established through amendments to the *Local Government Act 1999* (the Act) under the *Statutes Amendment (Local Government Review) Act 2021*, came into operation on 17 November 2022.

This framework makes a clearer distinction between 'behavioural' matters (generally, how council members behave towards others), and 'integrity' matters (matters that, if breached, could affect the integrity of council decisions), and provides much clearer pathways for the management and resolution of issues that arise.

The key features of the new behavioural framework include—

### 1. Managing behavioural matters

Councils have always had—and will continue to have—primary responsibility for managing alleged breaches of standards of behaviour of council members. The Act clarifies relevant standards and processes to better support both the role and expectation of councils.

#### Behavioural Standards

The *Behavioural Standards for Council Members* (Behavioural Standards) are standards published by the Minister, which all members are required to observe.

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.

The Behavioural Standards include behaviour like—

- acting respectfully towards others;
- making every effort to represent their council honestly;
- complying with all council policies.

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The Behavioural Standards are also clear that council members should not bully or sexually harass other members or council employees.

The Behavioural Standards are relatively high level, rather than detailing specific behavioural instructions which councils may establish themselves in 'behavioural support policies'.

## Behavioural support policies

Through 'behavioural support policies', councils may decide themselves what actions, behaviours and standards their members should adhere to. Councils may prepare and adopt behavioural support policies to support appropriate behaviour by council members, and may specify directions or guidelines relating to behaviours that members must observe. These behavioural support policies must not be inconsistent with the Behavioural Standards.

While councils will not be required to have a 'behavioural support policy', councils must consider whether they will have a policy or not, and what it could contain, within six months of each periodic election. This ensures that every council will have this important conversation, early in the new term of the council, about the standards and behaviours that they will hold themselves and their fellow members to.

## Behavioural management policies

Councils will continue to have the primary responsibility for managing instances where standards of behaviour are not met. This will be continued through a requirement for councils to have a 'behavioural management policy', which sets out processes and procedures for dealing with complaints about council member behaviour.

Councils can determine what processes best suit their needs to manage behavioural matters. Instead of undertaking a formal 'investigation' of any complaints (which often results in high legal fees and other costs), section 262B of the Act provides significantly more detail as to what councils' policies may contain, and clarifies that councils can deal with complaints as each council considers appropriate, such as written applications, or brief 'hearings' (subject to principles of procedural fairness).

Section 262C of the Act also includes a range of actions that a council can take in response to a behavioural issue. These actions include censure motions, public apologies, training, and removal from an office within council (e.g. on a committee).

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## 2. Managing repeated or serious behavioural matters

While it is appropriate for councils to continue to manage poor member behaviour, it becomes very difficult for councils to do this where this behaviour is repeated, or has serious repercussions on other members or council employees.

Two key elements of the behavioural framework are directly targeted at this issue—

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The Behavioural Standards Panel has been specifically designed to deal with ‘repeated’ or ‘serious’ misbehaviour, or where a council member has failed to comply with a council’s processes (under its behavioural management policy) or actions resolved by the council (e.g. a requirement to apologise or attend a specific training).

The Panel has been given wide-ranging powers to enable efficient resolution of difficult issues that can arise between council members, or between council members and employees. The Panel has greater actions available to it, including the power to suspend a council member for a maximum period of 3 months (with or without allowance).

For further information, refer to the separate guidance paper on *General Information – Behavioural Standards Panel*.

### Health and safety duties

Section 75G of the Act clarifies that council members must take reasonable care that their acts or omissions do not adversely affect the health and safety of other members or council employees.

Council members must also comply with reasonable directions that may be given to the member by a ‘responsible person’ to protect the health and safety of other members and employees. The ‘responsible person’ is generally the Mayor; or where an affected person is an employee, the chief executive officer.

These duties are in addition to and do not limit the operation of the *Work Health and Safety Act 2012*.

A failure by a council member to comply with these duties is considered ‘serious misbehaviour’ and is grounds for referral to the Behavioural Standards Panel.

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## 3. Managing integrity matters

The Act continues to provide the Ombudsman with a special jurisdiction in relation to the integrity of council members. The Ombudsman's recommendation powers have been expanded to include the ability to recommend suspension (maximum 3 months) of a council member and to apply some recommendations directly to a council member.

More significant sanctions will remain with the South Australian Civil and Administrative Tribunal (SACAT), which will be able impose suspensions for up to 6 months or to remove a member from office and—if necessary—prevent them from standing again for a period of time (not more than 5 years).