

# Governance 20: Code of Conduct Complaints Management

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## 1. Purpose

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and City of Kalamunda Code of Conduct for Council Members, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the Code of Conduct.

## 2. Policy Scope

This Policy applies to complaints made in accordance with Clause 11 of the Code of Conduct.

This Policy applies to Council Members, Committee Members, Candidates and any person who submits a complaint in accordance with this Policy.

## 3. Policy Statement

The City's Code of Conduct guides decisions, actions and behaviours of council members, committee members and candidates in local government elections.

It provides a high-level process that gives local government the ability to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected.

The City of Kalamunda and Council are committed to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

## 4. Details

### 4.1 Definitions

**Act** means the *Local Government Act 1995*;

**Breach** means a breach of Division 3 of the City of Kalamunda Code of Conduct for Council Members, Committee Members and Candidates]

**Candidate** means a candidate for election as a Council Member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act, but does not include a Council Member who has nominated for re-election. A person is a Candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act;

**Candidate Complaint** means a Complaint alleging a Breach by a Candidate. Candidate Complaints are dealt with in clause 4.4 b) of this Policy;

**City** means the City of Kalamunda;

**Code of Conduct** means the City of Kalamunda Code of Conduct for Council Members, Committee Members and Candidates;

**Committee Member** means a Council Member, employee of the City or other person who has been appointed by the Council to be a member of a Committee, in accordance with s.5.10(1) of the Act. A person is a Committee Member from the date on which they are appointed, until their appointment expires or is terminated by Council resolution;

**Complainant** means a person who has submitted a Complaint in accordance with this Policy;

**Complaint** means a complaint submitted under Clause 11 of 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 clause 11(2)(a) of the Code of Conduct [by Council resolution or by the CEO exercising delegated authority];

**Complaints Officer** means a person authorised in writing [by Council resolution or by the CEO exercising delegated authority] under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints. The role of the Complaints Officer is addressed in clause 4.3 a)of this Policy;

**Council** means the Council of the City;

**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, such as workshops or briefings;

**Council Member** means a person who is 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 clause 12(1) of the Code of Conduct as to whether the alleged Breach has or has not occurred;

**Plan** means a Plan that may be prepared and implemented under clause 12(4)(b) of the Code of Conduct, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred;

## 4.2 Principles

### a) Procedural fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a Complaint under this Policy. In particular:

- (i) the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- (ii) the decision maker should be objective and impartial, with an absence of bias or the perception of bias; and
- (iii) any findings made will be based on proper and genuine consideration of the evidence.

### b) Consistency

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their

circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

**c) Confidentiality**

The City will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, Local Government employees and contractors who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely, and must not disclose or inappropriately use this information.

Complainants will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

**d) Accessibility**

The City will ensure that information on how to make a complaint, including this Policy, is available at the City's Administration Building and on the City's website. The City will make information available in alternative formats if requested.

Any person wishing to make a complaint may contact the Complaints Officer if they require assistance in completing the complaint form or otherwise navigating the complaints process.

## **4.3 Procedure**

### **4.3.1 Making and withdrawing complaints and notices**

**a) Making a complaint**

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct [clause 11(1)].

A Complaint must be made within one (1) month after the alleged Breach [clause 11(2)(c) of the Code of Conduct].

A Complaint must be made by completing the Behaviour Complaint Form in full and providing the completed forms to the Complaints Officer (Appendix 1).

A Complaint must be made in accordance with the Behaviour Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached.

A Complaint is required to include the name and contact details of the Complainant therefore anonymous complaints cannot be accepted.

Where a Complaint Form omits required details, the 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 1 month after the alleged breach, the Complaints Officer will give the Complainant written notice that the Complaint cannot be made [clause 11(2)(c) of the Code of Conduct].

#### **b) Candidate Complaints**

A Complaint in relation to a Candidate must be made in accordance with 4.3.1 a), above, but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.

Within 7 days after receiving a Candidate Complaint, the Complaints Officer will provide written notice:

- (i) to the Complainant confirming receipt, and advising of the procedure for candidate complaints; and
- (ii) 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 Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with [clause 15(1) of the Code of Conduct]

#### **c) Withdrawing a Complaint**

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint [clause 14 of the Code of Conduct].

A Complainant may withdraw a Complaint by advising the Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

#### **d) Notice to Complainant**

Within 7 days after receiving a Complaint, the Complaints Officer will provide written notice to the Complainant that:

- (i) confirms receipt of the Complaint;
- (ii) outlines the process that will be followed and possible outcomes;
- (iii) explains the application of confidentiality to the complaint; and
- (iv) includes a copy of this Policy.

