

THE BAROSSA COUNCIL ELECTED MEMBER BEHAVIOURAL MANAGEMENT PROCESS



1 Purpose

- 1.1 This Process sets out the procedures for dealing with an allegation of a breach of the behavioural requirements applying to Elected Members. These procedures do not apply to complaints about council employees or the council as a whole.
- 1.2 A complaint made in accordance with this Process must be lodged within 6 months of the behaviour that is inconsistent with the behavioural requirements occurring. A decision may be made to accept a complaint lodged more than 6 months after the behaviour that is inconsistent with the behavioural requirements occurring on a case-by-case basis, at the discretion of the person responsible for managing the complaint.
- 1.3 Community members can lodge a complaint with the Council in accordance with this Process but cannot lodge a complaint directly with the Behavioural Standards Panel.

2 Process

This Process has three distinct stages to the approach that will be taken to address complaints about the behaviour of Elected Members:

- 2.1 **Part 1: Informal Action**
Where the matter can be resolved directly between the parties
- 2.2 **Part 2: Formal Action**
Where the matter cannot be resolved using informal action and a formal process of consideration is required.
- 2.3 **Part 3: Referrals to the Behavioural Standards Panel**
the circumstance under which the Mayor, the Council or other authorised person(s) will make a referral.

3 Dispute versus Complaint

- 3.1 It is important to distinguish between a dispute or a complaint. A dispute is generally a difference of opinion or a disagreement between two parties. It may involve a heated discussion or some other unsatisfactory exchange between parties but may not amount to conduct inconsistent with the behavioural requirements. Ideally disputes will be handled directly by the parties involved and will not escalate to a complaint requiring action (even informal action) under this Process. The Mayor (or another person) may play a role in facilitation a resolution to a dispute.

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- 3.2 This Process is intended to deal with matters where conduct is alleged to have been inconsistent with the behavioural requirements, rather than where members of council have differences of opinion, even when robustly put.

4 Confidentiality

- 4.1 Complaints made in accordance with this Process will be managed on a confidential basis until such a time as they are required to be reported to Council in a public meeting in accordance with this Process or are otherwise lawfully made public or disclosed.
- 4.2 Access to information relating the complaints and information about complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided within this policy.
- 4.3 A person who has access to information about a complaint (including the complaints will be limited to parties to the complaint and individuals with a responsibility within the complaint handling process or as otherwise provided for within this Process.
- 4.4 A person who has access to information about a complaint (including the complainant and the person complained about) must not directly, or indirectly disclose to any person (including to a council member) that information except:
- 4.4.1.1 For the purpose of dealing with the complaint
 - 4.4.1.2 Where required by law
 - 4.4.1.3 For the purpose of obtaining legal advice or legal representation, or medical or psychological assistance from a medical practitioner, psychologist or councillor
 - 4.4.1.4 Where the disclosure is made to an external party, investigating the complaint, or mediator/conciliator engaged in accordance with this Process
 - 4.4.1.5 Where the information has been made public in accordance with this Process or this Policy otherwise authorises or requires the disclosure of the information
- 4.5 This is not to be confused with formal consideration at a Council Meeting of any matter arising from application of this Process. Items presented to Council must be assessed on a case-by-case basis in accordance with the requirements of Section 90 of the *Local Government Act 1999*.
- 4.6 A complainant may request their identity be kept confidential from the person complained about. This does not constitute an anonymous complaint. The person responsible for managing the complaint will consider such requests on a case-by-case basis, having regard to any applicable legal requirements.

5 Part 1: Informal Action

- 5.1 Council encourages informal resolution of concerns regarding behaviour alleged to be contrary to the behavioural requirements. A person may therefore consider raising the matter directly with the Elected Member concerned.

