

# Council Policy

**Council Policy Name:** Management of Complaints of Alleged Breaches of Behaviour

**Responsible Directorate:** Finance and Corporate Services **Version** Adopted

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## 1. PURPOSE

1.1. The purpose of this Policy is to outline the City’s approach to the management of complaints relating to alleged breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

## 2. SCOPE

2.1. This Policy is applicable to complaints about alleged breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.

2.2. A breach of Part 4 of the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. 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 Act;
- d. serious breaches under section 5.114 of the Act; and
- e. allegations of corruption.

## 3. DEFINITIONS

Term	Meaning
Committee	the Behaviour Complaints Committee established under section 5.8 of the <i>Local Government Act 1995</i> and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Complainant	a person lodging a complaint
Assessor	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to assess complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled “Management of Complaints of Alleged Breaches of Behaviour”.
Respondent	the Council or Committee member to whom a complaint relates

## 4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 4 - Leadership of the City's Strategic Community Plan 2021-2031 and specifically the Strategic Priority 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

## 5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
  - a. making a complaint;
  - b. dealing with a complaint;
  - c. dismissal of a complaint; and
  - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint of alleged breaches of the behavioural requirements set out in the Code.

### Complaint Submission and Response

- 5.4. A complaint must be submitted to the Complaints Officer and cannot be submitted anonymously.
- 5.5. The Complaints Officer, within 7 days of receiving a complaint:
  - a. will contact the Complainant acknowledging that the complaint has been received;
  - b. will outline the process that will be followed and the application of confidentiality;
  - c. will provide the Respondent with a copy of the complaint, including the name of the Complainant; and the City's response form.
- 5.6. The Respondent will complete and submit the response form to the Complaints Officer within 7 days of receiving notification from the Complaints Officer.
- 5.7. If more than one complaint is received that relates to the same alleged behaviour, the Complaints Officer may determine to progress those complaints concurrently.
- 5.8. If mediation is requested by both parties, the Complaints Officer will appoint a Mediator and the assessment timelines outlined in this Policy will be suspended until such time as the mediation is finalised in accordance with paragraph 5.9 or discontinued.
- 5.9. The Complainant must within 5 days of mediation lodge a withdrawal of complaint in accordance with the Code, or the assessment of the complaint will continue.

### Assessment of the Complaint

- 5.10. Within 7 days of receiving a response from the Respondent, the Complaints Officer will undertake a review of the complaint to determine:
  - a. whether it could be dismissed under Clause 14.1 of the Code; or
  - b. whether they will refer the complaint to an Assessor; or
  - c. make an assessment themselves as to whether the alleged behaviour breach has occurred.
- 5.11. Where a complaint is to be referred to an Assessor, the Complaints Officer must engage an Assessor within 14 days of receiving a response from the Respondent.
- 5.12. The Assessor must provide to the Complaints Officer a report containing a determination within 21 days of receiving a copy of the complaint and response.

- 5.13. In assessing the complaint, the Assessor may request the Complaints Officer to search for any relevant records in the City's record management system.
- 5.14. A meeting of the Committee must be convened:
- a. within 14 days after receipt of the Assessor's assessment; or
  - b. where recommended for dismissal or assessed by the Complaints Officer, within 21 days of the Complaints Officer having received the response from the Respondent.

#### **Committee finding**

- 5.15. The Complaints Officer must present each complaint to the Committee in a confidential report. The report is to include:
- a. a copy of the complaint and any supporting attachments;
  - b. a copy of the response and any supporting attachments;
  - c. the report of the Assessor where relevant;
  - d. a recommendation on the question whether or not a breach of behaviour has occurred;
  - e. a recommendation as to whether any further action is required.
- 5.16. Based on the Complaints Officer's report, and the evidence presented, the Committee must do one of the following:
- a. dismiss the complaint in accordance with clause 14.1 of the Code;
  - b. find the alleged breach has occurred and decide no further action is required;
  - c. find the alleged breach has occurred, decide that further action is required and request that the Complaints Officer prepare an action plan; or
  - d. find that the alleged breach has not occurred.
- 5.17. In deciding whether to implement an action plan, the Committee should consider:
- a. the nature and seriousness of the breach(es);
  - b. any submission made by the person to whom the complaint relates;
  - c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
  - d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
  - e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

#### **Action plans**

- 5.18. If the Committee has made a finding in accordance with clause 5.16(c) to prepare an action plan, the Complaints Officer will prepare an action plan in consultation with the person to whom the complaint relates or engage a suitably qualified third party to prepare an action plan.
- 5.19. An action 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.

#### **Confidentiality of complaints**

- 5.20. The complaint, response and any deliberations and assessment by the Complaints Officer / Assessor are confidential as they relate to the affairs of a person.
- 5.21. The Committee's findings and reasons will be published in the Committee minutes.

### Compliance with plan requirement

- 5.22. The Complaints Officer is to monitor the actions and timeframes set out in an action plan.
- 5.23. Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.
- 5.24. The Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

## 6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

## 7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	27 July 2022	Resolution #	C2207/189
Previous Adoption	DATE	10 November 2021	Resolution #	C2111/087