

City of Port Phillip

Assessment of Code of Conduct Complaint Resolution Process

Internal Audit Report

(Extract of relevant body of report)

CONFIDENTIAL

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Executive Summary

We have assessed the integrity and appropriateness of the investigation and resolution process in relation to the Code of Conduct Complaint received by Council on [REDACTED] 2019 and have found that overall, the receipt, assessment, investigation and resolution process was appropriate and followed the Councillor Code of Conduct and Complaint Handling Process. The Mayor decided to resolve the matter herself which is permitted by the Code of Conduct.

The involvement of a specialist lawyer to undertake key parts of the investigation and report on conclusions provided a level of independence and specialist knowledge in the Local Government Act.

The conclusions reached by the advising lawyer and agreed with the Mayor were based on interpretation of law and 'standards of proof', as to what constitutes [REDACTED] as contained in the Councillor Code of Conduct and Local Government Act.

The matter was resolved between the Mayor and councillors with reference to the conclusions and advice of the advising lawyer.

The Mayor communicated appropriately with all Councillors throughout the process including on receipt of the complaint, completion of the CEO Desktop Assessment, and decision on investigation process and engagement of an external lawyer. The Mayor appropriately communicated the summary of findings and conclusion to the [REDACTED] Councillors that the complaint was investigated as per the Councillor Code of Conduct and it was determined that the alleged breaches have not been substantiated, noting that the Code does not allow for escalation of this complaint to arbitration.

Background

The CEO and the Mayor received a complaint from Cr [REDACTED] and also on behalf of Cr [REDACTED] on [REDACTED] 2019 raising a number of allegations against [REDACTED] other councillors.

As per the Councillor Code of Conduct - Complaint Handling Process, if a Councillor wishes to make a complaint about another Councillor's conduct, the following steps are required:

- The complaint is submitted to the Mayor in writing.
- The Mayor will provide the complaint to the CEO who will perform a desktop assessment to determine the validity of the complaint to be dealt with under the Code of Conduct (if the CEO is conflicted then the CEO will delegate their responsibilities to a member of the ELT).
- The Mayor will receive the result of the desktop assessment of the complaint from the CEO and may attempt to resolve the complaint by looking into the matter, discussing with the Councillors involved and determining an appropriate way to deal with the matter.
- The complainant will be advised (by the Mayor) that the matter has been considered, discussed with the Councillor (s) involved and how the matter was resolved.
- If the Mayor is not able to resolve the matter, the Mayor has two other options to resolve the matter:
 - the Mayor will ask the Principal Conduct Officer (PCO) to arrange for mediation to occur, which may involve an external mediator.
 - The Mayor may ask the Principal Conduct Officer to appoint an arbiter if:
 - the matter is not able to be resolved through mediation.
 - A Councillor involved in the internal resolution process indicates that they are not satisfied with the resolution; or
 - In the case where there are repeated complaints.

Similarly, as per **Section 4 of the Councillor Code of Conduct (Council's Internal Issue Resolution Procedure)** –

Step 2 (b) 'Early Intervention':

'Conduct by Councillor that is inconsistent with the Code and requires intervention', then:

- Mayor is to be notified in writing, providing details of the alleged contravention, when it occurred and who it involved;
- Mayor will assess the information;
- Mayor will speak with relevant Councillors or concerned parties and provide an opportunity for them to be heard where appropriate; and
- Mayor will send written confirmation to the Councillor's and concerned parties confirming whether the matter was discussed and how it was resolved.

Scope and Results

The scope of our work included an assessment of the integrity and appropriateness of the complaint investigation and resolution process undertaken for the Code of Conduct complaint received by the Mayor on [REDACTED] 2019.

Our detailed assessment is included in Appendix 1 below.

Scope Area	Process Element	Reference to Finding
Code of Conduct Incident	Code of Conduct complaint notification	Not applicable
	Complaint assessment	Refer 'Findings'
	Complaint investigation approach and powers	Not applicable
	Investigation findings and conclusion	Not applicable
	Resolution and closure	Not applicable

Scope Limitations

Our scope included assessing the complaint investigation and resolution process in accordance with the Code of Conduct and Complaint Handling Process. We did not investigate any aspect of the specific allegations. While we discussed with the lawyer assisting the Council the investigation process he undertook, we did not audit the approach or interpretations adopted by the lawyer nor did we assess the accuracy of the relevant legal and regulatory interpretations by the lawyer in reaching his conclusions.