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- 5.2 Alternatively, a person may raise their concern with the Mayor on an informal basis. If the concerns relate to or involve the Mayor the person may raise the matter with the Deputy Mayor (if appointed) or other Elected Member appointed by the Council as the person responsible for managing complaints under this Process.
- 5.3 If the Mayor or person responsible for managing the complaint considers that access to resources to support impacted parties and facilitate early resolution of the matter should be provided, the Mayor or person responsible for managing the complaint will request the CEO to facilitate access to relevant resources. The CEO will not refuse any reasonable request for resources made in accordance with this Process.

Record Keeping

- 5.4 Where the Mayor or person responsible for managing the complaint addresses the matter through informal action, a record should be made setting out:
- 5.4.1 Details of the complainant
 - 5.4.2 Details of the person complained about
 - 5.4.3 A summary of the matter
 - 5.4.4 A summary of actions taken in response
 - 5.4.5 Details of agreed actions (if any)
- 5.5 If informal action does not successfully resolve the matter, the record may be made available to an investigation process as provided for under this Process or to the Behavioural Standards Panel.

6 Part 2: Formal Action

- 6.1 This Part sets out the process for formal action in response to a complaint regarding the behaviour of Elected Members and addresses the manner in which a complaint will be:
- 6.1.1 Received
 - 6.1.2 Assessed
 - 6.1.3 Investigated
 - 6.1.4 Resolved
 - 6.1.5 Recorded
- 6.2 A complaint made under the Behavioural Management Process must:
- 6.2.1 Be received in writing. Subject to an alternative resolution of the Council, a complaint should be marked with "Confidential Elected Member Complaint" and forwarded to the relevant email or physical address as published on the Council's website.
 - 6.2.2 Provide the name of the Elected Member who has allegedly breached the behavioural requirements, the name and contact details of the complainant, the name and contact details of the person submitting the complaint (if different to the complainant) and the name and contact details of any witnesses or other persons able to provide information about the complaint.

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- 6.2.3 Be specific (including identifying the behavioural requirements the complainant alleges have been breached)
- 6.2.4 Provide as much supporting evidence as possible to assist an investigation, including the grounds and circumstances of the complaint (e.g. where, when, impact of the behaviour, actions taken to try to resolve the issue, relevant records or documents)
- 6.2.5 Identify the outcome being sought.
- 6.2.6 Be lodged within six months of the alleged conduct occurring on the basis that it is important to address alleged breaches of behavioural requirements in a timely manner (with discretion provided to the person responsible for managing the complaint to allow a longer time limit to apply in particular cases. This will be assessed on a case-by-case basis).

Receipt of a complaint

- 6.3 This step is an administrative process undertaken by the CEO or delegate:
 - 6.3.1 Receipt
 - 6.3.2 Initial acknowledgement
 - 6.3.3 Record keeping; and
 - 6.3.4 Allocation of the matter to the person responsible for managing the complaint.
- 6.4 The CEO or delegate does not undertake an assessment of the merits of the complaint.
- 6.5 Receipt of the complaint will be acknowledged within 2 business days or as soon as reasonably practicable and a copy of this Process and the Policy will be provided to the person making the complaint.
- 6.6 The complaint should be directed to the person responsible for managing the complaint in accordance with this Process.
- 6.7 A complainant may withdraw their complaint at any stage.

Initial complaint assessment

- 6.8 An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made at this stage.

Step 1

- 6.9 The person responsible for managing the complaint will undertake an assessment of it to determine whether the content of the complaint relates to the behavioural requirements and whether the conduct occurred in the context of the Elected Member carrying out their official functions and duties.
- 6.10 In undertaking the assessment, the person responsible for managing the complaint will have regard to the following matters:

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- 6.10.1 The person that is making the complaint (or on whose behalf the complaint has been made) has a sufficient interest in the matter.
The complaint is trivial, frivolous or vexatious or not made in good faith.
- 6.10.2 The complaint has been lodged with another authority.
- 6.10.3 The subject matter of the complaint has been or is already being investigated by the Council or another body.
- 6.10.4 It is unnecessary or unjustifiable for the Council to deal with the complaint.
- 6.10.5 The Council has dealt with the complaint adequately.

