

Council Policy

Code of Conduct Behaviour Complaints Management



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Legislation/local law requirements	Acts/Regulations <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Related policy procedures and documents	City of Kwinana Elected Members, Committee Members and Candidates – Code of Conduct

1. Introduction

The Code of Conduct Behaviour Complaints Management Policy is to give effect to the City's commitment to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Elected Members, Committee Members and Candidates.

2. Purpose

To establish the procedure for dealing with complaints about alleged breaches of behaviour requirements under the City of Kwinana Elected Members, Committee Members and Candidates – Code of Conduct, in accordance with clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021*.

3. Objective

To provide a high-level process that gives the City of Kwinana the ability to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected.

4. Scope

This Policy applies where a complaint is made in accordance with the City of Kwinana Elected Members, Committee Members and Candidates – Code of Conduct.

Policy Provisions

5. Definitions

Act means the *Local Government Act 1995*.

Behaviour Complaints Officer means the Chief Executive Officer, or such person authorised by the CEO to undertake the duties of a Behaviour Complaints Officer.

Breach means a breach of the Code of Conduct.

Candidate an individual is considered a Candidate when their nomination for election is accepted by a returning officer under section 4.49 of the Act. The Code of Conduct applies to the Candidate from that point in time. Any alleged behaviour breach may only be dealt with if the Candidate becomes an Elected Member.

Code of Conduct means the City of Kwinana Elected Members, Committee Members and Candidates – Code of Conduct.

Committee means a committee of Council, established in accordance with section 5.8 of the Act.

Committee Member includes any Elected Member, local government employee or unelected member of the community appointed by the Council to be a member of a Council committee.

Complainant means a person who has submitted a complaint in accordance with this Policy.

Complaint means a complaint submitted under the Code of Conduct.

Complaint Documents means the complaint form and any supporting information, evidence, or attachments provided by the Complainant.

Complaint Form means the form approved under the Code of Conduct.

Council means the Council of the City of Kwinana.

Council or Committee Meeting means a formal meeting of the Council or a Committee that is called and convened in accordance with the Act. It does not include informal meetings, workshops or briefings.

Elected Member means a person currently serving a term of office as an Elected Member of the Council in accordance with the Act.

Finding means a finding made in accordance with Code of Conduct as to whether a Breach has or has not occurred.

Independent Complaints Assessor means an independent party appointed in accordance with section 5.8 of the Act for the purpose of dealing with a complaint.

Plan means a Plan prepared and implemented under the Code of Conduct to address the behaviour of the person to whom the complaint relates, if a finding has been made that a Breach has occurred.

Response Documents means the response provided by the Respondent to the Complaint, and includes any supporting information or evidence that is supplied.

6. Policy statement

6.1 Principles

6.1.1 Procedural Fairness

The principles of procedural fairness will apply when dealing with a complaint:

- the Respondent will be afforded a reasonable opportunity to be heard prior to any findings being made;
- decisions are to be made in an objective and impartial manner with an absence of bias (or the perception of bias); and
- any findings made are to be based on proper and genuine consideration of the evidence.

6.1.2 Consistency

Each Complainant and Respondent will be dealt with according to their circumstances and each complaint considered and determined on its merits. However, the City shall ensure consistent decision making in relation to a complaint, with similar circumstances resulting in similar decisions where appropriate.

6.1.3 Confidentiality

To protect both the Complainant and Respondent, the City will take all reasonable steps to maintain confidentiality when dealing with a complaint. Information gained in the course of managing a complaint is to be managed in a secure manner and must not be disclosed or used inappropriately.

6.1.4 Accessibility

Information on how to make a complaint is available on the City's website, or alternatively from the City's Administration Building upon request.

Where required, the City shall provide assistance to complete a complaint form or otherwise to navigate the complaints process.

6.2 Roles

6.2.1 Behaviour Complaints Officer

A complaint may be dealt with by the Behavioural Complaints Officer in instances where:

- in the view of the Behaviour Complaints Officer, the nature of the complaint is not serious or complex in nature;
- Alternative Dispute Resolution is either not appropriate given the nature of the complaint, it not agreed to by both parties, is terminated or does not achieve an agreed outcome; and
- the Behaviour Complaints Officer does not have a conflict of interest in relation to the complaint (or a perceived conflict of interest).

In undertaking their functions, the Behaviour Complaints Officer will apply the Principles of this Policy.

