

Policy	Elected Member Code of Conduct – Complaints of Alleged Behaviour Breach
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Policy Type

Council

Policy Purpose

The objective of the policy is to prescribe the processes for the management of complaints involving council members, committee members and candidates in matters relating to breaches of the behaviour requirements in Division 3 of the Code of Conduct.

Policy Statement

(1) Scope

1. This Policy is limited to Complaints about behaviour breaches by council members, committee members and candidates.
2. A person may make a Complaint, in accordance with the Code of Conduct, alleging a behaviour breach.

(2) Definitions

'Behaviour Breach' means a breach of a behaviour requirement in Division 3 of the Code of Conduct.

'Behaviour Complaints Officer' means a person authorised in writing by the council of the local government, or by the CEO exercising authority delegated by the Council, to receive complaints and withdrawals of complaints under clause 10 of the Code of Conduct, and the person so authorised in writing may be the same person as the local government's Complaints Officer under section 5.120 of the LG Act.

'Candidate' - a person who is not already a Council or Committee Member is considered a Candidate for the purpose of this Policy when their nomination for election is accepted by a Returning Officer under section 4.49 of the *Local Government Act 1995*. The Code of Conduct applies to the person from that point, but any alleged Behaviour Breach may only be dealt with if and when the Candidate is elected as a Council Member.

'City' means City of Cockburn.

'Code of Conduct' or **'Code'** means the Code of Conduct applying to the City under section 5.104 of the LG Act.

'Committee Member' - includes any council member, City employee or unelected member of the community, in any of those cases, who has been appointed by the Council to be a member of a Council Committee.



‘Complainant’ means a person complaining of a Behaviour Breach by a council or committee member of the local government or a candidate.

‘Complaint’ means a complaint made under clause 11(1) of the Code of Conduct.

‘Complaints Committee’ means a council committee to which the Council has delegated the powers and duties of the City of dealing with a Report under clauses 10 and 13. The membership of the Complaints Committee for the consideration of any Complaint is to include all members of the council except a Council member who is a Complainant or a Respondent in that Complaint.

‘Complaints Investigation Panel’ means a panel of persons appointed under clause 4.2 to consider and determine Complaints, as an alternative to appointment of an individual as Investigator.

‘council’ means the council of the City.

‘Council Member’ means a person who has been elected as a Council member of the City under the LG Act.

‘Council Committee’ means a committee to which any power or duty of the council is delegated.

‘Evidence’ means the available facts or information which go to indicate whether or not an allegation of a breach is true or valid. The City must use evidence provided by the complainant and by the respondent, as well as any other available evidence, to decide whether a breach has occurred.

‘Investigator’ means as the context requires either an individual appointed as Investigator or a Complaints Investigation Panel, appointed in either case under clause 4.1 of this Policy.

‘LG Act’ or **‘Act’** means the LG Act (WA).

‘Mediator’ means a person appointed as mediator under clause 6.1 or clause 8.2(a).

‘report’ means the report for the Complaints Committee of the outcome of the investigation of a Complaint dealing with the following:

- (1) whether or not the Investigator considers that the behaviour breach, the subject of the Complaint, has occurred;
- (2) the evidence relied on by the Investigator under clause 12(3) of the Code of Conduct for that conclusion; and
- (3) a recommendation as to whether no further action should be taken on the Complaint, or as to the terms of a plan under clause 12(4)(b) of the Code.

‘Respondent’ means a Council or Committee member against or about whom a Complaint is made under clause 5 of this Policy.



Other terms used in this Policy that are also used in the LG Act or the Code have the same meaning as they have in the Act or the Code unless the contrary intention appears.

(3) Appointment of Investigator or Complaints Panel

3.1 The CEO is to appoint a person with relevant legal knowledge who is not an employee of the City, as Investigator to review and consider one or more Complaints of behaviour breach and to report on the outcome of any investigation to the CEO for provision to the Complaints Committee.

3.2 As an alternative to appointment of an Investigator, in any case where the CEO considers it appropriate, the CEO may appoint a Complaints Investigation Panel of three persons to perform the function of the Investigator under this Policy. At least one of the number of such a panel must be a person with relevant legal knowledge. Any such panel is to make its decisions by a majority vote and is to appoint one of its number as chair and to perform its investigation, consideration and determination on a Complaint in accordance with due process and consistently with the provisions of this Policy.