Step 2

- 6.11 If the person responsible for managing the complaint considers the matter warrants further consideration, the person complained about should be advised that a complaint has been received and is undergoing an initial assessment in accordance with this Process. They should be provided a summary of the matter, at a sufficient level of detail, to understand the nature of the allegations and enable them to provide a preliminary response. This may be achieved by a discussion between the person responsible for managing the complaint and the person complained about, taking into account the principles of this Process. The person complained about may have a support person present during any discussions.
- 6.12 The person complained about should be given a reasonable opportunity, but no more than ten business days, to provide a response to support the initial assessment. The person responsible for managing the complaint may provide a longer period of time for provision of a response at their discretion. The person responsible for managing the complaint should have regard to any response provided in determining the action resulting from the initial assessment.

Action from initial assessment

- 6.13 The person responsible for managing the complaint will determine what action will result from the initial assessment. A matter may proceed to formal consideration under this Process, unless there are grounds to take one of the following actions pursuant to section 262B(2)(b):
 - 6.13.1 Refusing to deal with the complaint.
 - 6.13.2 Determining to take no further action.
 - 6.13.3 Referring to an alternative resolution mechanism or to propose training for relevant parties (e.g. facilitated discussion, provision of training, mediation, arbitration, conflict resolution, etc.)
 - 6.13.4 Referring the matter to another body or agency (e.g., the Ombudsman SA or the Behavioural Standards Panel)
- 6.14 The outcome of the initial assessment will be advised to the complainant and person complained about in writing as far as is permitted by law.

Refusing to deal with the complaint/Determining to take no further action

- 6.15 Where the person responsible for managing the complaint makes a decision not to proceed with formal consideration of the matter the following steps should be taken:

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- 6.15.1 The complainant must be provided written reasons explaining the decision.
 - 6.15.2 The person complained about should be provided with a brief summary of the complaint and the reasons for not proceeding.
 - 6.15.3 A record of these steps and the decision not to proceed should be made.
- 6.16 Whilst a matter may not proceed, the person responsible for managing the complaint may discuss the issues informally with the parties and identify strategies to build skills, facilitate positive relationship development and reduce the likelihood of repeat occurrences.

Decision to refer to alternative resolution mechanism:

- 6.17 The person responsible for managing the complaint may form the view that the optimal way to deal with the complaint is to implement an alternative resolution mechanism such as facilitated discussion, mediation, arbitration, conflict resolution or training.
- 6.18 The person responsible for managing the complaint should discuss the use of a proposed alternative resolution mechanism with the complainant and the person complained about to determine whether there is support for this approach.
- 6.19 If so, the person responsible for managing the complaint should request the CEO take steps to facilitate access to appropriate internal or external support (not being for the purposes of obtaining legal advice) for parties to the complaint. The CEO will not refuse any reasonable request for resources made in accordance with this Process.
- 6.20 The complainant and the person complained about should be provided written confirmation of the alternative resolution mechanism to be used for the purposes of resolving the complaint.

Decision to refer to another body or agency.

- 6.21 Where the person responsible for managing the complaint makes a decision to refer the matter to another body or agency the person will follow any direction from that body or agency regarding what information is to be provided to the complainant and the elected member complained about regarding the referral.

Decision to proceed to formal consideration:

- 6.22 Where the person responsible for managing the complaint makes a decision to proceed to formal consideration the following steps should be taken:
- 6.22.1 the person complained about should be provided with a copy of this Process and the Policy, contact details of the person responsible for managing the complaint and a summary document setting out:
- the specific provision(s) of the behavioural requirements alleged to have been breached; and
 - the circumstances where this breach is alleged to have occurred.

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In circumstances where the complainant has not requested their identity be kept confidential, a copy of the complaint may be provided in full.

- 6.22.2 the complainant should be advised of the decision to proceed and the contact details of the person responsible for managing the complaint.

