

Policy

City of Cockburn Behaviour Complaints



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

1.1 This policy applies to:

- 1.1.1 Complaints made in accordance with Clause 11 of the Code;
- 1.1.2 Council Members, Committee Members, Candidates; and
- 1.1.3 Complainants

(2) Process for Making a Complaint

2.1. Making a Complaint

- 2.1.1. Any person may make a Complaint within one month after the alleged Behaviour Breach occurred.
- 2.1.2. A Complaint must be made by completing the 'Behaviour Breach Form' in full and lodging with the City's Behaviour Complaints Officer.
- 2.1.3. A Complaint must be submitted by the Complainant.
- 2.1.4. A Complaint cannot be submitted anonymously.

2.2 The Behaviour Complaints Officer is to:

- 2.2.1 Give notice to the Complainant in writing where a Complaint is not compliant, giving the opportunity to address if applicable.
- 2.2.2 Give notice to the Complainant within 7 days, confirming receipt of the Complaint and providing a copy of this Policy.
- 2.2.3 Inform the Respondent within 14 days, acknowledging the Complaint has been received, and providing a copy of this Policy.
- 2.2.4 Provide all Complaints to the Complaint Assessor together with details of the alleged Behaviour Breach and any supporting evidence provided by the Complainant.
- 2.2.5 Deal with and consider, so far as is practicable, Complaints based on the order in which they are received.
- 2.2.6 Only refer a Complaint relating to a Candidate to a Complaint Assessor if and when the Candidate is elected as a Council Member, where the Complaint is compliant.

(3) Appointment of Complaint Assessor

- 3.1 The Behaviour Complaints Officer will appoint a Complaint Assessor 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 Remuneration of a Complaint Assessor or consultant assisting the City will be in accordance with the City's Procurement Policy

(4) Alternative Dispute Resolution

- 4.1 The Complaint Assessor or Behaviour Complaints Officer must offer to both parties Alternative Dispute Resolution, such as mediation.
- 4.2 Where both parties agree to engage in Alternative Dispute Resolution, the Complaints Officer will determine the process and appoint the appropriate consultant.
- 4.3 Any Alternative Dispute Resolution Process may be terminated at any time by the Complainant, or Respondent or Complaints Officer or consultant appointed to assist the City.
- 4.4 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 will resume the formal process required under this Policy.

(5) Assessment

- 5.1 The Complaint Assessor will undertake an assessment of the Complaint in accordance with this Policy.
- 5.2 The Complaint Assessor will provide the Respondent with a reasonable opportunity to be heard before forming any opinions or preparing the Report.
- 5.3 The Complaint Assessor may request relevant records of the City from the Behaviour Complaints Officer, copies of which must be provided to the Respondent.
- 5.4 Where the Complainant has provided any clarification or additional information, that information must be provided to the Respondent.

(6) Report

- 6.1 The Complaint Assessor will prepare a Report and after considering a Complaint, the Complaint Assessor must make a determination as to whether or not the alleged Behaviour Breach has occurred.
- 6.2 The Complaint Assessor must perform their investigation, consideration, and determination on a Complaint on the basis of the documents and claims before them, and in accordance with due process, consistent with the provisions of this Policy.

(7) Action Plan

- 7.1 When preparing an Action Plan in compliance with this Policy, the Complaint Assessor must consult with the Respondent.
- 7.2 The Respondent must be provided with the opportunity to be involved in matters such as the timing of meetings or training.

- 7.3 An Action Plan may include a requirement for the Respondent to do one or more of the following
 - 7.3.1 engage in mediation;
 - 7.3.2 undertake counselling;
 - 7.3.3 undertake training; or
 - 7.3.4 take other action of an **instructive** but not **punitive** nature, as is appropriate to the circumstances of the case.
- 7.4 An Action Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of Council Members.
- 7.5 The Action Plan should outline
 - 7.5.1 the behaviour(s) of concern;
 - 7.5.2 the actions to be taken to address the behaviour(s);
 - 7.5.3 who is responsible for the actions; and
 - 7.5.4 an agreed timeframe for the actions to be completed.

(8) Withdrawal of Complaint

- 8.1 A Complainant may withdraw their Complaint any time before it is considered by the Complaints Committee.
- 8.2 The withdrawal of a Complaint may be:
 - 8.2.1 in writing; and
 - 8.2.2 given to the Behaviour Complaints Officer.
- 8.3 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.

(9) Complaints Committee

- 9.1 The Agenda will be prepared on the basis that the part of the meeting that deals with the Report will be held behind closed doors in accordance with s.5.23(2) of the Act.
- 9.2 The Complaints Committee will consider the Report and attachments, giving due regard to the recommendations.