3.3 The CEO is to deal with the remuneration of an Investigator or the members of a Complaints Investigation Panel, and a complaints mediator, in accordance with clause 16.

(4) Process for making a complaint

4.1 Initiation of Complaint

- (a) any person may make a Complaint alleging a Behaviour Breach.
- (b) a Complaint must be in writing on the local government's approved form – 'Complaint About Alleged Behaviour Breach form'.
- (c) the complainant must lodge the Complaint with the City's Behaviour Complaints Officer.
- (d) the Complainant must provide with the Complaint, details of the alleged behaviour breach together with any supporting evidence.
- (e) the Complaint must be lodged within one calendar month of the occurrence of the alleged Behaviour Breach.
- (f) a complaint must be submitted by the Complainant.

4.2 A complaint cannot be submitted anonymously.

4.3 The Behaviour Complaints Officer is to provide all complaints to the Investigator in accordance with the following clause.



- 4.4 The Behaviour Complaints Officer as soon as possible and if possible within 14 days of receiving a Complaint:
- (a) must contact the complainant acknowledging that the Complaint has been received;
 - (b) as part of the acknowledgment process, must provide the complainant with a copy of the local government's Complaints Policy;
 - (c) must provide the respondent with a copy of this Complaints Policy and a copy of the Complaint; and
 - (d) must send to the Investigator the Complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 4.5 Complaints are to be dealt with and considered so far as is practicable in an order based on the order in which they are received by the Behaviour Complaints Officer.
- 4.6 A Complaint relating to a candidate is only to be referred to an Investigator if and when the candidate is elected as a council member, but in any event the Complaint must be lodged within one calendar month of the occurrence of the alleged behaviour breach.
5. Mediation
- 5.1 The Investigator must offer to both parties mediation by an independent mediator to be appointed by the CEO, as the first option for dealing with a Complaint and before progressing with the consideration or determination of the Complaint. Mediation can only proceed if agreed to by both parties.
- 5.2 If issues raised in the Complaint are resolved to the satisfaction of both parties in mediation or otherwise before the determination of the Complaint, the complainant must lodge a Withdrawal of Complaint in writing with the Behaviour Complaints Officer.
6. Investigator making a determination
- 6.1 Within 14 days of the notification of the Complaint to the respondent by the Behaviour Complaints Officer, and before making a determination in relation to a Complaint the Investigator must provide the respondent with an opportunity to respond to the allegations in the Complaint and to provide their own comments and evidence for consideration. The Investigator may extend the 14 day period for good reason provided by the respondent.



- 6.2 After considering a Complaint, the Investigator must make a determination as to whether or not the alleged Behaviour Breach has occurred. The Investigator must perform their investigation, consideration and determination on a Complaint in accordance with due process and consistent with the provisions of this Policy.
- 6.3 The determination must be made within 21 days:
- (a) from receiving a Complaint from the Behaviour Complaints Officer; or
 - (b) from the date of termination of a mediation if that does not resolve the matter; or
 - (c) from receiving a copy of the response to the allegations by the respondent,
- whichever is the later. Provided that in any case the Investigator may seek from the CEO such additional time to make a determination as is appropriate in the circumstances of the case.
- 6.4 A determination by the Investigator 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 occur.
- 6.5 Having made a determination on the alleged behaviour breach, the Investigator must inform the Behaviour Complaints Officer by providing a determination and reasons for it in a Determination and Reasons Report (**Report**).
- 6.6 The Report must be provided to the Behaviour Complaints Officer within 14 days of making the determination.
- 6.7 If the Investigator makes a determination that the alleged breach has occurred, the Report must make a recommendation if further action is required and make a recommendation on the plan to address the behaviour of the respondent (**action plan**).
- 6.8 The Investigator may recommend to the Complaints Committee to dismiss a Complaint in accordance with clause 12 of the Code, and if the Investigator concludes that the behaviour the subject of the Complaint is an offence under a local law that deals with meeting procedures, the Complaint should not be dealt with further as a Behaviour Breach, but should be referred back to the Behaviour Complaints Officer.
- 6.9 The Investigator's deliberations and determination are to be confidential and reported only to the Behaviour Complaints Officer, but subject to any consultation with the respondent under the following clause, and subject to provision by the Complaints Officer of a confidential report to the Complaints Committee under clause 8.