Formal consideration

- 6.23 Where a decision to formally consider the complaint has been made the person responsible for managing the complaint will determine how to proceed:

6.23.1 The person responsible for managing the complaint may determine that they are the appropriate person to formally consider the complaint; or

6.23.2 The person responsible for managing the complaint may determine to engage a third party to formally consider the complaint, for example:

- an investigator who will report to the person responsible for managing the complaint; or
- an external service provider with skills relevant to the matter who will report to the person responsible for managing the complaint.

- 6.24 If the person responsible for managing the complaint determines a third party should be engaged, they will request the CEO to facilitate engagement of an appropriate service provider. The CEO will not refuse any reasonable request for resources made in accordance with this Process.

- 6.25 The person responsible for managing the complaint will advise both the complainant and the person complained about that they are able to have a support person accompany them during discussions relating to the complaint.

- 6.26 It is the expectation of Council that both the complainant and the person complained about will cooperate with any such process to consider the complaint and, if requested, participate in meetings in a timely manner.

Failure by the Elected Member complained about to comply with this requirement may be taken into account when considering the actions to be taken under section 262B(2)(e) of the Local Government Act 1999 and may constitute grounds for referral to the Behavioural Standards Panel for misbehaviour.

- 6.27 Further consideration by the person responsible for managing the complaint (or the third party engaged), may (at the discretion of that person) involve:

6.27.1 Explore the complaint with the complainant and the person who is the subject of the complaint.

6.27.2 Speaking with other persons who have been nominated by the parties to have observed the behaviour.

6.27.3 Speaking directly with witnesses to the conduct complained about.

6.27.4 Requesting the provision of information or documents relevant to the investigation, which may include access to audio or video recordings of meetings.

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- 6.28 During the formal consideration of a matter appropriate records should be kept by the person responsible for managing the complaint.

Report

- 6.29 The person responsible for managing the complaint (or the third party engaged) should ensure a report is prepared summarising the matter and setting out their findings, conclusions and recommendations. The report should set out:
- 6.29.1 Allegations made in the complaint.
 - 6.29.2 Summary of evidence to which the investigation had regard.
 - 6.29.3 Findings.
 - 6.29.4 Conclusions.
 - 6.29.5 Recommendations.
- 6.30 A report will generally include a recommended action for the parties to consider and/or participate in such as, but not limited to the imposition of sanctions as per the *Local Government Act 1999*:
- 6.30.1 Discussions with parties to the complaint to seek agreement.
 - 6.30.2 Formal mediation if not already undertaken.
 - 6.30.3 Conciliation.
 - 6.30.4 Arbitration.
 - 6.30.5 Education and further training.
- 6.31 A copy of the draft report should be provided to the parties to the complaint who should be given a reasonable opportunity, but no more than ten business days, to make submissions in relation to the draft report. The person responsible for managing the complaint (or the third party engaged) may provide a longer period of time for lodgement of submissions to the draft report at their discretion. The person responsible for managing the complaint (or the third party engaged) should have regard to any submissions made in preparing a final report.

Outcome – No breach found.

- 6.32 Where the finding is that no breach of the behavioural requirements has occurred, a final report should be prepared by the person responsible for managing the complaint (or third party engaged) and provided to the complainant and the person complained about.
- 6.33 The complaint will remain confidential in accordance with the requirements of this Process, except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting. If no such request is received, no further action will be taken.

Outcome – agreed actions (breach found)

- 6.34 Where the finding is that a breach of the behavioural requirements has occurred and the complainant and the person complained about agree to a path for resolution, that agreement will be documented including matters such as:
- 6.34.1 Actions to be undertaken.

