

## 1. POLICY CERTIFICATION

Policy title:	<b>Members' Disciplinary Policy</b>
Policy number:	<b>CL002</b>
Category:	<b>Council Policy</b>
Classification:	<b>Council</b>
Status:	<b>Approved 24<sup>th</sup> November 2011</b>

## 2. PURPOSE

This policy aims to protect and enhance the integrity and reputation of Roper Gulf Regional Council (RGRC) by maintaining appropriate standards of conduct for Councillors, Local Authority Members and Council Committee Members.

## 3. SCOPE

This policy applies to all Roper Gulf Regional Councillors, Local Authority Members and Council Committee Members.

## 4. POLICY STATEMENT

When Members take up their position they are bound by the Roper Gulf Regional Council Code of Conduct that is authorised under sections 77 & 78 of the *Local Government Act 2008*. The Local Government Act outlines the following processes:

- a complaint against a Member for breaching the Code of Conduct (sections 79 – 83) to the Agency (Department of Local Government)
- a complaint against a Member to the Roper Gulf Regional Council.

This policy should be read in conjunction with the RGRC Code of Conduct and the RGRC Complaints Policy (ADM003).

## 5. DEFINITIONS

<b>The Agency</b>	Department of Local Government
<b>Complaint</b>	Any expression of dissatisfaction about the behaviour of a Member. A complaint may be made verbally, but it must be recorded in writing to be processed as a formal complaint. There is a form for recording complaints attached to the Roper Gulf Regional Complaints Policy, but it is not compulsory to use this form to record a complaint– a simple letter covering the same information is acceptable.
<b>Disciplinary Committee</b>	A committee established by the Minister for Local Government to investigate complaints about Code of Conduct breaches by Members (Local Government Act section 80).
<b>Member</b>	Member means, according to context, a member of a council, a local authority or a council committee (Local Government Act section 3).
<b>Delegate</b>	The Mayor may refer the complaint against a member to a delegate such as the relevant Ward Councillor or the CEO or both.

## 6. PRINCIPLES

This policy complements the *Local Government Act 2008*, Roper Gulf Regional Council's Code of Conduct for Members, RGRC Complaints Policy and the RGRC values of honesty, equality, accountability, respect and trust.

Anyone who believes a Member has breached the Code of Conduct is entitled to complain directly to the Agency's Disciplinary Committee.

Complaints referred to in this Policy are those coming directly to RGRC unless it is stated otherwise.

All Members will have ongoing professional development regarding the code of conduct.

A copy of the Code of Conduct, the Complaints Policy and Disciplinary Policy will be issued to all Members and will be available on the website, at Head Quarters and in all Service Delivery Centres.

Councillors cease to be Members of a Council in the event that they are disqualified and no longer eligible from office under sections 37 or 39 of the *Local Government Act 2008*.

Councillors can only be removed from office by the Minister on the recommendation of the Disciplinary Committee or if they are convicted of an offence showing them to be unfit to remain in office (*Local Government Act section 83*).

Local Authority and Council Committee Members are appointed by the Roper Gulf Regional Council (RGRC) and can be removed by the Council without reference to the Agency or the Minister.

A Member, against whom a complaint is made, will be given the opportunity to state their case and talk the situation through with the Mayor or his/her Delegate.

All complaints against Members will be discussed by Council in a closed session of an Ordinary Council Meeting.

A Member may apply to the Mayor for a leave of absence in the case of serious personal problems or illness.

A Member may have a support person present at any stage of the disciplinary process.

A Member will not directly approach a person who has made a complaint about them in regards to that complaint, without having an adult witness present.

Details about all complaints must be filed under the relevant year in the Complaints Directory in the InfoXpert system. These files are protected with security restrictions that allow only senior staff to access them directly.

The Mayor is responsible for Council discipline and may request the assistance of the Deputy Mayor, Ward Councillor and/or CEO for investigations of complaints or for ongoing support of cases that are required to be forwarded to the Agency.

The Agency and/or LGANT may be approached at any time for confidential advice or assistance in relation to actual or alleged misconduct by a Member.

