



Council Policy

CP 1.8 | Code of Conduct Behavioural Complaints Management

Policy Objective

To establish the process for managing complaints of alleged breaches of the behavioural requirements of the City's *Code of Conduct for Council Members, Committee Members and Candidates* (the **Code**).

Policy Scope

This Policy applies to Council Members, Committee Members, Candidates and Complainants when a Behavioural Complaint has been received under the Code.

The following are not within the scope of 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.
- c) Minor breaches under section 5.105 of the *Local Government Act 1995 (WA)* (the **Act**).
- d) Allegations of serious breaches under section 5.114 of the Act.
- e) Allegations of serious misconduct or other criminal conduct.
- f) Complaints related to the City's products or services.

Policy Statement

Section 5.104 of the **Act** requires local governments to adopt a code of conduct to be observed by Council Members, Committee Members and Candidates. A local government's code of conduct is to reflect the model code of conduct prescribed by section 5.103(1) of the Act which includes:

- general principles to guide behaviour;
- requirements relating to behaviour; and
- provisions specified to be rules of conduct.

The purpose of this Policy is to detail the process for resolving complaints of alleged behavioural breaches detailed in the Code.

A local government does not possess power to investigate alleged breaches of the behavioural requirements of the Code. Decisions made regarding breaches of the behavioural requirements of the Code are based solely upon the evidence presented by the Complainant and Council or Committee Member against which a complaint has been made.



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It is the responsibility of the Complainant and the Council or Committee Member to provide all the information they wish to be considered by the Behavioural Complaints Officer and Authorised Person when making a determination.

The Behavioural Complaints Officer and Authorised Person may make a finding that a Council or Committee Member has committed a breach of the behavioural requirements of the Code, based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not.

Definitions:

a) In this Policy:

'Authorised Person' means the person authorised under clause 11(3) of Schedule 1, Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021* to receive complaints and the withdrawal of complaints under the Code.

'Behavioural Complaint' means a complaint made regarding a breach of the behavioural provisions of the Code.

'Behavioural Complaints Officer' means a person appointed by the Authorised Person to administer and assess complaints.

'Candidate' means a Candidate for election as a Council Member, but does not include a Council Member who has nominated for re-election.

'City' means the City of Perth, being a local government established as a body corporate under section 2.5 of the Act and continues to be a corporate body under section 6 of the *City of Perth Act 2016*.

'CEO' means the Chief Executive Officer of the City.

'Code' means the City's *Code of Conduct for Council Members, Committee Members and Candidates*.

'Committee' means a committee established under the Act.

'Committee Member' includes any Council Member, the CEO, Employee or unelected member of the community who has been appointed by Council to be a member of a Committee.

'Complainant' means a person who has submitted a Behavioural Complaint under this policy.

'Council' means the Council of the City.

'Council Member' means the City's elected Lord Mayor or an elected Councillor.

'Employee' means a person:

- (a) employed by the City under section 5.36(1) of the Act; or
- (b) engaged by the City under a contract for services.

'Frivolous' means insupportable in law; disclosing no cause of action; groundless.

'Misconceived' means to fail to understand something correctly.

'Trivial' means having little value or importance.

'Vexatious' means an action that has no reasonable prospect of success.



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‘Without substance’ means lacking in the quality of having a solid basis in reality or fact.

Authorised person to receive complaints and withdrawals:

The Authorised Person is the person appointed under the relevant delegated authority. If no appointment is made, the CEO is the Authorised Person.

The Authorised Person will decide on the outcome of a Behavioural Complaint, based on the report of the Behavioural Complaints Officer.

Making a Behavioural Complaint

- a) Any person can make a Behavioural Complaint.
- b) A Behavioural Complaint must be made within one (1) month after the alleged breach occurring.
- c) A Behavioural Complaint must be made by completing the Behavioural Complaints Form in full and providing the completed form to the Authorised Person.
- d) Behavioural Complaints cannot be submitted anonymously.

Acknowledgement

- a) Upon receipt the Behavioural Complaint will be acknowledged within two (2) working days by the Authorised person.
- b) The Complainant will be provided with a copy of this policy and the contact details of the Behavioural Complaints Officer.
- c) The Council Member, Committee Member or Candidate will be provided with a copy this policy, a copy of the Behavioural Complaint (including the Complainant’s name but excluding the personal contact details of the Complainant) and the contact details of the Behavioural Complaints Officer.

Complaints against Candidates

A Behavioural Complaint about a Candidate cannot be dealt with until the candidate has been elected as a Council Member.

Dismissal of a Behavioural Complaint

The Behavioural Complaints Officer will make an initial assessment of the Behavioural Complaint to determine if the complaint meets the requirements of a Behavioural Complaint under the Code.