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- 6.34.2 Responsibility for completing actions.
 - 6.34.3 Timeframes for completion of actions.
 - 6.34.4 What will occur if there is a repeat of the behaviours complained about.
 - 6.34.5 Monitoring arrangements for completion of actions.
 - 6.34.6 What will occur if the actions aren't completed.
 - 6.34.7 Confirmation that the matter is considered resolved.
- 6.35 The agreement reached will be made in writing, including a commitment by parties to the complaint to abide by the agreement (which may be by electronic means). A copy of the agreement will be retained by each party and a copy held in Council Records.
- 6.36 The complaint will remain confidential in accordance with the requirements of this Process except at the request of the person complained about. If such a request is made, a copy of the final report will be tabled at the next practicable Council meeting. The matter must be reported in the Council's Annual Report which must contain the information required by the regulations.

Outcome – no agreed action (breach found)

- 6.37 Where the finding is that a breach of the Behavioural Standards has occurred and the parties to the complaint have failed to reach agreement as to the resolution of the matter, a final report should be presented to Council for determination. The person responsible for managing the complaint should request the CEO to include the final report in the Council Agenda as soon as practicable.

Actions of Council

- 6.38 Where the parties are not able to agree on an approach to resolve the matter, the matter will be provided to Council for determine the actions to be taken which may include:
- 6.38.1 Taking no further action.
 - 6.38.2 Passing a censure motion in respect of the Member.
 - 6.38.3 Requiring the Member to issue a public apology (in a manner determined by the Council).
 - 6.38.4 Requiring the Member to undertake a specified course of training or instruction.
 - 6.38.5 Removal or suspension from one or more offices held in the Member's capacity as a Member of the Council or by virtue of being a Member of the Council – but not the office of Member of the Council.
- 6.39 If Council determines to take action, a report on the matter must be considered at a meeting open to the public.
- 6.40 Where Council determines to take no further action, the complainant will be advised of this along with reasons, which may include:
- 6.40.1 The ground that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the council to deal with or continue to deal with the complaint;

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6.40.2 The ground that the subject matter of the complaint has been or is already being investigated, whether by the council or another person or body; or

6.40.3 The ground that the council has dealt with the complaint adequately.

6.41 In making a determination under section 262C(1) Council should be reasonably prescriptive about the manner and time periods in which the action must be completed. Section 262E defines a failure to comply with a requirement of the council under 262C(1) as 'misbehaviour' which may result in a referral to the Behavioural Standards Panel.

6.42 The matter must be reported in the Council's Annual Report which must contain the information required by the regulations.

7 Part 3: Referrals to the Behavioural Standards Panel

7.1 The Behavioural Standards Panel is an independent statutory authority consisting of three members and has powers to impose sanctions on Elected Members who breach the behavioural requirements.

7.2 In accordance with section 262Q of the *Local Government Act 1999* a complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour may be made to the Panel by certain persons as set out below. The Panel's jurisdiction arises in the circumstances set out below:

<i>Legislative definition</i>	<i>Plain language explanation</i>
Misbehaviour means— a) a failure by a member of a council to comply with a requirement of the council under section 262C(1); or b) a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or c) a failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1;	Misbehaviour means: a) a council member fails to take the action required by council; or b) a council member fails to comply with this policy; or c) a council member fails to comply with an agreement reached pursuant to this policy
Repeated misbehaviour means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2;	A second or subsequent breach of the behavioural requirements
Serious misbehaviour means a failure by a member of a council to comply with section 75G.	A breach of health and safety duties (including sexual harassment) as set out in section 75G of the Local Government Act 1999

7.3 A complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour by a Member of Council may be referred to the Panel by:

7.3.1 A resolution of the council;

7.3.2 The Mayor; or

7.3.3 At least 3 Members of the Council

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7.3.4 Responsible person under 75G – direction not to attend meeting.

Behavioural Standards Panel Contact Officer

7.4 Council must appoint a person as the contact officer for matters referred to the Behavioural Standards Panel. The contact officer is responsible for the provision of information to and receipt of notice from the Behavioural Standards Panel.

