

2.7 CODE OF CONDUCT BEHAVIOUR COMPLAINTS

Responsible Directorate	Corporate Services
Responsible Service Area	Governance
Adopted	July 2023 C15.07.23
Policy Ref	Code of Conduct for Council Members, Committee Members and Candidates (1.1)
Procedure Ref	N/A

1. PURPOSE

Shire of Mundaring (the Shire) is committed to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of council members, committee members and candidates.

This policy establishes the procedure for dealing with complaints about alleged breaches of behaviour requirements under the Shire's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct), and in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021*.

2. SCOPE

This policy applies to breaches of **Division 3 - Behaviour** and 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.

Complaints that are deemed outside of the scope of this policy are:

- dissatisfaction with a Council or committee member's lawfully made decisions
- dissatisfaction with a Council or committee member's performance in their role
- personal disagreements
- minor breaches under s. 5.105(1) of the Act
- serious breach complaints under s.5.114 of the Act

Complaints related to **Division 4 - Rules of Conduct** are dealt with by the Local Government Standards Panel. An overview of the complaint process and the "Complaint of Minor Breach Form" can be found on the Department of Local Government Sport and Cultural Industries (DLGSC) website. Any complaint for Division 4 should be on DLGSC "Complaint of Minor Breach Form" and sent to the Shire of Mundaring CEO as the Complaints Officer.

Investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority.

3. DEFINITIONS

Act	the <i>Local Government Act 1995</i> .
breach	a breach of Division 3 of the Shire's Code of Conduct.
candidate	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.
Code of Conduct	the Shire's adopted Code of Conduct for Council Members, Committee Members and Candidates as required by the <i>Local Government (Model Code of Conduct) Regulations 2021</i> .
committee member	a member of a committee appointed by the Council.
complaint	a complaint made under clause 11(1) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> .
complainant	a person who has submitted a complaint in accordance with this policy.
Complaint Assessor	the independent and suitably qualified person appointed by the Shire Complaints Officer in accordance with item 4.2.2 of this policy.
complaint documents	the complaint form and any supporting information, evidence or attachments provided by the complainant.
complaint form	the form approved under section 11(2)(a) of the Code of Conduct.
Complaints Officer	a person authorised 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 item 4.2.1 of this policy.
Council	the Council of the Shire of Mundaring.
Council or committee meeting	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	a person who is currently serving a term of office as an elected member of the Council in accordance with the Act. The Shire's council members includes the Shire President, Deputy Shire President and Councillors (as defined by the Act).
finding	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	a plan that may be prepared and implemented under clause 12(4)(b) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> 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.
support person	a support person is not an advocate or representative. They cannot speak on your behalf, and their role is solely to provide support and reassurance.
respondent	a person who is the subject of a complaint submitted under section 11 of <i>the Local Government (Model Code of Conduct) Regulations 2021</i> .
response document	the response provided by the respondent to the complaint and includes any supporting information or evidence that is supplied.

4. POLICY

4.1. Principles

4.1.1. Procedural Fairness

The principles of procedural fairness will apply when dealing with a complaint under this policy. In particular:

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

4.1.2. 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.

4.1.3. Confidentiality

The Shire will take all reasonable steps to maintain confidentiality when dealing with the complaint, in order to protect both the complainant and respondent.

Council members, employees and contractors who have a role in responding or investigating 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.

The details of a complaint and the processes undertaken in connection with a complaint including the referral to a Complaint Assessor are confidential matters. Parties to the complaint and those involved in the processes undertaken in connection with a complaint, must not disclose details of the complaint, unless lawfully required to do so, or until Council has made a formal finding of a breach in respect of the complaint. The relevant parties will be advised that breaches of confidentiality on their part may prejudice the determination of the complaint.

4.1.4. Accessibility

The Shire will ensure that the information on how to make a complaint, including this policy, is available at the Shire's Administration Building and on the Shire's website. The Shire will make information available in alternative format 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.