(7) Action Plans

7.1 When preparing an action plan under clause 6.7 of this Policy, the Investigator must consult with the respondent. The respondent must be provided with the opportunity to be involved in matters such as the timing of meetings or training.

7.2 An action plan may include a requirement for the respondent to do one or more of the following:

- (a) engage in mediation;
- (b) undertake counselling;
- (c) undertake training; or
- (d) take other action of an **instructive** but not **punitive** nature, as is appropriate to the circumstances of the case.

7.3 An action plan should be designed to provide the respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives. The plan should outline:

- (a) the behaviour(s) of concern;
- (b) the actions to be taken to address the behaviour(s);
- (c) who is responsible for the actions; and
- (d) an agreed timeframe for the actions to be completed.

(8) Report provided to Complaints Committee

8.1 The Behaviour Complaints Officer must as soon as possible provide a **confidential** report to the Complaints Committee including:

- (a) a copy of the Complaint;
- (b) the Report of the Investigator together with the evidence received by the Investigator and any submissions or other communications from the parties;
- (c) a recommendation on the question whether or not a behaviour breach has occurred;
- (d) a recommendation as to whether any and if so what further action is required; and



- (e) if further action is required, a recommendation must be provided to the Complaints Committee on an action plan to address the behaviour of the person to whom the Complaint relates.

(9) Complaints Committee finding

- 9.1 The Complaints Committee must not make a finding that a Behaviour Breach has occurred without the respondent first having been given a reasonable opportunity to be heard. The Complaints Committee may accept compliance with clause 6.1 of this Policy as provision of a reasonable opportunity to be heard.
- 9.2 A finding 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 occur.
- 9.3 If the Complaints Committee makes a finding that the alleged breach has occurred, it may resolve to –
 - (a) take no further action; or
 - (b) prepare and implement an action plan recommended by the Investigator with or without modifications as it thinks fit.
- 9.4 Based on the Investigator's Report, the evidence and any further comments or submissions by the parties, the Complaints Committee may:
 - (a) dismiss the Complaint in accordance with clause 13 of this Policy; or
 - (b) find that the alleged breach has occurred; or
 - (c) find that the alleged breach has not occurred; or
 - (d) if the finding is that the breach has occurred, decide that no further action is required; or
 - (e) if the finding is that a breach has occurred, decide that further action is required and consider the adoption of an action plan; or
 - (f) adopt an action plan to address the behaviour of the Respondent.
- 9.5 If the Complaints Committee makes a finding that the alleged breach has occurred, it must give reasons for that finding.



(10) Behaviour Complaints Officer acting on Complaints Committee finding

When the Complaints Committee makes a finding in relation to a Complaint, the Behaviour Complaints Officer must give the complainant and the respondent written notice of:

- (a) the finding and the reasons for the finding; and
- (b) if the finding is that the alleged breach has occurred, the Complaints Committee's decision on the course of action to be taken including the options in clause 7.2 above.

(11) Confidentiality of Complaints

The fact of a Complaint having been made and the details of a Complaint and the processes undertaken in connection with a Complaint including the referral to an Investigator are **confidential** matters and **must** not be disclosed unless and until the Complaints Committee has made a formal finding of breach in respect of the Complaint. Whether disclosure is to occur, and if so the manner and extent of disclosure, are to be decided by the Complaints Committee.

(12) Dismissal of Complaint

12.1 The Complaints Committee must dismiss a Complaint where:

- (a) the behaviour occurred at a council or committee meeting and the behaviour was dealt with at that meeting; and
- (b) either:
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the person responsible for the behaviour has taken remedial action in accordance with the local law of the City that deals with meeting procedures.

12.2 In any event, behaviour that is an offence under a local law that deals with meeting procedures cannot be dealt with as a behaviour breach.

