

POLICY

CODE OF CONDUCT BEHAVIOUR COMPLAINTS HANDLING

ASPIRATION	Leadership
RESPONSIBLE DIRECTORATE	Office of the CEO
RESPONSIBLE BUSINESS UNIT	City Legal
RELEVANT LEGISLATION	Local Government Act 1995

1. Objective

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and City of Armadale Code of Conduct for Council Members, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Part 5 of the City of Armadale Code of Conduct for Council Members, Committee Members and Candidates.

To give effect to the City of Armadale’s commitment to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

2. Scope

This Policy applies to complaints made in accordance with Clause 8.1 of the City of Armadale’s Code of Conduct for Council Members, Committee Members and Candidates.

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

This Policy does not apply to complaints:

- a) relating to Rules of Conduct under Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021 (WA)*;
- b) relating to services delivered by the City;
- c) against employees of the City;
- d) involving allegations of serious misconduct, corruption or fraud; or
- e) about other criminal or corrupt conduct.

3. Policy

3.1 Principles

3.1.1 Procedural fairness

The principles of procedural fairness, or natural justice, 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.

3.2 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.

3.3 Confidentiality

The City of Armadale 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.

3.4 Accessibility

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

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

3.5 Roles

3.5.1 Behaviour Complaints Officer

The Behaviour Complaints Officer is authorised in accordance with clause 8.1(3) of the Code of Conduct to accept complaints and withdrawal of complaints.

The Behaviour Complaints Officer is not an advocate for the Complainant or the Respondent. The Behaviour Complaints Officer provides procedural information and assistance to both Complainant and Respondent.

The Behaviour Complaints Officer will liaise with and provide administrative support to a Complaint Assessor appointed under this Policy.

Where Council is required to make a finding in respect of a complaint, the Behaviour Complaints Officer will liaise with the CEO to facilitate the calling and convening of Council meetings if required.

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

3.5.2 Complaint Assessor

The Complaint Assessor is appointed by the Behaviour Complaints Officer in accordance with Part 3.8 of this Policy.

The Complaint Assessor is an impartial third party who will undertake the functions specified in this Policy. In undertaking their functions, the Complaint Assessor will apply the Principles of this Policy.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

3.5.3 Council

Council will determine matters relating to complaints, including:

- Dismissing a Complaint in accordance with clause 8.3 of the Code of Conduct and providing reasons for any such dismissal.
- Making 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 *[clause 8.2(4) of the Code of Conduct]*.
- Determining reasons for such a Finding.
- Where a Finding is made that a breach has occurred, determining:
 - To take no further action; or
 - Prepare and implement a plan to address the behaviour of the person to whom the Complaint relates.

3.6 Procedure

3.6.1 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 Part 5 of the Code of Conduct *[clause 8.1(1) of the Code of Conduct]*.

A Complaint must be made within one (1) month after the alleged Breach *[clause 8.1(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 Behaviour Complaints Officer.

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.

In order to allow the Respondent to understand and respond to the complaint against them, the name of the Complainant will be provided to the Respondent, unless the Complainant provides reasons this should not occur.

The Complainant's contact information will not be provided to the Respondent.

The Complainant's name and contact information will not be included in any publicly available documents such as meeting agenda or minutes.

The Complainant should be aware that Complaint Documents may be subject to an FOI request, noting that they must be consulted before any documents are released, and exemptions may apply.

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 1 month after the alleged breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be made *[clause 8.1(2)(c) of the Code of Conduct]*.

A Complaint will not be actioned if the Complaint is withdrawn by the Complainant, or is not on the form approved by the Council.

3.6.2 Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with 3.1, 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 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 *[clause 8.5(1) of the Code of Conduct]*.

3.6.3 Withdrawing a Complaint

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint *[clause 8.4 of the Code of Conduct]*.

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

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

3.6.4 Notice to Complainant

Within 7 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Complainant to the person's last known place of residence or the person's last known email address 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, after referral to the Complaints Assessor, 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 3.6 of this Policy.

