

COUNCIL MEMBER, COMMITTEE MEMBER AND CANDIDATE CODE OF CONDUCT COMPLAINT HANDLING POLICY

Responsible Directorate:	<i>Office of the CEO</i>
Responsible Service Unit:	<i>Governance and Legal</i>
Contact Person:	<i>Executive Manager Governance and Legal</i>
Date of Approval:	<i>23 April 2024</i>
Council Resolution No:	<i>CS06-04/24</i>

1. POLICY STATEMENT

The City of Wanneroo is committed to addressing complaints under Division 3 of the Council Member, Committee Member and Candidate Code of Conduct (**Complaint/s**) (the **Code**) in an effective, transparent and fair manner that supports high standards of behaviour by Council Members, Committee Members and Candidates.

Council Member, Committee Members and Candidates understand that when accessing this policy they must do so in good faith and for a proper purpose in line with the duties and expectations that their role provides.

2. OBJECTIVE AND PURPOSE

This Policy establishes the process by which the City of Wanneroo Council deals with Complaints.

3. KEY DEFINITIONS

<i>DEFINITIONS: Any definitions listed in the following table apply to this document only.</i>	
Act	means the <i>Local Government Act 1995</i> .
Action Plan	means a Plan that may be prepared and implemented under clause 12(4)(b) of the Code, 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.
Candidate	means a candidate for election as a Council Member.
Code	means the City of Wanneroo Council Member, Committee Member and Candidate Code of Conduct.
Committee Member	A person appointed to a committee by resolution of Council.
Complaint	means a complaint submitted under section 11 of the Code.
Complainant	means a person who has submitted a Complaint.

Complaints Administrator	means the independent and suitably qualified person appointed by the Complaints Officer in accordance with clause 5.3 of this Policy.
Complaint Form	means the form approved under section 11(2)(a) of the Code
Complaints Officer	means a person authorised in writing by Council resolution (CE03-03/21) under section 11(3) of the Code of Conduct to receive Complaints and withdrawals of Complaints. The role of the Complaints Officer is addressed in clause 5.2 of this Policy.
Council	means the Council of the City of Wanneroo.
Council Meeting	means a formal meeting of the Council 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.
Respondent	means a person who is the subject of a Complaint submitted under section 11 of the Code.

4. SCOPE

4.1 This Policy applies to:-

- a) complaints made in accordance with section 11 of the Code;
- b) Council Members, Committee Members, Candidates; and
- c) any person who submits a Complaint.

4.2 This Policy does not apply to complaints:-

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

5. IMPLICATIONS

The City will incur costs to engage the Complaints Administrator and appropriately provide resource capacity to assist the Complaints Officer and the Complaint Administrator to receive and deal with Complaints.

6. IMPLEMENTATION

6.1 Making a Complaint

- a) Any person may make a Complaint within one month after the alleged breach of the Code occurred.
- b) A Complaint must be made by completing the [Behaviour Complaint Form](#) in full and providing the completed forms to the Complaints Officer. ([www.wanneroo.wa.gov.au/council/Good Governance and Conduct/Codes of Conduct](http://www.wanneroo.wa.gov.au/council/Good%20Governance%20and%20Conduct/Codes%20of%20Conduct)).
- c) A Complaint will not be accepted if the Complainant has made a complaint under the Rules of Conduct Division 4 of the Code where the Complaint relates to the same or similar circumstances of the Complaint.

6.2 Complaints Officer

- a) The Director Corporate Strategy and Performance (and in their absence or where a conflict of interest exists, the Executive Manager Governance and Legal) is authorised as the Complaints Officer.
- b) The Complaints Officer is authorised to receive Complaints and is the City's liaison with the Complaint Administrator.
- c) Prior to appointing a Complaints Administrator, 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 Administrator.
- d) For the avoidance of any doubt, the role of the Complaints Officer is intended to be administrative only. A Complainant may reject or choose not to seek the guidance of the Complaints Officer in making a Complaint.

6.3 Complaint Administrator

- a) The Complaint Administrator is an impartial person external to the City who will undertake the functions specified in this Policy.
- b) The City will appoint a suitably qualified and experienced Complaints Administrator in accordance with the City's Purchasing Policy that meets the following criteria –
 - i) Licensed to undertake investigations;
 - ii) Evidence of completion of a Certificate IV in Government Investigations;

- iii) Experienced in undertaking investigations in the local government sector, with experience with local government council members as preferable; and
 - iv) Demonstrated ability to provide quality services at a competitive price.
- c) The Complaints Administrator is appointed to review and consider a Complaint and to report on their findings and recommended course of action to the City's Complaints Officer for consideration by Council.