The authority of the Behaviour Complaints Officer includes the power to:

- Accept complaints and withdrawal of complaints;
- Dismiss a complaint in accordance with the Code of Conduct, providing reasons for such dismissal;
- Make a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur;
- Where a Finding is made that a breach has occurred, determine:
 - To take no further action where appropriate; or
 - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

6.2.2 Independent Complaints Assessor

The Independent Complaints Assessor is an impartial third party, appointed by the Behaviour Complaints Officer where:

- the complaint is sufficiently serious or complex in nature such that it warrants the appointment of an independent party to undertake assessment and/or make a Finding; or
- the complaint is not serious or complex in nature, however a conflict of interest (of the perception of a conflict of interest) preclude a Behaviour Complaints Officer from making a determination in relation to the complaint; and
- Alternative Dispute Resolution is either not appropriate given the nature of the complaint, is not agreed to by both parties, is terminated or does not achieve an agreed outcome.

Where a complaint is referred to an Independent Complaints Assessor, the Behaviour Complaints Officer is to provide the complaint documents, the response documents and any relevant Local Government Records as attachments.

In undertaking their functions, the Independent Complaints Assessor will apply the Principles of this Policy.

The Independent Complaints Assessor has authority to:

- Accept a withdrawal of complaint;
- Dismiss a complaint in accordance with the Code of Conduct, providing reasons for any such dismissal;
- Make a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur;
- Where a finding is made that a breach has occurred, determine:
 - To take no further action, where appropriate; or
 - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

6.3 Procedure

6.3.1 Making a Complaint

Any person may make a complaint alleging that an Elected Member, Committee Member or Candidate has behaved in a way that constitutes a breach of the Code of Conduct.

A complaint must be made within one month after the alleged Breach.

A complaint must be made by completing the Complaint Form in full and providing the completed forms to the Behaviour Complaints Officer.

A complaint must be made in accordance with the Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached. It must also include the name and contact details of the Complainant.

Where a Complaint Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the complaint to be progressed.

Where a complaint is made more than one month after the alleged breach, the Behaviour Complaints Officer will give the Complainant written notice that the complaint cannot be made.

6.3.2 Candidate Complaints

A complaint in relation to a Candidate must be made in accordance with the above process but cannot be dealt with unless the Candidate is subsequently elected as an Elected Member.

Within seven days after receiving a Candidate Complaint, the Behaviour Complaints Officer will provide written notice:

- To the Complainant confirming receipt and advising of the procedure for candidate complaints; and
- To the Respondent, including a summary of the complaint and advising of the procedure for candidate complaints.

No action will be taken until the results of the election are declared by the Returning Officer. If the respondent is elected, then the complaint will be dealt with in accordance with this Policy. Timeframes that would otherwise commence on the receipt of a complaint will be taken to commence on the election date.

If the Respondent is not elected, the Behaviour Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the complaint cannot be dealt with.

6.3.3 Withdrawing a Complaint

A Complainant may withdraw their complaint at any time before a Finding has been made in relation to the complaint.

A Complainant may withdraw a complaint by advising the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) in writing that they wish to do so.

After receiving a written withdrawal of the complaint, the Behaviour Complaints Officer or Independent Complaints Assessor will take all necessary steps to terminate the process commenced under this Policy.

6.3.4 Notice to Complainant

Within seven days of receiving a complaint, the Behaviour Complaints Officer will provide written notice to the Complainant:

- confirming receipt of the complaint;
- outlining the process that will be followed and possible outcomes;
- explaining the application of confidentiality to the complaint;
- including a copy of this Policy; and
- if necessary, seeks clarifications or additional information.

If the Complaint Form indicates that the Complainant agrees to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will advise the Complainant of the process in accordance with Part 5.3.6 of this Policy.

6.3.5 Notice to Respondent

Within 14 days of receiving a complaint, the Behaviour Complaints Officer will provide written notice to the Respondent:

- advising that a complaint has been made and include a copy of the Complaint Documents as well as copy of this Policy;
- outlining the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- if applicable, advise that further information has been requested from the Complainant and will be provided in due course; or
- If applicable, advise that the matter has been referred to an Independent Complaints Assessor to be managed.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also agreeable to participating.

6.3.6 Alternative Dispute Resolution

Alternative Dispute Resolution may support both parties reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint. Alternative Dispute Resolution requires the consent of both parties to the complaint and may not be appropriate in all circumstances.