4.2. Roles

4.2.1. Complaints Officer

The Complaints Officer will apply the principles (refer to item 4.1) of this policy.

In accordance with clause 11(3) of the Code, the Shire's CEO is authorised as the Complaints Officer (C12.02.21).

The Complaints Officer is authorised to receive complaints and withdrawal of complaints and will liaise with and provide administrative support to a Complaint Assessor appointed under item 4.2.2.

The Complaints Officer is not an advocate for the complainant or the respondent and provides procedural information and assistance to both complainant and respondent.

Prior to appointing a Complaint Assessor, the Complaints Officer will conduct a preliminary review to confirm that the complaint

has been properly made and is within jurisdiction and required time frames. If the complaint is determined not to be properly made or within jurisdiction, the Complaints Officer will provide the complainant the opportunity to amend before referral to the Complaint Assessor.

In accordance with 12(1) of the Code of Conduct, unless the complaint is dismissed under clause 13, or the complaint is withdrawn under clause 14(1) the Complaint Officer will appoint a Complaints Assessor.

4.2.2. Complaint Assessor

The Complaint Assessor is appointed by the Complaints Officer, and will liaise with the Complaints Officer to manage the administrative requirements of dealing with the complaint.

The Complaint Assessor is an impartial third party who will undertake the functions specified in this Policy.

The appointment of the Complaint Assessor is considered an exempt purchase under the provision of the Shire's "Purchasing Policy".

The Complaints Assessor is appointed to review and consider one or more complaints and to report on findings and recommend a course of action to the Complaints Officer for consideration by Council.

4.3. Process

The below process is to be read in conjunction with the "Code of Conduct Behaviour Complaints Process Flowchart" (Appendix 1).

4.3.1. 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)] and lodge a "Behaviour Complaint Form" with the Complaints Officer.

A complaint must:

- a. be made by completing the "Behaviour Complaint Form" in full and specify which requirement(s) of the Code of Conduct is alleged to have been breached.
- b. within one (1) month after the alleged Breach [clause 11(2)(c) of the Code of Conduct].
- c. include the name and contact details of the complainant therefore anonymous complaints cannot be accepted.

Where a "Behaviour 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 one (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].

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 Officer may decide to progress those complaints concurrently.

The Shire will incur the cost to engage an external Complaint Assessor and appropriately provide resource capacity to assist the Complaints Officer and Complaint Assessor to receive and deal with complaint.

4.3.2. Candidate Complaints

A complaint in relation to a candidate must be made in accordance with item 4.3.1, above, but cannot be dealt with unless the candidate is subsequently declared elected as a council member (in doing so, becoming the respondent in the context of this policy).

Within seven (7) days after receiving a candidate complaint, the Complaints Officer will provide written notice:

- a. to the complainant confirming receipt, and advising of the procedure for candidate complaints (refer to item 4.3.4); and
- b. to the respondent (refer to item 4.3.5), including a summary of the complaint, and advising of the procedure for managing 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]. This will conclude the process for this complaint.

4.3.3. Withdrawing a Complaint

A complainant may withdraw their complaint at any time before a finding has been made in relation to the complaint [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.

4.3.4. Notice to Complainant

The Complaint Officer must, within seven (7) days after receiving a complaint, provide written notice to the complainant that:

- confirms receipt of the complaint;
- outlines the process that will be followed and possible outcomes;
- explains the application of confidentiality to the complaint;
- includes a copy of this policy; and
- if necessary, seeks clarifications or additional information.

If the “Behaviour Complaint Form” indicates that the complainant agrees to participate in alternative dispute resolution, the Complaints Officer will advise the complainant of the process in accordance with item 4.3.6 of this policy.

