

## GOVERNANCE

### G 1.23 Code of Conduct Behaviour Complaints Management

<i>Responsible Department</i>	Chief Executive Officer Office
<i>Resolution Number</i>	C.4839
<i>Resolution Date</i>	16/08/2023
<i>Next Scheduled Review</i>	2025
<i>Related Shire Documents</i>	G 1.4 Code of Conduct for Councillors, Committee Members and Candidates 4.2 Procurement Policy
<i>Related Legislation</i>	Local Government (Model Code of Conduct) Regulations Local Government (Administration) Regulations 1996 Standing Orders Amendment Local Law 2018

### PURPOSE

To establish, in accordance with Clause 15(2) of the Local Government (Model Code of Conduct) Regulations 2021 and the Code of Conduct, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the Code of Conduct.

This policy gives effect to the Shire'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.

### SCOPE

This Policy applies to complaints made in accordance with Clause 11 of the Shire of Northam Code of Conduct for Councillors, 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.

Complaints that are deemed outside of the scope of this policy are:

- dissatisfaction with a Council or committee member's lawfully made decisions;
- dissatisfaction with a Council or Committee member's performance of his or her role;
- minor breaches under s. 5.105(1) of the Act;
- serious breaches under s. 5.114 of the Act;
- corruption allegations; or

- personal disagreements.

Complaints related to Division 4 - Rules of Conduct are dealt with by the Local Government Standards Panel. An overview of the complaint process and the complaint form can be found at the [Department of Local Government Sport and Cultural Industries](#). Any complaint for Division 4 should be on the appropriate form and sent to the Executive Manager Corporate Services as the Complaints Officer.

## DEFINITIONS

**Act** means the Local Government Act 1995.

**Authorised Person** means the Shire President, or where the complainant is made by, or about the Shire President, the Deputy Shire President.

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

**Candidate** an individual is considered a candidate when their nomination for election is accepted by a Returning Officer under s4.49 of the Act. The Code of Conduct applies to the candidate from that point. Any alleged breach may only be dealt with if the candidate is elected as a Council Member.

**Code of Conduct** means the Code of Conduct for Council Members, Committee Members and Candidates adopted by the Shire of Northam.

**Complainant** means a person complaining of a breach by a Council or Committee Member of the Shire or a candidate.

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

**Complaint Form** means the 'Alleged Breach Complaints Form – Councillors, Committee Members & Candidates'.

**Council Member** means a person currently serving a term of office as a Council Member of the Council in accordance with the Act.

**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, workshops or briefings.

**Finding** means a finding made in accordance with Code of Conduct as to whether a Breach has or has not occurred.

**Investigator** means an independent party appointed by the Authorised Person in accordance with this Policy for the purpose of dealing with a Complaint.

**Plan** means a Plan prepared and implemented under the Code of Conduct to address the behaviour of the person to whom the Complaint relates, 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.

**Respondent** means the person to whom a complaint relates.

**Shire** means Shire of Northam.

## POLICY

### 1. PRINCIPLES

#### 1.1. Procedural Fairness

The principles of procedural fairness will apply when dealing with a Complaint. The Respondent will be afforded a reasonable opportunity to be heard prior to any findings being made; decisions are to be made in an objective and impartial manner with an absence of bias (or the perception of bias); and any findings made are to be based on proper and genuine consideration of the evidence.

#### 1.2. Consistency

Each Complainant and Respondent will be dealt with according to their circumstances and each Complaint considered and determined on its merits. However, the Shire will ensure consistent decision making in relation to a Complaint, with similar circumstances resulting in similar decisions where appropriate.

#### 1.3. Confidentiality

To protect both the Complainant and Respondent, the Shire will take all reasonable steps to maintain confidentiality when dealing with a Complaint. Information gained in the course of managing a Complaint is to be managed in a secure manner and must not be disclosed or used inappropriately.

#### 1.4. Accessibility

Information on how to make a Complaint is available on the Shire's website, or alternatively from the Shire's Administration Building upon request.