(10) Finding

- 10.1 The Complaints Committee must not make a Finding without the Respondent first having been given a reasonable opportunity to be heard. The Complaints Committee may accept compliance with clause 5.2 of this Policy as provision of a reasonable opportunity to be heard.
- 10.2 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.
- 10.3 If the Complaints Committee makes a finding that the alleged breach has occurred, it may resolve to
 - 10.3.1 take no further action; or
 - 10.3.2 prepare and implement an Action Plan recommended by the Complaint Assessor with or without modifications as it thinks fit.
- 10.4 Based on the Report, the evidence and any further comments or submissions by the parties, the Complaints Committee may
 - 10.4.1 dismiss the Complaint in accordance with clause 11 of this Policy; or

- 10.4.2 find that the alleged breach has occurred; or
 - 10.4.3 find that the alleged breach has not occurred; or
 - 10.4.4 if the Finding is that the Behaviour Breach has occurred, decide that no further action is required.
 - 10.4.5 if the finding is that a Behaviour Breach has occurred, decide that further action is required; and
 - 10.4.6 adopt an Action Plan to address the behaviour of the Respondent.
- 10.5 If the Complaints Committee makes a Finding that the Behaviour Breach has occurred, it must give reasons for that Finding

(11) Dismissal of Complaint

- 11.1 The Complaints Committee must dismiss a Complaint if it is satisfied that:
- 11.1.1 the behaviour occurred at a Council or Committee Meeting; and 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 City's Standing Orders Local Law.

(12) Action

- 12.1 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:
- 12.1.1 the Finding and the reasons for the Finding; and
 - 12.1.2 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.

(13) Compliance

- 13.1 The Behaviour Complaints Officer is to monitor the actions in time frames set out in an Action Plan.
- 13.2 Failure to comply with a requirement included in an Action Plan is a breach of clause 23 of the Code and is a minor breach under section 5.105(1) of the Act.
- 13.3 The Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in an Action Plan

(14) Procedural Fairness

- 14.1 The principles of procedural fairness will apply when dealing with a Complaint to the extent set out in this Policy.
- 14.2 Procedural fairness is to be provided to the Complainant and the Respondent as follows:
- 14.2.1 A Complaint will be considered in accordance with this Policy;
 - 14.2.2 A Complainant has the opportunity, as prescribed in the Behaviour Complaint Form, to receive clarification and assistance from the Complaints Officer prior to submitting a Complaint;
 - 14.2.3 As soon as reasonably practicable after the receipt of a Complaint, the Complainant will receive acknowledgment that the Complaint

- has been received and the Respondent will be duly notified of the Complaint by the Behaviour Complaints Officer;
- 14.2.4 At first instance, the Behaviour Complaints Officer or Complaints Assessor will offer both parties the opportunity to participate in alternative dispute resolution. If this is declined, the declining party/parties must provide detailed reasons as to why mediation is not appropriate in the circumstances. The Complaints Assessor is to note these comments in the Report;
- 14.2.5 If no alternative dispute resolution is to occur, the Respondent will be provided fourteen days to respond to the Complaint in writing;
- 14.2.6 The Respondent can seek reasonable extensions of time to provide their response, upon written confirmation from the Behaviour Complaints Officer.
- 14.2.7 Both parties will be provided with the finding and recommendation of the Complaints Assessor prior to it being considered by the Complaints Committee. This includes any recommended Action Plan;
- 14.2.8 Both parties will be notified of the outcomes of the Council determination as soon as practicable by the Behaviour Complaints Officer;
- 14.2.9 If a Behaviour Breach has been found and it has been determined that an Action Plan is required, the Behaviour Complaints Officer will consult with the Respondent about their availability for actions included in the Action Plan;
- 14.2.10 The Complainant will be notified that the Action Plan session has been conducted.

(15) Confidentiality of Complaints

- 15.1 Subject to disclosure required to process and determine the Complaint, and to the extent disclosure is required by law, the Complainant, the Respondent and the Complaints Assessor are required to maintain confidentiality in respect of the Complaint and the processes undertaken to determine the Complaint.
- 15.2 The relevant parties will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the determination of their Complaint.
- 15.3 The Complaint Assessor's Report must be provided to the Complaints Committee.

Definitions

Act means the *Local Government Act 1995*.

Action 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 whom the Complaint relates, if a Finding has been made that a Behaviour Breach has occurred.

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

Behaviour Complaints Officer means the person authorised in writing by the Council to receive Complaints and Withdrawals of Complaints and may be the same person as the City's Complaints Officer under section 5.120 of the Act.

Candidate means 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 Act.

City means City of Cockburn.

Code means the Code of Conduct applying to the City under section 5.104 of the Act.

Committee Member means a person appointed to a committee by resolution of Council.

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

Complaint Assessor means an impartial third party who will undertake the functions specified in this Policy, applying the principles of this Policy and manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

Complainant means a person who has submitted a Complaint.

Complaints Committee means the Council Committee delegated the powers and duties of the City of dealing with a Report under clauses 10 and 13 of the Code.

Council means the council of the City.

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.

Council Committee means a committee of Council.

Finding means a finding made in accordance with clause 12(1) of the Code of Conduct as to whether the Behaviour Breach has or has not occurred.

Report means the report for the Complaints Committee of the outcome of the investigation of a Complaint that must:

- (a) outline the process followed, including how the Respondent was provided the opportunity to be heard;
- (b) include all Complaint documents and related records, including any City records, as attachments;
- (c) include recommendations on each decision that may be made by the Complaints Committee;
- (d) include reasons for each recommendation, with reference to this Policy; and
- (e) include an Action Plan where recommended by the Complaint Assessor.

Respondent means a person who is the subject of a Complaint.

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

Related Documents:

- Code of Conduct for Council Members, Committee Members and Candidates
- Behaviour Complaint Form

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