**e) Notice to Respondent**

Within 14 days after receiving a Complaint, the Complaints Officer will provide written notice to the Respondent that:

- (i) advises that a Complaint has been made in accordance with the Code and this Policy;
- (ii) includes a final copy of the Complaint Documents;
- (iii) outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes; and
- (iv) includes a copy of this Policy.

**f) 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 Officer may decide to progress those Complaints concurrently.

## **4.3.2 Process**

**a) Appointment of External Body Complaints Assessor**

The Complaints Officer is to engage a suitably qualified independent person or body, external to the City (External Body) to conduct a confidential assessment into the complaint.

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

**b) Role of the External Body**

The External Body will determine whether the complaint is within jurisdiction, and if not, provide a report to the Complaints Officer recommending that the complaint be dismissed.

If the complaint is within jurisdiction, the external Body must ensure that the councillor about whom the complaint is made will be provided with an opportunity to respond to the allegations and submit evidence in support of their response.

At the conclusion of the assessment process, the External Body is to provide a confidential report to the Complaints Officer.

### **c) Search of Local Government Records**

The External Body may request the Complaints Officer to search for any relevant records in the City's Record Management System.

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

- (i) the behaviour occurred at a Council or Committee Meeting;
- (ii) the behaviour was dealt with by the person presiding at the meeting, and/or
- (iii) the Respondent has taken remedial action in accordance with the City's Standing Orders Local Law.

The External Body 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 by either the Complaints Officer or the External Body, copies must also be provided to the Respondent.

### **d) Report of complaint assessment**

The External Body must include in the confidential report:

- (i) findings in relation to the allegation based on the available evidence;
- (ii) that if a finding alleges that a breach did occur, that it is based on the evidence from which it may be concluded that it is more likely the breach occurred than it did not occur;
- (iii) findings as to whether substantiated allegations amount to a breach of Division 3 of the Code of Conduct; and
- (iv) reasons for those findings.

The External Body must also provide recommendations in accordance with clause 12 (4), and reasons for the recommendations, in the confidential report. These recommendations must be either:

- (i) that no further action be taken; or
- (ii) that a plan be prepared to address the behaviour of the person to whom the complaint relates.

If the External Body recommends option (ii) (that a plan be prepared), the External Body is to recommend either:

- (i) Mediation;
- (ii) Counselling;

- (iii) Training; or
- (iv) Other action within the meaning of clause 12(6)(d).

#### **e) Role of the Council**

Within 14 days of receiving the confidential report, the Complaints Officer is to provide a copy of the confidential report to the Councillor to whom the complaint relates.

The Complaints Officer is to then provide the confidential report from the External Body in a confidential item to be considered at the next available Council meeting.

Before Council makes a finding on the complaint the presiding member must give the Councillor to whom the complaint relates a reasonable opportunity to be heard.

If the Councillor to whom the complaint relates is the presiding member, then the presiding member must step down as chair for that item and the deputy presiding member is to assume the chair.

When Council makes a finding that an alleged breach of Division 3 of the Code of Conduct has occurred, it 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.

If Council makes a finding that an alleged breach of Division 3 of the Code of Conduct has occurred, the Council may:

- (i) Take no further action; or
- (ii) Prepare and implement a plan under clause 12(4)(b) of the Code of Conduct that incorporates all of the elements of the Plan Recommendation (as recommended by the External Body); or
- (iii) Prepare and implement a plan under clause 12(4)(b) of the Code of Conduct that incorporates some (but not all) of the elements of the Plan Recommendation (as recommended by the External Body).

For the avoidance of doubt it is not open to Council to prepare and implement a plan under clause 12(4)(b) of the Code of Conduct that incorporates elements that do not form part of the Plan Recommendation (as recommended by the External Body).

Should Council determine to impose a plan on the Councillor to whom the complaint relates, then that Councillor must be with when that plan is prepared. That Councillor must comply with all reasonable measures contained within that plan.

If Council makes a finding in relation to the complaint, the Complaints Officer must give the complainant, and the person to whom the complaint relates, written notice of:

- (i) Council's finding and the reasons for its finding; and

- (ii) If Council's finding is that the alleged breach has occurred – the Council Plan Decision.

Should the Councillor not comply with the plan within the specified timeframe, then the Complaints Officer is to advise the Chief Executive Officer, who is then to refer the matter to the Local Government Standards Panel as a breach of regulation 23 of the *Local Government (Model Code of Conduct) Regulations 2021*.

Status			
Related Local Law			
Related Council Policies			
Relevant Delegation			
Related Internal Procedures			
Related Budget Schedule			
Legislation	<i>Local Government Act 1995</i> <i>Local Government (Administration) Regulations 1996</i> <i>Local Government (Model Code of Conduct) Regulations 2021</i>		
Notes and Conditions			
Authority			
Adopted	13 December 2022	Next Review Date	1 July 2023