To commence the process, the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the formal process will be paused.

The objective of Alternative Dispute Resolution will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the complaint, in accordance with Part 5.3.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a complaint, even in the absence of a request from the Complainant, qualifies for consideration as Alternative Dispute Resolution.

If Alternative Dispute Resolution is commenced, both the Complainant and Respondent may decline to proceed with the process at any time. The process may also be terminated on the advice of the Facilitator or Mediator.

If Alternative Dispute Resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the complaint, the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) will resume the formal process required under this Policy.

6.3.7 Order of Complaints

Complaints will normally be dealt with in the order in which they are received.

If more than one complaint is received that relates to the same alleged behaviour, the complaints may be progressed concurrently where appropriate.

6.3.8 Appointment of Independent Complaints Assessor

Where the Behaviour Complaints Officer it to appoint a suitably qualified and experience Independent Complaints Assessor, they will endeavour to do so within a reasonable period.

The Behaviour Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.

6.3.9 Search of Local Government Records

The Independent Complaints Assessor may request the Behaviour Complaints Officer to search for any relevant records in the City's Record Management System or Councillor emails.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer will be requested to identify any Local Government records that provide evidence that may support a decision as to whether:

- the behaviour occurred at a Council or Committee Meeting;
- the behaviour was dealt with by the person presiding at the meeting; and/or
- the Respondent has taken remedial action in accordance with the *Standing Orders Local Law 2019*.

The Independent Complaints Assessor must provide the Respondent with a copy of any records that are identified. In addition, where a clarification or additional information has been sought from the Complainant, copies must also be provided to the Respondent.

6.3.10 Assessment of the Complaint

The Respondent is to be provided with a reasonable opportunity to be heard before forming any opinions or recommendations.

If the behaviour that is the subject of the complaint is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) will determine whether or not to dismiss the complaint.

If a complaint is dismissed, the Complainant and the Respondent must be given written notice of the decision and the reasons for the decision in accordance with the Code of Conduct. This concludes the process in relation to the complaint.

If the complaint is not dismissed, the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) will consider the complaint and make a finding as to whether the alleged Breach that is the subject of the complaint has or has not occurred.

If it is determined that the alleged Breach **did not** occur, the Complainant and the Respondent are to be given written notice of the finding and the reasons for the finding. This concludes the process for the complaint.

If it is determined that the alleged breach **did** occur, the the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) will decide whether to take no further action or prepare a plan to address the behaviour.

If the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) decides to take no further action, the Complainant and the Respondent are to be given written notice of this decision and the reasons for the finding. This concludes the process for the complaint.

If the Behaviour Complaints Officer or Independent Complaints Assessor (as appropriate) decides to prepare a Plan, the Respondent is to be consulted prior. Any submissions made by the Respondent are to be considered before preparing and implementing such Plan.

6.3.11 Compliance with plan requirements

The Behaviour Complaints Officer will monitor the actions in timeframes set out in a Plan.

Failure to comply with a requirement included in a Plan is a minor breach under section 5.105(1) of the Act and the Code of Conduct.

The Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

6.4 Decision Making

6.4.1 Objective and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 5.1 of this Policy.

6.4.2 Dismissal

A complaint is to be dismissed where, in accordance with the Code of Conduct:

- (a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (b) either —
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the Respondent has taken remedial action in accordance with the *Standing Orders Local Law 2019*.

6.4.3 Finding

A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of the Code of Conduct.

6.4.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the following is to be considered:

- the nature and seriousness of the breach(es);
- the Respondent's submission in relation to the contravention;
- whether the Respondent has breached the Code of Conduct knowingly or carelessly;
- whether the Respondent has breached the Code of Conduct on previous occasions;
- likelihood or not of the Respondent committing further breaches of the Code of Conduct;
- personal circumstances at the time of conduct;
- need to protect the public through general deterrence and maintain public confidence in Local Government; and
- any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

6.4.5 Plan Requirements

The Proposed Plan may include requirements for the Respondent to do one or more of the following:

- engage in mediation;
- undertake counselling;
- undertake training; and/or
- take other action considered appropriate (e.g. an apology).

The Proposed Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Code of Conduct.

The Proposed Plan may also outline:

- the actions to be taken to address the behaviour(s);
- who is responsible for the actions;
- any assistance the Local Government will provide to assist achieve the intent of the Plan; and/or
- a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

OFFICER USE ONLY

Officers may amend this section without council approval

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