Work Performed

We undertook the following procedures:

- Assessed the complaint email received from Councillor [REDACTED] on [REDACTED] 2019;
- Assessed the following documents:
 - Desktop assessment performed by the CEO and the underlying documentation referenced in the assessment;
 - Email communications received by the Mayor from the Councillors on the matter;
 - Email communications sent by the Mayor to the respective Councillors on the matter;
 - Emails received by the Mayor from the lawyer; and
 - Recommendations report presented by the lawyer to the Mayor.
 - Desktop searches [REDACTED]
- Interviewed the Mayor and the [REDACTED] lawyer to confirm the process undertaken to investigate and resolve the matter.

Finding

We noted the 'Desktop Assessment' did not conclude on the specific allegation element (in the Councillors complaint email) that [REDACTED]. Although this omission did not influence the resolution process or change the investigation conclusion, all allegation elements should be concluded on for completeness.

Recommendation

Update Desktops Assessment Procedure to require that all allegation elements contained in complaints received are addressed and documented; and there is a quality management review of the Desktop Assessment report to confirm all allegations elements are adequately addressed and concluded on.

Management Comment

Agree - noting that [REDACTED]. It would have been appropriate to have specifically referenced the fact and indicate whether it could or could not have been substantiated and we will ensure that this occurs going forward.

Agreed Management Actions	Responsibility	Date for completion
Update Desktop Assessment procedure and conduct training of Governance team to include: <ul style="list-style-type: none"> ▪ All allegation elements of a complaint are to be addressed in the Desktop Assessment; ▪ if an allegation cannot be validated, this is to be documented with reason, in the Desktop Assessment Report; ▪ Management oversight review (by Manager Governance and Organisational Performance) of Desktop Assessment Report to verify that all allegation elements have been documented / addressed in the Desktop Assessment report. 	Manager Governance and Organisational Performance	30 September 2020

Appendix 1 – Code of Conduct Complaint Resolution Process Assessment

Presented below is our assessment of the integrity and appropriateness of the complaint resolution process undertaken for resolution of the Code of Conduct complaint.

Key	Description
✓	Process was appropriate and complied with the Conduct of Conduct and Complaints Handling Process
○	Some elements of the process could be improved

Assessment step	Procedure / Policy requirement	Work done by Council	Our Assessment
Receipt of complaint	Councillor Code of Conduct - Complaints Handling Process: 'Councillor to make a complaint about another Councillor's conduct to the Mayor in writing'	The allegation email was addressed to the CEO and the Mayor and the joint complainant was copied in. The Councillor who wished to lodge the complaint was informed by the CEO of the correct procedure to lodge the complaint as per the Councillor Code of Conduct - Complaints Handling Process, which is to submit directly to the Mayor (not including the CEO).	✓ Notwithstanding the complaint email was submitted to both the Mayor and the CEO, notification of complaint was received by the Mayor in writing as per the Councillor Code of Conduct - Complaints Handling Process.
		The Mayor sent the following communications to the relevant Councillors: <ul style="list-style-type: none"> Acknowledgement emails to the █████ Councillors who filed the complaint(s) advising them she would advise them on next steps. Emails to the █████ Councillors who were subject of the allegation informing them of the complaint(s) received against them. 	✓ Appropriate communication protocol undertaken.
Assessment of the Complaint	Councillor Code of Conduct Complaints Handling Process - CEO is required to perform a desktop assessment to determine the validity of the complaint to be dealt with under the Code of Conduct.	Mayor requested the CEO to conduct a Desktop Assessment. Desktop assessment was performed by the CEO (conducted by Governance team) to determine the validity of the complaint and that it qualified as an alleged breach of the Code of Conduct. The Mayor provided updates to the █████ Councillors on the status of the Desktop assessment process and responded to any questions the Councillors submitted in relation to the Resolution process.	✓ Desktop assessment and the options presented to the Mayor were in accordance with the Councillor Code of Conduct Section 4 and the Complaint Handling Process.