6.4 Function and Responsibilities of the Complaints Administrator

- a) The Complaints Administrator assesses and makes a finding on a Complaint, and makes a recommendation to Council.
- b) The Complaints Administrator is not to assess a Complaint if they have an actual or perceived conflict of interest in relation to a Complaint.
- c) The Complaint Administrator is to undertake the following –
 - i) determine whether the Complaint is within jurisdiction, and if the matter is found not to be within jurisdiction, make a recommendation for dismissal without engaging in further investigation;
 - ii) determine whether the Complaint is to be dismissed pursuant to clause 5.7 of this Policy;
 - iii) offer the parties mediation;
 - iv) liaise with the Respondent and facilitate the Response;
 - v) make a finding on the balance of probabilities¹; and
 - vi) prepare a report and recommendation to Council based on their findings.
- d) The findings and subsequent recommendation of the Complaints Administrator will be put to Council by the Complaints Officer. A Complaints Administrator's recommendation based on their finding must either –
 - i) recommend that the Council find that no breach of the Code has occurred;
 - ii) recommend that the Council find that a breach of the Code has occurred and that no further action should be taken; or
 - iii) recommend that the Council find that a breach of the Code has occurred and an Action Plan for counselling and training be prepared and implemented.

¹ The balance of probability threshold is derived pursuant to clause 12(3) of Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021*, which requires that any finding of a breach 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.

- e) The Complaints Administrator must provide reasons for their finding/s and recommendation/s.
- f) The Complaints Administrator may seek legal advice from the Executive Manager Governance and Legal to interpret the provisions of Division 3 of the Code.

6.5 Mediation

- a) The administration of the Complaint is focused on providing the Complainant and the Respondent the most appropriate process to resolve the Complaint, with a strong preference for facilitated mediation.
- b) Both parties will be offered the opportunity for mediation.
- c) Any party which does not wish to engage in mediation must provide written reasons why mediation is not possible or appropriate in the context of the Complaint.
- d) If the parties do agree to mediation, they are required to participate in the facilitated mediation in good faith in seeking to resolve the Complaint.
- e) Mediation will be facilitated through the Complaints Administrator with an independent and suitably qualified mediator.
- f) The facilitated mediation process is to consider all the disputed issues, develop options to resolve each of the issues and to reach an agreed outcome.
- g) If an agreed outcome is reached, the Complainant will withdraw the Complaint.

6.6 Assessment of Complaint

- a) The Complaints Administrator has no investigatory powers.
- b) The Complaints Administrator will make their determination regarding the occurrence of a breach/breaches of the Code in consideration *only* of –
 - i) the evidence and information provided by the Complainant in the completed [Behaviour Complaint Form; and](#)
 - ii) the submission (if received) by the Respondent pursuant to clause 5.10.

6.7 Dismissal of a Complaint

- a) The Complaints Administrator may recommend to the Complaints Officer that a Complaint be dismissed at first instance.
- b) Such a recommendation must be made on the determination that the behaviour to which the Complaint relates occurred at a Council Meeting (*section 13 of the Local Government (Model Code of Conduct) Regulations 2021*) and either:

- i) the behaviour was dealt with by the Mayor; or
- ii) the person responsible for the behaviour has taken remedial action in accordance with Standing Orders Local Law.

6.8 Council Determination

- a) A confidential report is to be prepared for Council that must include the following:
 - i) the substance of the Complaint;
 - iii) the nature and extent of the assessment into the Complaint;
 - ii) the substance of the Response;
 - iii) the Complaints Administrator's finding;
 - iv) the Complaints Administrator's recommendation; and
 - v) any recommended Action Plan for training and counselling to address the behaviour of the Respondent (if in breach).
- b) Council's determination of a Complaint must:
 - i) be based on proper and genuine consideration of the finding of the Complaint Administrator, their report and recommendation; and
 - ii) not consider or take into account any irrelevant factors.
- c) In determining a Complaint, Council may resolve that a breach of the Code has:
 - i) occurred and to take no action;
 - ii) occurred and to implement an Action Plan; or
 - iii) not occurred and dismiss the Complaint.

6.9 Action Plan

- a) An Action Plan may be recommended as a mechanism to encourage positive behaviour and prevent negative behaviour in the future.
- b) In Council resolving to prepare and implement an Action Plan, the Council may consider:
 - i) the findings and recommendations of the Complaints Administrator;
 - ii) the Respondent's submission in relation to the Complaint;
 - iii) whether the Respondent has remedied or rectified their conduct;
 - iv) whether the Respondent has breached the Code knowingly or carelessly.
 - v) whether the Respondent has breached the Code on previous occasions.
 - vi) the harm or potential harm to the reputation of the City arising from the conduct.
 - vii) the public interest.