3.6.5 Notice to Respondent

Within 14 days after receiving a Complaint, the Behaviour 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;

- outlines 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.

The Respondent will be given 14 days to provide a response. In the event a Respondent requests more time to provide a response, the Complaints Assessor may grant an extension of up to 14 days, however no additional extensions are to be granted.

In the event the Respondent fails, or refuses to provide a response within the period stated, including any approved extension, the Complaints Assessor shall write to the Respondent's last known place of residence or email to the Respondent's last known email address, advising them that they have 7 days to provide a response. Failure to respond will result in the matter being dealt with by the Council without any further reference to that person.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6 of this Policy.

3.6.6 Alternative Dispute Resolution

The City of Armadale recognises that 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. Alternative Dispute Resolution may be facilitated by an independent/external third party who is appropriately qualified and experienced in Alternative Dispute Resolution.

To commence the process, the Behaviour Complaints Officer 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 Behaviour Complaints Officer will pause the formal process.

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 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 a third party who is providing assistance to the Local Government, such as a facilitator or mediator.

When the Behaviour Complaints Officer invites the parties to participate in alternative dispute resolution, 14 days are to be given to the parties to allow each party to consider the invitation. No extensions are to be granted to the 14 day period and where one or both parties to the complaint do not respond to the invitation within 14 days, the Behaviour Complaints Officer is to proceed with dealing with the matter in accordance with this policy.

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.

3.6.7 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 Behaviour Complaints Officer, after referral to the Complaints Assessor, may decide to progress those Complaints concurrently.

3.6.8 Appointment of Complaints Assessor

The Chief Executive Officer will appoint a suitably qualified and experienced Complaint Assessor, in accordance with the City of Armadale's Purchasing Policy.

The Behaviour Complaints Officer will endeavour to appoint a Complaint Assessor within a reasonable period. The Behaviour Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.

3.6.9 Search of Local Government Records

The Complaint Assessor may request the Behaviour Complaints Officer to search for any relevant records held by the City.

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 City of Armadale Standing Orders Local 2000.

The 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 by either the Behaviour Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

3.6.10 Assessment of the Complaint

The Complaint Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under Part 3.4 and Part 3.5 of this Policy.

The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to be heard before forming any opinions, or drafting the Complaint Report or recommendations.

The evidence presented to Council must be of a sufficient quality and relevance to lead to a conclusion as to whether or not the conduct alleged, on the balance of probabilities, likely occurred. It also means that the evidence relied on to arrive at a finding must be confined to the matter that is before it, and that has been put to the Respondent. Individual grievances or disagreements that have not been the subject of a previous finding of a breach involving the Respondent cannot form part of Council's deliberations.

Council's function in this respect is that of a quasi-judicial tribunal that is required to make a determination on the matter based on the documents and information before it, much like the Local Government Standards Panel. Consequently, great care must be taken to ensure Council's deliberations are not affected by bias or inference.

A councillor who is a Complainant or a Respondent should consider their responsibilities in relation to declaration of interests under the *Local Government Act 1995* and associated regulations, and also the principles of procedural fairness in regard to decision makers being free from an actual or perceived bias. As such a councillor who is a Complainant or a Respondent may choose to be absent for the meeting or portion of a meeting at which the complaint is considered.

3.6.11 Complaint Report

The Complaint Assessor will prepare a Complaint Report that will:

- outline the process followed, including how the Respondent was provided with an opportunity to be heard;
- include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
- include recommendations on each decision that may be made by Council; and
- include reasons for each recommendation, with reference to Part 4 of this Policy.

If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 8.2(5)(b) of the Code of Conduct and Part 4.4 of this Policy, the Complaint Report must include a Proposed Plan.

The Respondent is to be provided with a draft copy of the Complaint Report and any Proposed Plan, and an opportunity to make submissions, before the Complaint Assessor finalises the Complaint Report and Proposed Plan. The written response of the Respondent to the Proposed Plan is to be included within the Complaint Report and form part of the material considered by Council to satisfy clause 8.2(6) of the Code of Conduct.