The Behavioural Complaints Officer may recommend that the Authorised Person dismisses the Behavioural Complaint where they are satisfied:

- a) The behaviour occurred at a Council or Committee Meeting and the behaviour was dealt with by the presiding member.
- b) The complaint was not made within one month after the occurrence of the alleged breach.
- c) The complaint is trivial, vexatious, frivolous or misconceived.
- d) The complaint constitutes an allegation of minor breach, serious breach, serious misconduct or criminal conduct.



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If the Authorised Person dismisses a Behavioural Complaint, they must provide the Complainant, and the Council or Committee Member, written notice of the decision and the reasons for the decision.

Withdrawal of Complaint

The Complainant may withdraw their complaint at any time before the Authorised Person makes a finding in relation to the complaint.

The withdrawal of the complaint must be in writing on the Withdrawal of Complaint form and given to the Authorised Person.

Mediation

The Behavioral Complaints Officer may offer mediation to both parties as the first option for resolving a Behavioural Complaint.

If issues raised in the Behavioural Complaint are resolved in mediation to the satisfaction of both the Complainant and Council or Committee member before the determination of the Behavioural Complaint is made, the Complainant is required to withdraw the complaint in writing on the Withdrawal of Complaint form.

Consideration of a Behavioural Complaint

Following an initial assessment of the Behavioural Complaint, if the Authorised Person decides to proceed, the Council or Committee Member subject to the complaint will be requested to provide a response to the complaint.

The Behavioural Complaints Officer can only make a recommendation based on the evidence presented by the Complainant and in the response from the Council or Committee Member subject to the complaint.

The decision is made on an evaluation of whether it is more likely that the alleged breach occurred than it did not occur, based on the evidence available.

Having considered the evidence the Behavioral Complaints Officer must make a recommendation to the Authorised Person by providing a report including, the reasons for the recommendation, a summary of the alleged breach, evidence provided by the Complainant and the response provided by the Council or Committee Member.

Procedural fairness:

All assessments of a Behavioural Complaint are to observe due process and procedural fairness.

Procedural fairness for an assessment shall include:

- a) ability for a person or persons the subject of a Behavioural Complaint a reasonable opportunity to respond, which shall be at least fourteen (14) days;
- b) all parties given a reasonable opportunity to put their case, in writing;
- c) the careful consideration of all evidence provided;
- d) considering all relevant factors and not irrelevant factors;
- e) ensuring any conflicts of interest are managed appropriately;



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- f) acting fairly and without bias; and
- g) making a finding without undue delay.

Making a Finding

A finding that the alleged Behavioural Breach has occurred must be based on the complaint and other evidence received from the Complainant and the Council or Committee Member.

The Authorised Person must be satisfied that, on the balance of probabilities, it is more likely than not that a breach occurred.

If a Behavioural Breach has occurred the Authorised Person may decide:

- a) To take no further action
- b) Prepare and implement an action plan to address the behaviour of the Council or Committee Member.

The Authorised Person must give the Complainant and the Council or Committee Member written notice of:

- a) The finding and the reasons for the finding
- b) The decision on the course of action to be taken, if applicable
- c) An invitation to meet with the Authorised Person to discuss the finding.

Where the Council or Committee Member takes up the offer to meet with the Authorised Person to discuss the finding, the Authorised Person may invite a third party to observe the meeting.

Action Plan

If the Authorised Person finds that the alleged behaviour has occurred, the Behavioural Complaints Officer will prepare and recommend an action plan to address the behaviour of the Council or Committee Member to the Authorised Person.

When preparing the Action Plan the Behavioural Complaints Officer must consult with the Council or Committee Member.

The Action Plan may include a requirement for the Council or Committee Member to do one or more of the following:

- a) Engage in mediation or further mediation
- b) Undertake counselling
- c) Undertake training
- d) Take other action the Behavioural Complaints Officer considers appropriate

The Action Plan will be designed to provide the Council or Committee Member with the opportunity and support to demonstrate the professional and ethical behaviour expected of a Council or Committee Member.

The plan will outline:

- a) The behaviour of concern



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- b) The actions to be taken to address the behaviour(s)
- c) Who is responsible for the actions
- d) An agreed timeframe for the actions to be completed

Management of actions:

All findings made in contravention of the Code, and any associated actions, will be monitored and managed by the Behavioural Complaints Officer.

Reporting:

The City will maintain a register of Behavioural Complaints lodged with the Authorised Person. Any finding that a breach has occurred will be included in an additional register and placed on the City's website.



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Document Control

Other relevant/related documents

Legislation:	<i>Local Government Act 1995.</i> <i>Local Government (Model Code of Conduct) Regulations 2021.</i>
City Policies:	CP 2.16 Complaints Management
City Procedures and Processes:	Code of Conduct for Council Members, Committee Members and Candidates

Document responsibilities

Custodian:	Executive Director Governance and Strategy	Custodian Unit:	CEO Alliance	Decision Maker:	Council
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Review management

Next review due:	March 2024	Document Management Ref:	18837/22
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Document management

Version	Decision reference	Synopsis of changes
1.0	OCM 29 March 2022	Initial policy submitted for approval