4.3.5. Notice to Respondent

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

- advises that a complaint has been made in accordance with the Code of Conduct and this policy;
- includes a copy of the complaint documents;
- outline the process that will be followed, the opportunities that will be afforded to the respondent to be heard and the possible outcomes;
- includes a copy of this policy; and,
- if applicable, advises that further information has been requested from the complainant and will be provided in due course.

If the complainant has agreed to participate in alternative dispute resolution, the Complaints Officer will ask the respondent if they are willing to participate in accordance with item 4.3.6 of this policy.

4.3.6. Alternative Dispute Resolution

The Shire recognises that alternative dispute resolution may support both parties to reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint. Alternative dispute resolution requires the consent of the complainant and the respondent and may not be appropriate in all circumstances.

To commence the process, the Complaints Officer will, as the first course of action, offer the complainant and the respondent the option of alternative dispute resolution. If both parties agree to participate in alternative dispute resolution, the Complaints Officer will appoint a Complaint Assessor to act as mediator and provide written notice of the appointment to the complainant and the respondent. The formal complaints process is to be paused until the alternative dispute resolution process reaches an outcome.

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 item 4.3.3 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 the respondent may decline to continue with the process at any time. The process may also be terminated on advice of the Complaints Assessor acting as mediator.

Where mutually agreed, parties to the complaint may have a support person present during alternative dispute resolution process.

If alternative dispute resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the complaint, the Complaints Assessor will resume the formal process required under item 4.3.7 of this policy.

4.3.7. Assessment of Complaint

The Complaints Assessor must ensure that the respondent is provided with a reasonable opportunity to be heard before forming any opinions or drafting the findings or recommendations.

The Complaint Assessor will request the respondent to provide a written response to the complainant's allegation(s), including any evidence or information that the respondent considers relevant, within 14 days of the notification of complaint to them by the Complaints Officer.

The Complaint Assessor may request the Complaints Officer to search any relevant records in the Shire'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 records that provide evidence that may support a decision as to whether:

- a. The behaviour occurred at a Council or Committee meeting;
- b. The behaviour was dealt with by the person presiding the meeting, and/or
- c. The respondent has taken remedial action in accordance with the Shire's *Meeting Procedures Local Law 2015*.

The respondent must be provided with a copy of any records that are identified and have an opportunity to respond. In addition, where clarification or additional information has been sought from the complainant by either the Complaints Officer or

the Complaint Assessor, copies must also be provided to the respondent.

After considering a complaint, the Complaint Assessor must make a determination as to whether or not the alleged breach has occurred.

The determination must be made within 28 days:

- a. from receiving a complaint from the Complaints Officer; or
- b. from receiving a copy of the response to the allegations from the Respondent;

whichever is the later.

A determination by the Complaint Assessor that the alleged behaviour 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.

Having made a determination on the alleged behaviour breach, the Complaint Assessor must prepare a complaint report and recommendation for Council as prescribed in clause 4.3.8. The complaint report must be provided to the Complaints Officer within 14 days of making a determination.

4.3.8. Complaint Report

The format of the complaint report in item 4.3.7 is to include:

- a. an executive summary of the investigation, including how the respondent was provided with an opportunity to be heard;
- b. complaint form and supporting documents provided by complainant, respondent written response, any additional information provided by either complainant or respondent and any relevant records maintained by the Shire as attachments;
- c. its finding as to whether substantiated allegations amount to a breach of Division 3 of the Code of Conduct;
- d. reasons for its finding;
- e. recommendations on each decision that may be made by Council; and
- f. reasons for each recommendation, with reference to item 4.4.3 of this policy.

If the complaint report recommends that a plan is prepared and implemented in accordance with clause 12(4)(b) of the Code of Conduct and item 4.4 of this policy, the complaint report must include a proposed plan.

The Complaint Assessor will liaise with the Complaints Officer to include the complaint report in the agenda for a meeting of Council. The Complaints Officer will be responsible for preparation of an officer report with the complaint report provided as a confidential attachment. The recommendations of the

complaint report will be provided as the officer recommendations.