Council retains the right to seek legal advice at any time and to refer misconduct that may involve criminal behaviour to the police.

Council retains the right to refer issues to the Agency's Disciplinary Committee at any stage of the disciplinary process if it appears that a serious breach of the Code of Conduct may be involved.

## **7. POLICY CONTENT**

### **7.1 Four sources of information about alleged misconduct**

Alleged misconduct by a Member can be grouped into four areas according to the source of information:

- Possible inappropriate behaviour but no formal complaint
- Member convicted of an offence
- Formal complaint to Roper Gulf Regional Council
- Formal complaint direct to the Agency (All this stuff deleted is repeated in the next section)

### **7.2 Disciplinary process**

#### ***7.2.1 Informal disciplinary process - preliminary discussion***

When it appears that a Member may have engaged in misconduct, except when a complaint has gone direct to the Agency, the Mayor or his/her Delegate will initiate informal discussions with the Member involved. The Mayor/Delegate will provide specific details of the alleged misconduct. At this stage it will be decided whether further investigation is needed or whether the Member has no case to answer.

Further investigation is needed if the alleged misconduct is serious, regardless of whether there is a formal complaint or not. If it appears likely that the Member has committed a breach of the Code of Conduct, the Mayor/Delegate will commence stage one of the formal disciplinary process.

If the complaint is about an issue that is less serious in nature, and it appears that the complaint is justified, the Mayor/Delegate will advise the Member that the interview is the first stage of the disciplinary procedure and that continued breaches of the Code of Conduct may result in more formal disciplinary action. The type of conduct that is appropriate should also be discussed along with specific examples of how the Member needs to improve their performance. It is expected that the Member will improve his or her behaviour after this discussion.

### **7.2.2 Formal disciplinary process stage one**

If a complaint about misconduct appears to be justified or if a Member has not responded to preliminary discussions about less serious misconduct, a formal meeting with the Mayor/Delegate will take place. At this meeting the previous issues of the Member will be raised formally as will any additional evidence produced by investigation of the complaint. The disciplinary process will be explained to the Member again and a first letter of warning will be issued. This letter will include a record of:

- The actions deemed to be misconduct;
- The Mayor's expectations of the Member;
- An action plan for the Member highlighting areas where immediate improvement needs to occur;
- A monitoring period where appropriate; and
- Action likely to be taken if performance does not improve.

The Member will be asked to sign the letter of warning and will be provided with a copy. The original will be kept on the Member's personal file in the locked cabinet in the Governance Office. It is expected that the Member will improve their behaviour after this formal meeting.

### **7.2.3 Formal disciplinary process stage two**

If there is no improvement in the Member's performance during the agreed monitoring period, or if another breach of the Code of Conduct occurs during that time, the Member will be promptly contacted by the Mayor/Delegate and another formal meeting arranged. A second letter of warning will be completed including a record of:

- The actions deemed to be misconduct (original and new/continued)
- The Mayor's expectations of the Member;
- An action plan for the Member highlighting areas where immediate improvement needs to occur;
- A monitoring period where appropriate; and
- Action likely to be taken if the Member's behaviour does not improve, or any more breaches of the Code of Conduct occur. This may include the fact that the Council will refer the issue to the Disciplinary Committee for investigation if there is no improvement in behaviour. In other words, this is the **final warning process** of Roper Gulf Regional Council.

The Member will be asked to sign the letter of warning and will be provided with a copy. The original will be kept on the Member's personal file in the locked cabinet in the Governance Office. It is expected that the Member will show immediate and sustained improvement in behaviour after this final warning.