- c) Council can resolve an Action Plan that requires the Respondent to engage in counselling and training.
- d) The counselling session will be undertaken by an appropriately qualified independent person appointed by the Complaints Officer.
- e) The intention of a counselling session is to allow for education around the behaviour which caused the breach, discussion around positive behaviour for the future and to ideally facilitate the opportunity for an informal apology to be made.
- f) The Respondent must engage with counselling in good faith.
- g) Failure to comply with an Action Plan is a breach of the *Local Government (Model Code of Conduct) Regulations 2021* and will be duly referred to the relevant statutory authority by the Complaints Officer.

6.10 Procedural Fairness

- a) The principles of procedural fairness will apply when dealing with a Complaint to the extent set out in this Policy.
- b) Procedural fairness is to be provided to the Complainant and the Respondent as follows –
 - i) A Complaint will be considered in accordance with this Policy;
 - ii) 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;
 - iii) 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 Complaints Administrator or Complaints Officer;
 - iv) At first instance, the Complaints Administrator will offer both parties the opportunity to mediate the Complaint. If this is declined, the declining party/parties must provide detailed reasons as to why mediation is not appropriate in the circumstances. The Complaints Administrator is to note these comments in their report;
 - v) If no mediation is to occur, the Respondent will be provided fourteen days to respond to the Complaint in writing;
 - vi) The Respondent can seek reasonable extensions of time to provide their response, upon written confirmation from the Complaints Officer.
 - vii) Both parties will be provided with the finding and recommendation of the Complaints Administrator prior to it being considered by Council. This includes any recommended Action Plan;
 - viii) Both parties will be notified of the outcomes of the Council determination

as soon as practicable by the Complaints Administrator or Complaints Officer;

- ix) If a breach has been found and it has been determined that an Action Plan is required, the Complaints Officer will consult with the Respondent about their availability for a counselling and training session;
- x) The Complainant will be notified that the counselling and training session has been conducted.

6.11 Reporting

- a) The City will maintain a register of Complaints lodged under the Code.
- b) Minor breach complaints that result in a finding and costs relating thereto, will be reported to the Audit and Risk Committee on an annual basis and included in the City's Annual Report.

6.12 Confidentiality

- a) 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 Administrator are required to maintain confidentiality in respect of the Complaint and the processes undertaken to determine the Complaint.
- b) 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.
- c) The Complaint Administrators' Finding and Recommendation is provided to Council for determination through a confidential report presented in a closed session of Council.

6.13 Appeal

- a) Subject to 5.13b) below, there is no mechanism to appeal a determination of Council in respect of a Complaint.
- b) The City of Wanneroo Standing Orders Local Law applies in respect of Council determining Complaints.

7. AUTHORITIES AND ACCOUNTABILITIES

The Director Corporate Strategy and Performance (and in their absence or where a conflict of interest exists, the Executive Manager Governance and Legal) is authorised as the Complaints Officer.

8. ROLES AND RESPONSIBILITIES

The Complaints Officer is authorised to receive Complaints and is the City's liaison with the Complaint Administrator.

9. DISPUTE RESOLUTION (if applicable)

All disputes concerning this policy will be referred to the Executive Manager Governance and Legal or the Director Corporate Strategy and Performance as the Complaints Officers in the first instance, and if unresolved, to the CEO for determination.

10. EVALUATION AND REVIEW

This Policy is to be reviewed every two years to ensure that it meets its objective and provides clear accountability requirements unless legislative amendments or Council require an immediate review.

11. RELATED DOCUMENTS

- Council Member, Committee Member and Candidate Code of Conduct
- Council Member, Committee Member and Candidate Code of Conduct Complaint Handling Protocols

12. REFERENCES

- *Local Government Act 1995*
- *Local Government (Model Code of Conduct) Regulations 2021*
- Department of Local Government, Sport and Cultural Industries: The Minor Breach System: A guide for council members, complaints officers and members of the community.
- Department of Local Government, Sport and Cultural Industries: Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates 2021

13. RESPONSIBILITY FOR IMPLEMENTATION

Executive Manager Governance and Legal

REVISION HISTORY

Version	Next Review	Record No.
1	July 2024	21/250805
1	Minor amendments to correct reference to procedure (CE01-04/22)	21/250805v2
2	April 2024	21/250805v2
2	Minor amendments to align policy to legislative requirements (23/371038)	21/250805v2
2	April 2024 (CS06-04/24)	21/250805v2
3	April 2026	