8 Responsibilities

8.1 The Mayor, Deputy Mayor or other Elected Member appointed by the Council as the person responsible for managing complaints is responsible under this Process to:

8.1.1 Perform the tasks bestowed upon the person responsible for dealing with a complaint pursuant to this Process.

8.1.2 In consultation with the CEO, facilitate access to resources to support impacted parties and resolve the concerns raised in a timely manner prior to the matter becoming serious, or escalating to a formal complaint.

8.1.3 In consultation with the CEO, engage external resources to assist with investigation and resolution of matters.

8.2 The CEO (or delegate) is responsible under this Process to:

8.2.1 Manage the administrative receipt, acknowledgement, record keeping and allocation of a complaint lodged in accordance with this Process.

8.2.2 Facilitate access to external resources to support the resolution of complaints lodged in accordance with this Process.

8.3 The Behavioural Standards Panel Contact Officer (appointed by the Council) is responsible under this Process to:

8.3.1 Comply with any lawful request of the Panel for information related to a matter under consideration.

8.3.2 Receive and respond to notices relating to matters under consideration by the Panel.

8.4 Where the Behavioural Standards Panel Contact Officer is not the CEO, the Contact Officer should keep the CEO informed of the status of matters under consideration by the Panel.

9 Related Policies and supporting documents

9.1 Minister's Behavioural Standards for Council Members

9.2 Behavioural Management Policy

9.3 Strategic Policy Platform and Expected Behavioural Norms of the Council and its Elected Members

9.4 Customer Service Policy

9.5 Complaint Handling Process

10 Legislation and References

10.1 *Independent Commission Against Corruption Act 2012*

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- 10.2 *Local Government Act 1999*
 10.3 *Ombudsman Act 1972*
 10.4 *Public Interest Disclosure Act 2018*

11 Review

- 11.1 This Process will be reviewed by the Council in consultation with the relevant stakeholders, within four years or more frequently if legislation or Council's need changes.

12 Further Information

- 12.1 This Process is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Process can be obtained at those venues upon payment of a fixed fee.
- 12.2 Complaints regarding this Process or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council's Customer Service Policy.

13 Definitions

Behavioural Management Framework	- The legislative framework within which all council members must operate; - The Behavioural Standards for Council Members, determined by the Minister for Local Government, which apply to all council members in South Australia; - The mandatory Behavioural Management Policy (this document) relating to the management of behaviour of council members and adopted pursuant to section 262B of the Local Government Act; - Optional Behavioural Support Policy (or policies) designed to support appropriate behaviour by council members and adopted pursuant to section 75F of the Local Government Act 1999.
Behavioural requirements	In this document refers collectively and individually to the Behavioural Standards for Council Members, the Behavioural Management Policy and any Behavioural Support Policies adopted by the Council
Behavioural Standards for Council Members	Established by the Minister for Local Government, and published as a notice in the SA Government Gazette, specifying standards of behaviour to be observed by members of councils; and providing for any other matter relating to behaviour of members of councils
Frivolous	Includes without limitation, a matter of little weight or importance, or lacking in seriousness
Misbehaviour	Means, (a) a failure by a member of a council to comply with a requirement of the council under section 262C(1); or (b) a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or (c) a failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1.

Person responsible for managing the complaint	Means, subject to any resolution of the Council to the contrary – 1. the Mayor; 2. if the complaint relates to or involves the Mayor, the Deputy Mayor; 3. if the complaint relates to or involves the Mayor and Deputy Mayor, another council member appointed by Council
Repeated misbehaviour	Means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2.
Serious misbehaviour	Means a failure by a member of a council to comply with section 75G.
Trivial	Includes without limitation, a matter of little worth or importance; that is trifling; or insignificant
Vexatious	Includes a matter raised without reasonable grounds or for the predominate purpose of causing annoyance, delay or detriment, or achieve another wrongful purpose

14 Version History

Number	Date	Description
1	16/04/2024	New Process established under review of the Behavioural Management Policy Process components transferred from Policy