(13) Withdrawal of Complaint

13.1 A complainant may withdraw their Complaint any time before it is considered by the Complaints Committee.

13.2 The withdrawal of a Complaint must be:

- (a) in writing; and
- (b) given to the Behaviour Complaints Officer.

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13.3 When a Complaint is withdrawn, the fact of the Complaint having been made, and any details of the Complaint and its withdrawal, must be treated as **confidential** and not disclosed.

(14) Compliance with plan requirement

14.1 The Behaviour Complaints Officer is to monitor the actions in time frames set out in an action plan.

14.2 If an action plan includes any of the requirements in clause 7.2 above (i.e. in clause 12.6 of the Code), failure to comply with that requirement is a breach of clause 23 of the Code and as a breach of the Rules of Conduct, is a minor breach under section 5.105(1) of the LG Act 1995.

(15) Complaints that are inappropriate under this Policy

The purpose of the Code of Conduct is to guide the decisions, actions and behaviours of council members, committee members, and of candidates running for election as a council member. A breach of the Rules of Conduct is a minor breach under section 5.105(1) of the LG Act, and is not the intended subject of this Policy. The objective of this Policy is to deal with matters relating to breaches of the behaviour requirements in Division 3 of the Code of Conduct, and all Complaints under this Policy should be made with that objective in mind. Consequently, Complaints such as the following are inappropriate to be dealt with under this Policy:

- (a) complaints made with the intent of addressing personal grievances or disagreements;
- (b) complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
- (c) minor breaches under section 5.105(1) of the LG Act;
- (d) serious breaches under section 5.114 of the LG Act; and
- (e) allegations of corruption.

(16) Cost in the complaints process

16.1 No fee is charged to lodge a Complaint under this Policy.

16. The Investigator or the members of a Complaints Investigation Panel, or a mediator, appointed pursuant to the Policy may charge the City a fee to cover the costs of dealing with the Complaint whether or not a breach is ultimately found.

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16.3 Any fee charged by an Investigator or the members of a Complaints Investigation Panel, or a Mediator, is to be based on the time spent in connection with the Complaint and may be established in advance on a quotation, or otherwise in accordance with the City’s Purchasing Policy.

Strategic Link:	Governance Framework
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Lead Business Unit:	Governance
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Adoption Date: (Governance Purpose Only)	14 July 2022
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ECM Doc Set ID: (Governance Purpose Only)	10789263

Terms of Reference

1 Background

- 1.1 The Code of Conduct Complaints (CCC) Committee is a formally appointed Committee of Council.
- 1.2 Section 5.103 of the LG Act and Regulation 12 of the Local Government (Model Code of Conduct) Regulations 2021 require the Council to adopt a Code of Conduct to be observed by council members and candidates for local government elections.

2 Objectives and Duties

- 2.1 The CCC Committee is responsible for receiving and reviewing the Investigator's Report related to a Complaint or Complaints received for an alleged breach of the Code against a council member or candidate and determining the outcome, in accordance with the powers delegated by Council.
- 2.2 The Committee will be responsible for the effective determination of the outcome based on the evidence presented and take into account any recommendations provided in the Investigator's Report.
- 2.3 Should the Committee find that a breach has occurred, it will be responsible for issuing an appropriate sanction, in accordance with Council Policy "Elected Member Code of Conduct – Complaints of Alleged Behaviour Breach"

3 Membership

- 3.1 The CCC Committee will comprise of all elected members upon the resolution of Council to that effect.
- 3.2 Any member who is either a Complainant or Respondent to an alleged Breach which is the subject of a Meeting, will be excluded from attending the Meeting at which the alleged Breach is to be presented.
- 3.3 City staff, under the direction of the CEO, shall provide secretarial and administrative support to the Committee

4 Meetings

- 4.1 The Committee shall meet on an as required basis and in accordance with the procedures as outlined in the Council Policy.
- 4.2 Any external Consultant or officer of the City of Cockburn may be invited to attend any Meeting of the Committee to address a particular item of business on the Agenda.

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- 4.3 Any external Consultant or City officers in attendance at the Committee Meetings may be required to leave the Meeting upon a motion to that effect being carried at the Meeting.