

SOUTHERN REGION WASTE RESOURCE AUTHORITY (SRWRA)

(PO-33) BOARD MEMBER COMPLAINT HANDLING POLICY

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SRWRA

1. Introduction

The SRWRA has adopted a Code of Conduct for Board Members. This Code of Conduct is a public declaration of the principles of good conduct and standards of behaviour that the Board Members of the SRWRA have agreed to demonstrate. The standards in the Code of Conduct are in addition to any statutory requirements of the *Local Government Act 1999* or any other relevant Act or Regulation applicable to Board Members in the performance of their role and responsibilities.

This procedure applies when the SRWRA receives a complaint against a board member under the Code of Conduct for Board Members (Code).

2. Definitions

Act means the Independent Commissioner Against Corruption Act (ICAC) 2012

Appropriate Authority that receives disclosure of public interest information includes:

- A *Minister of the Crown*;
- A *member of the police force*- where the information relates to an illegal activity;
- the *Auditor-General* – where the information relates to the irregular or unauthorised use of public money;
- the *Ombudsman* – where the information relates to a public officer;
- a *Responsible Officer*, where the information relates to a matter falling within the sphere of responsibility of a Local Government body; or
- Any other person to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.

Complainant refers to the person who makes a complaint.

Corruption in public administration means:

- An offence against Part 7 Division 4 (offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:
 - i. bribery or corruption of public officers;
 - ii. threats or reprisals against public officers;
 - iii. abuse of public office
 - iv. demanding or requiring benefit on basis of public office;
 - v. offences relating to appointment of public office.
- Any other offences (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer, or an attempt to commit such an offence; or
- Any of the following in relation to an offence referred to in a preceding paragraph:
 - i. Aiding, abetting, counselling or procuring the commission of an offence;
 - ii. Inducing, whether by threats or promises or otherwise, the commission of the offence;
 - iii. Being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - iv. Conspiring with others to effect the commission of the offence.

Directions and Guidelines is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner's website (www.icac.sa.gov.au)

Employee refers to all the SRWRA's employees and includes trainees, work experience students, volunteers and contractors whether they are working in a full time, part time or casual capacity.

ICAC Act is the Independent Commissioner Against Corruption Act 2012.

Maladministration is defined by the ICAC Act 2012 in public administration to mean:

- i. Conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
- ii. Conduct of a public officer involving a substantial mismanagement in or in relation to the performance of official functions; and
 - Includes conduct resulting from impropriety, incompetence or negligence; and

- Is to be assessed having regard to relevant statutory provisions and directions.

(Mandatory Code refers to the Code of Conduct for Council Members as published in the South Australian Government Gazette 29 August 2013).

Misconduct in public administration defined at section 4 of the ICAC Act means:

- Contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- Other misconduct of a public officer while acting in his or her capacity as a public officer.

Office for Public Integrity (OPI) is the office established under the ICAC Act that has the function to:

- Receive and assess complaints about public administration from members of the public;
- Receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the SRWRA and public officers;
- Make recommendations as to whether and by whom complaints and reports should be investigated;
- Perform other functions assigned to the Office by the Commissioner.

Public Administration defined at section 4 of the ICAC Act means without limiting the acts that may comprise public administration, an administrative act within the meaning of the Ombudsman Act 1972 will be taken to be carried out in the course of public administration.

Public Officer includes:

- A board member of the SRWRA, including the Chair;
- An independent member of a SRWRA Committee, and
- An Employee or Officer of the SRWRA.

3. Procedure for Complaints Handling

Breaches of the Code of Conduct

Breaches of the Code may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code for Board Members but are referred to in the appendix. This procedure covers referral of these types of complaints to other agencies.

Alleged Breach

1. Where an alleged breach occurs the complainant should report the allegation, in writing, addressed to the Executive Officer. The allegation should:
 - be specific
 - provide as much evidence as possible to assist an investigation
 - provide the name of the Member who has allegedly breached the Code.
 - Complainants can, at any time, take the alternative option of lodging the complaint with the OPI, which will direct the complaint in accordance with the ICAC Act.
2. The Executive Officer will be responsible for receiving and managing the referral of a complaint and will advise the Chair (or if it relates to the Chair to the Deputy Chair) of receipt of a complaint. The Chair (or Deputy) will determine whether the complaint relates to:
 - behaviour which falls under Part 2 of the Code
 - misconduct which triggers action under Part 3 of the Code or
 - criminal or corrupt behaviour

Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately. (see below at clauses 6 and 7 under Part 3, Mandatory Code (Misconduct))

SRWRA maintains jurisdiction where the complaint deals with the conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Board Members should conduct themselves. Robust debate within the Board which is conducted in a respectful manner is not a breach of this Part.