### **7.2.4 Formal disciplinary process stage three**

If the Member does not show immediate improvements in his or her behaviour, or if he or she commits another breach of the Code of Conduct, the Mayor/Delegate will prepare a report for the Council (or Finance & Audit Committee if Council

chooses to delegate the task). The situation will be discussed in closed session at the next relevant meeting, or out of session if urgent, and a motion will be moved to refer the matter to the Agency's Disciplinary Committee for investigation

### **7.3 Situations that lead to automatic disqualification of Councillors**

The Local Government Act specifically disqualifies people from becoming candidates for Councillor or from staying on as Councillors if they:

- a. hold a judicial office (other than Justice of the Peace) (section 37 (1) (a));
- b. are bankrupt (section 37 (1) (b));
- c. have been sentenced to a term of imprisonment (which has not expired) of one year or more (section 37 (1) (c));
- d. are a Council employee disqualified in accordance with the criteria in the Ministerial Guidelines (section 1 (2) Ministerial Guidelines);
- e. owe the Council money for rates or surcharge and fail to pay off the debt within six months (section 37 (1) (e));
- f. are certified mentally unfit by two medical practitioners (section 37 (1));
- g. are no longer enrolled as an elector residing within the Shire (section 39 (1) (c)); or
- h. fail to attend two consecutive ordinary Council meetings without permission from Council (section 39 (1) (d)).

In these situations, the Councillor is automatically disqualified even if there has been no breach of the Code of Conduct or formal complaint. The Council can formalise this process without going through the Agency.

### **7.4 Situations that lead to automatic disqualification of Local Authority or Council Committee Members**

The *Local Government Act 2008* does not apply the list of criteria for automatic disqualification above in 7.3 to Local Authority or Council Committee Members. It is Roper Gulf Regional Council Policy that Local Authority and Council Committee Members will automatically be disqualified from the relevant Board or Committee if they:

- a. are bankrupt;
- b. have been sentenced to a term of imprisonment (which has not expired) of one year or more;
- c. owe the Council money for rates or surcharge and fail to pay off the debt within six months;
- d. are certified mentally unfit by two medical practitioners;
- e. fail to attend two consecutive meetings of the relevant Local Authority or Council Committee without permission from that Board or Committee;
- f. lose a vote of no confidence by at least 60% of the Members of the Board or Committee on which they serve.

Council reserves the right to suspend Local Authority or Council Committee Members whilst any of the above matters are being investigated. An apology from the Member will be automatically assumed and accepted for any meetings held by the relevant Board or Committee during any such period of suspension.

### 7.5 Recording of the disciplinary process for Members

Basic notes should be kept of disciplinary process meetings between Mayor/Delegate and Member and of any investigatory interviews. These notes should record the date, the source of the complaint, the Mayor's or investigating officer's findings, the outcome of the meeting(s) and should be clearly marked 'Confidential'. These notes must be placed on the Member's file in the locked cabinet in the Governance Office.

The original complaint letter/record and a brief summary of the outcome must be filed under the relevant year in the Complaints folder of the InfoXpert system. This will allow Roper Gulf Regional Council to maintain an accurate complaint register and provide brief data on complaints in the Annual Report.

### 7.6 Expiry of letters of warning

If a Member's behaviour has improved and there have been no further complaints of misconduct against them, a letter of warning expires two years after the date on which it was issued. If that Member commits a breach of the Code of Conduct after this time, the disciplinary process will start from the beginning again.

## 8. REFERENCES

Acknowledgements (original author/source documents)	<b>Councillor Disciplinary Procedures draft 1 May 09 by Arianne McCormack. Re-worked by Moira McCreesh Nov-Dec 09. Reviewed &amp; updated by Moira McCreesh/Sharon Hillen Oct-Nov 10.</b>
Related Policies	<b>Complaints Policy. Code of Conduct.</b>
Related Publications	<b>Local Government Act 2008.</b>

## 9. DOCUMENT CONTROL

Policy number	<b>CL002</b>
Policy Owner	<b>Governance, Corporate Planning and Compliance Manager</b>
Endorsed by	<b>Council</b>
Approved	<b>17<sup>th</sup> December 2010</b>
Revisions	<b>Oct 2010</b>
Amendments	Nov 10 Title of policy changed from 'Councillor Disciplinary Policy' to 'Members' Disciplinary Policy' and policy altered to cover all Members, not only Councillors. Clarified that Council cannot remove Councillors from office. Automatic disqualification criteria for Local Board and Council Committee Members added.
Next revision due	<b>May 2015</b>

## 10. CONTACT PERSON

Position	<b>Manager Governance, Corporate Planning and Compliance</b>
Contact number	<b>89 729 004</b>