Within fourteen (14) days of receiving the complaint report, the complaint officer is to provide copy to the respondent before Council consideration.

4.3.9. Council Decision

The complaint report will be considered at the next available Council meeting. The agenda will be prepared on the basis that the part of the meeting that deals with the complaint report will be held behind closed doors in accordance with section 5.23(2) of the Act.

If the respondent 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.

Council will consider the complaint documents, response documents and complaint report and give due regard to the recommendations.

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

- a. take no further action; or
- b. prepare and implement a plan under clause 12(4)(b) that incorporates all of the elements of the plan recommendations (as recommended by the Complaint Assessor); or
- c. 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 plan recommendations (as recommended by the Complaint Assessor).

For the avoidance of any doubt, it is not open to Council to prepare and implement a plan under clause 12(4)(b) that incorporates elements that do not form part of the complaint report plan recommendations.

Should Council determine to impose a plan on the respondent, then the respondent must be consulted when the plan is finalised. The respondent must comply with all reasonable measures contained within the plan in accordance with item 4.3.10.

Council must dismiss a complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct and conclude the process for this complaint if Council is satisfied that:

- 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 in accordance with item 6.18 of the *Shire's Meeting Procedures Local Law 2015*; or
- ii. the respondent has taken remedial action in accordance with item 7.4(3) of the *Shire's Meeting Procedures Local Law 2015*.

In accordance with regulation 11(d)(a) of the *Local Government (Administration) Regulations 1996*, reasons for any decision that is significantly different from the officer recommendation must be recorded in the meeting minutes.

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

- a. Council's finding and the reasons for its finding; and
- b. if Council's finding is that the alleged breach has occurred – the Council plan requirements.

4.3.10. Compliance with Plan Requirements

The Complaints Officer will monitor the actions as determined in the adopted plan to ensure the respondent adheres to the agreed actions within the listed timeframes (if applicable).

Failure to comply with a requirement included in the adopted plan is a minor breach under section 5.105(1) of the Act and clause 23 of the Code of Conduct and will be referred to the Local Government Standards Panel by the CEO.

The Complaints Officer will provide a report advising Council of any failure to comply with a requirement included in a plan.

4.4. Decision Making

All decisions made under this policy will reflect the purpose and principles (refer to item 4.1) of this policy.

4.4.1. 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 [clause 12(3) of the Code of Conduct].

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 Division 3 of the Code of Conduct.

4.4.2. Action

In deciding whether to take no further action, or prepare and implement a plan, Council may consider:

- 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.

4.4.3. Plan requirements

The proposed plan may include requirements for the respondent to do one (1) or more of the following:

- engage in mediation
- undertake counselling
- undertake training
- take other action the Council considers appropriate (e.g. an apology, public censure etc.).

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
- a reasonable timeframe for the plan action(s) to be addressed by the respondent.

4.5. Reporting and Record Keeping

The Complaints Officer is responsible for ensuring that all appropriate record keeping is completed in relation to the complaint, including retaining in the Shire's record keeping system any evidence received, reports or other materials associated with a complaint and its investigation.

The Shire is to maintain a register of complaints lodged under this policy. Where a complaint has been investigated and it is determined that a breach has occurred, it will be included in a public register of complaints, available on the Shire's official website. The public complaints register will include:

- a. the date on which the complaint was lodged;
- b. the council member or committee member subject of the complaint;
- c. the name of the complainant;
- d. what provision of the code is believed to have been contravened;

- e. the date and findings under the code in relation to that particular complaint; and,
- f. details of the action(s) taken under section 5.110(6)

The public register of complaints is to be included in the Shire's Annual Report prepared under section 5.53(1) (2) (hb).

5. APPENDICES

Appendix 1 Code of Conduct Behaviour Complaints Process Flowchart

6. RELATED LEGISLATION

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

7. RELATED DOCUMENTS

Behaviour Complaint Form