A Plan should not include measures that are intended to be a punishment, and instead should focus on mechanisms to encourage positive behaviour and prevent negative behaviour from occurring again in future. However, the purpose of the consultation is to ensure the actions set out in the Plan correspond with the availability of the Respondent to be involved in them (for example, scheduling appointments and training around the person's job, family commitments etcetera), not whether the Respondent agrees with the actions or not.

The timeframe required for a Respondent to achieve practical completion of a Plan is dependent on the nature of the actions required. It may be unreasonable or unworkable for a Respondent to complete a Plan in a 4 week period if the Plan involves multiple training or mediation sessions over a number of weeks. This is something that is to be determined by the Complaints Assessor in consultation with the Respondent.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Council. The Behaviour 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.

3.6.12 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 s.5.23(2) of the Act.

The Council will consider the Complaint Report and attachments and give due regard to the recommendations.

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 the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Council will determine whether or not to dismiss the Complaint in accordance with Clause 8.3 of the Code of Conduct and Part 4.2 of this Policy.

If the Council dismisses a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 8.3(2) of the Code of Conduct. This concludes the process for this Complaint.

If the Complaint is not dismissed, the Council 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, in accordance with clause 8.2 of the Code of Conduct and Part 4.3 of this Policy.

If the Council finds that the alleged Breach **did not** occur, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 8.3(2) of the Code of Conduct. This concludes the process for this Complaint. If the Council finds that the alleged breach **did** occur, the Council will decide whether to take no further action in accordance with clause 8.2(5)(a) of the Code of Conduct or adopt the Proposed Plan or prepare an Alternate Plan to address the behaviour in accordance with clause 8.2(5)(b) of the Code of Conduct and Part 4.4 of this Policy.

If the Council decides to take no further action, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 8.2(8)(a) of the Code of Conduct. This concludes the process for this Complaint. If the Council decides to prepare an Alternate Plan the Council will first consult with the Respondent in accordance with clause 8.2(6) of the Code of Conduct. The Council will consider any submissions made by the Respondent before adopting and implementing an Alternate Plan.

3.6.13 Compliance with Plan Requirement

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 clause 8.6 of 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.

4. Decision Making

4.1 Objective and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 1 of this Policy.

4.2 Dismissal

The Council must dismiss a Complaint in accordance with clause 8.3(1)(a) and (b) of the Code of Conduct if it 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; or
 - (ii) the Respondent has taken remedial action in accordance with the City of Armadale Standing Orders Local Law 2000.

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 [*clause 8.2(4) 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 Part 5 of the Code of Conduct.

4.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the 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.

4.5 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).

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.

5. Influencing Strategies or Plans

Strategic Community Plan 2020 – 2030

6. Applicable Legislation

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

7. Definitions

Act means the *Local Government Act 1995*.

Behaviour Complaints Officer means a person authorised pursuant to clause 8.1(3) of the Code of Conduct to receive complaints and withdrawals of complaints. The role of the Behaviour Complaints Officer is addressed in Part 2.1 of this Policy.

Breach means a breach of Part 5 of the City of Armadale 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 Part 3.2 of this Policy.

City means the City of Armadale.

Code of Conduct means the City of Armadale Code of Conduct for Council Members, Committee Members and Candidates.

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

Committee Member means a Council Member, employee of the City of Armadale 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.

Complaint means a complaint submitted under Clause 8.1 of the Code of Conduct.

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

Complaint Assessor means an external, impartial person appointed by the Behaviour Complaints Officer in accordance with Part 2.2 and Part 3.8 of this Policy.

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 8.1(2)(a) of the Code of Conduct *[by Council resolution or by the CEO exercising delegated authority]*.

Council means the Council of the City of Armadale.

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 8.2(2) 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 8.2(5)(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.

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

VERSION CONTROL			
RELEVANT DELEGATIONS	N/A		
INITIAL COUNCIL ADOPTION	3/05/2021	REFERENCE	CEO1/5/21
LAST REVIEWED	26/02/2024	REFERENCE	CS/4/2/24
NEXT REVIEW DUE	Click or tap to enter a date.		



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