Assessment step	Procedure / Policy requirement	Work done by Council	Our Assessment
	<p>Section 2.6 (c) Conflicts of Interest Disclosure defines an applicable gift to be a receipt of an applicable gift or gifts from a person or organisation with a direct interest.</p> <p>Section 2.7 Consistent with section 76D of the Act, Councillors must not misuse his or her position to:</p> <p>a) Gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or</p> <p>b) Cause, or attempt to cause, detriment to the Council or another person.</p>	<p>Desktop assessment established the following:</p> <ul style="list-style-type: none"> • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] <p>The outcome of the Desktop Assessment was that it meets the requirements for the matter to be dealt with under the Code of Conduct Complaints Handling Process; and further information is required from the [REDACTED] Councillors and that legal advice is required to determine [REDACTED]</p>	<p>○ Desktop assessment did not conclude on the specific allegation item that [REDACTED]</p>
<p>Complaint investigation approach and powers</p>	<p>Per the Councillor Code of Conduct - Complaints Handling Process - if a Councillor wishes to make a complaint against another Councillor's conduct, it provides that:</p> <ul style="list-style-type: none"> ▪ The Mayor will attempt to resolve the complaint by looking into the matter, discussing with Councillor (s) involved, and determining an appropriate way to deal with the matter. <p>Code of Conduct - Section 4 – Council's Internal Resolution Procedure, the mayor has three options</p> <p>Step 2:</p> <p>(a) resolve the matter themselves by discussing with the Councillor(s) and</p>	<p>The Mayor was presented with three options by the CEO from the Desktop Assessment to resolve the complaint:</p> <ol style="list-style-type: none"> 1. Mayor attempts to resolve the matter with the assistance of an independent legal counsel to support the resolution. 2. Mayor requests that a mediator is appointed. 3. Mayor requests that Principal Conduct officer engage an arbiter to investigate the matter and report of the arbiter be presented to the Council. <p>Council advice to the Mayor was to engage legal advice on relevant questions to ask Councillors and investigation approach.</p> <p>The Mayor advised the CEO that she elects Option 1 for resolving the matter and requested the CEO to engage an external lawyer in accordance with her brief.</p> <p>Notification via email was sent by the Mayor to all [REDACTED] Councillors involved, advising them of the completion of the desktop assessment</p>	<p>✓ Within the provisions of the Code of Conduct Handling Process the Mayor was able to decide to resolve the complaint herself, and on advice from the Desktop Assessment, engaged legal advice to support the resolution process.</p> <p>This also achieved a level of independence, given the allegations made by [REDACTED] Councillors were against [REDACTED] other Councillors.</p> <p>The mayor appropriately advised all Councillors involved of the resolution process, where they would have the opportunity to be heard.</p>

Assessment step	Procedure / Policy requirement	Work done by Council	Our Assessment	
	<p>determine an appropriate way to deal with the matter.</p> <p>(b) If the Mayor is not able to resolve the matter, the Mayor will ask the Principal Conduct Officer (PCO) to arrange for mediation to occur.</p> <p>Step 3: The Mayor may ask the Principal Conduct Officer to appoint an arbiter</p>	<p>and the decision to engage independent legal counsel to assist with the resolution process, and that they would each be contacted by the lawyer.</p> <p>██████ Local Government Lawyers were appointed by the Council and a legal brief was provided to the lawyer who then conducted the investigation.</p> <p>The Mayor elected not to be part of the email enquiries and conversations between the lawyer and the Councillors to maintain independence and allow the Councillors to respond without bias.</p>	<p>✓</p>	
Investigation process - findings and conclusion	<p>Councillor Code of Conduct - Complaints Handling Process - The Mayor will attempt to resolve the complaint by looking into the matter, discussing with Councillor (s) involved, and determining an appropriate way to deal with the matter.</p> <p>Section 4 - Step 2 (b) Council's Internal Issue Resolution Procedure - Mayor will speak with the relevant Councillors and provide an opportunity for them to be heard, where appropriate.</p>	<p>The Mayor briefed the lawyer who conducted the investigation by communicating by email with each of the █████ Councillors to obtain information and ask questions.</p> <p>The lawyer provided updates to the Mayor during the investigation.</p> <p>The Lawyer prepared a report on findings and conclusions via email that addressed:</p> <ul style="list-style-type: none"> ▪ The allegations ▪ The complaint ▪ The evidence sighted ▪ The conclusions on each of the allegations ▪ Resolution process with the █████ Councillors. 	<p>✓</p>	<p>Process was appropriate. The lawyer undertook the investigation and provided a report on his findings and conclusions to the Mayor.</p>
Resolution and Closure	<p>Councillor Code of Conduct - Complaints Handling Process</p> <p>Section 4 - Step 2 (b) Council's Internal Issue Resolution Procedure - Mayor to send a written confirmation to the councillor/s and concerned parties confirming whether the matter was discussed and how it was resolved.</p>	<p>Mayor received and accepted the recommendation provided by the lawyer in his Summary of Findings and Conclusions.</p> <p>On advice from the lawyer, the Mayor informed the relevant parties being the █████ Councillors, in writing that pursuant to Step 2(b) (Early Intervention) of the Internal Resolution Procedure of the Councillor Code of Conduct.</p> <ul style="list-style-type: none"> ▪ the complaint was investigated as per the Councillor Code of Conduct and has been resolved on the basis that the alleged contraventions have not been substantiated; and ▪ noting that the Code does not allow for escalation of this complaint to arbitration. 	<p>✓</p>	<p>The process complies with Councillor Code of Conduct - Complaints Handling Process and the Code of Conduct – Internal Resolution Procedure (Section 4 - Step 2 (b)).</p>