Having regard to the seriousness of the allegation and information provided, the Chair may:

- seek to resolve the matter immediately
 - refer the complaint to the Local Government Governance Panel.....
 - dismiss the allegation.
3. Within three days of receipt of an allegation, the Member who is the subject of the allegation will be advised by the Chair of the complaint and substance. The Member will also be advised of the manner in which the Chair intends to deal with the complaint.

Alleged Breach of Part 2-Internal response

1. Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties. The Chair may hold meetings with the complainant and the Board Member and may seek mediation and conciliation between the parties in an attempt to resolve the

matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Board Member.

2. The Chair must ensure that the principles of natural justice and procedural fairness are observed.
3. Where the matter is resolved by the Chair to the satisfaction of all parties, the matter will be closed and no further action will be taken. The Chair will send written confirmation to all parties confirming that the matter has been resolved and provide a report to a meeting of the Board which will also be made available to the public.
4. Where the matter cannot be resolved, the Chair will refer the original complaint to the Local Government Governance Panel. Neither the Chair nor the EO will be part of a complaint referred to the Local Government Governance Panel.

Alleged Breach of Part 2 – Referral to the Local Government Governance Panel

1. Where there has been an allegation that a Board Member has breached Part 2 of the Code, the complaint may be referred to the independent Local Government Governance Panel by the Chair under this procedure, without further reference to the Board.
2. Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel's procedures is available on the Governance Panel webpage on the LGA's website under the Rules of Engagement. (www.lga.sa.gov.au)
3. The matter will be assessed initially by the Panel Chairperson who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance. Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Board. The report may recommend to the Board appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Board under clause....of the Code (see below).
4. A breach of Part 2 of the Code must be the subject of a report to the Board. If following investigation by the Governance Panel, a breach of Part 2 of the Code is found, the breach must be the subject of a report to the Board (clause ...of the Code). The Board may, by resolution, take any of the following actions:
 - Take no action;
 - Pass a censure motion in respect of the Board Member;
 - Request a public apology, whether written or verbal;
 - Request the Board Member to attend training on the specific topic found to be breached;

- Resolve to remove or suspend the Board Member a position within the Board (not including the Board Member's position);
- Request the member to repay monies to the SRWRA.
- Notify relevant Council and request replacement Board Member

Appeals

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

Part 3 – Mandatory Code (Misconduct)

1. Any person may report an alleged breach of Part 3 of the Code to the Board, the Ombudsman or the Office of Public Integrity. Alleged breaches of this Part made to the Board or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
2. Under the Code, a Board Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Chair of the Board or the Executive Officer, the Ombudsman or the Office of Public Integrity.
3. A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.
4. A failure of a Board Member to co-operate with the Board's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
5. A failure of a Board Member to comply with a finding of an investigation under Part 2 of the Code, adopted by the Board, may be referred for investigation under Part 3.
6. Repeated or sustained breaches of Part 2 of the Code by the same Board Member may be referred, by resolution of the Board, to the relevant authority as a breach of Part 3.
7. A report from the Ombudsman that finds a Board Member has breached Part 3 of the Code must be the subject of a report to a public meeting of the Board.
8. The Board must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Board following receipt of these recommendations.

Criminal Matters – Appendix To The Code of Conduct

1. The matters within the Appendix to the Code are matters for which a criminal penalty attaches. These matters must be reported to the OPI. In addition, allegations of a breach of any of the offence provisions in the Local Government Act must also be reported to the OPI. (See the SRWRA's Fraud

and Corruption Prevention Policy for further information on reporting requirements or the Directions and Guidelines issued by the Independent Commissioner Against Corruption).

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

4. Further Information

Members of the public may inspect this policy on SRWRA's website www.srwra.com.au and at the principal office of the SRWRA at 112 Bakewell Drive Seaford Heights, SA 5169.

On payment of a fee, a copy of this Policy may be obtained from the SRWRA, or otherwise may be downloaded free from the SRWRA's website.

5. Statement of Adoption and Review

This policy was adopted on 3 November 2014 and will be reviewed in conjunction with the review of SRWRA's Code of Conduct for Board Members.

The SRWRA may at any time alter this policy, or substitute a new policy.

6. Other Relevant Policies/Procedures

Code of Conduct for Board Members.

Copies of SRWRA's policies are available on its website www.srwra.com.au or by contacting SRWRA on 8327 0304 and /or info@srwra.com.au