### 2. MAKING A COMPLAINT

- 2.1. 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 Division 3 of the Code of Conduct.
- 2.2. A Complaint must be made within one month after the alleged Breach.
- 2.3. A Complaint must be made by completing the Complaint Form in full and providing the completed forms to the Authorised Person.
- 2.4. A Complaint must be made in accordance with the Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached. It must also include the name and contact details of the Complainant.
- 2.5. Where a Complaint Form omits required details, the Authorised Person will invite the Complainant to provide this information in order for the Complaint to be progressed.
- 2.6. The supporting information provided with the initial Complaint will be the only information considered during any assessment or investigation. The Authorised Person may seek clarification but will not seek or accept any additional supporting information.
- 2.7. A Complaint in relation to a Candidate must be made in accordance with the above process but cannot be dealt with unless the Candidate is subsequently elected as a Council Member.

### **3. WITHDRAWING A COMPLAINT**

- 3.1. A Complainant may withdraw their Complaint, in writing, at any time before a Finding has been made in relation to the Complaint.
- 3.2. A Complainant may withdraw a Complaint by advising the Authorised Person, in writing, that they wish to do so.
- 3.3. After receiving a withdrawal of the Complaint, the Authorised Person will take all necessary steps to terminate the process commenced under this Policy.

### **4. RESPONDING TO A COMPLAINT**

- 4.1. Within 14 days after receiving a Candidate Complaint, the Authorised Person will provide written notice:
  - 4.1.1. To the Complainant confirming receipt and advising of the procedure for complaints; and

- 4.1.2. To the Respondent, including a summary of the complaint and advising of the procedure for complaints.
- 4.2. Within 14 days of receiving a Complaint, the Authorised Person will contact the:
  - 4.2.1. Complainant:
    - 4.2.1.1. confirming receipt of the Complaint.
    - 4.2.1.2. outlining the process that will be followed and possible outcomes.
    - 4.2.1.3. explaining the application of confidentiality to the complaint.
    - 4.2.1.4. including a copy of this Policy; and
    - 4.2.1.5. if necessary, seeking clarification.
  - 4.2.2. Respondent:
    - 4.2.2.1. advising that a Complaint has been made and include a copy of the Complaint and supporting documents.
    - 4.2.2.2. outlining the process that will be followed and the possible outcomes.
  - 4.2.3. Complaints will normally be dealt with in the order in which they are received.
    - 4.2.3.1. If more than one Complaint is received that relates to the same alleged behaviour, the Complaints may be progressed concurrently where appropriate.

## 5. MEDIATION

- 5.1. It is recognised that mediation may support both parties to a Complaint to reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint and the Authorised Person will, as the first course of action upon receiving a complaint, offer and encourage the Complainant and the respondent to participate in Mediation.
- 5.2. If both parties agree to participate in Mediation, the formal process will be paused.
- 5.3. The Authorised Person is to appoint a suitably qualified and experienced mediator, with administrative assistance provided by the Chief Executive Officer,
- 5.4. The objective of Mediation will be to reach a resolution. For example, an offer, by the person to whom the Complaint relates, to issue a voluntary apology in response to a Complaint, even in the absence of a request from the complainant, qualifies for consideration as mediation and resolution.

5.5. If Mediation 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 the Mediator.

5.6. Successful mediation outcomes will be reported to council through the Audit and Risk Management Committee via anonymous information report.

5.7. If Mediation is terminated or does not achieve a resolution that results in the withdrawal or agreed closure of the Complaint, the Authorised Person will resume the formal process required under this Policy.

## **6. ASSESSMENT OF THE COMPLAINT**

6.1. The Respondent is to be provided with a reasonable opportunity to be heard before any opinions or recommendations are formed.

6.2. If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Authorised Person will determine whether or not to dismiss the Complaint.

6.3. If a Complaint is dismissed, the Complainant and the Respondent will be given written notice of the decision and the reasons for the decision in accordance with the Code of Conduct. This concludes the process in relation to the Complaint.

6.4. If the Complaint is not dismissed, the Authorised Person or Investigator (as appropriate) 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.

6.5. If it is determined that the alleged Breach did not occur, the Complainant and the Respondent will be given written notice of the Finding and the reasons for the Finding. This concludes the process for the Complaint.

6.6. If it is determined that the alleged breach did occur, the Authorised Person or Investigator (as appropriate) will decide whether to recommend further action and / or to prepare a plan to address the behaviour.

6.7. If the Authorised Person or Investigator (as appropriate) decides to take no further action, the Complainant and the Respondent will be given written notice of this decision and the reasons for the Finding. This concludes the process for the Complaint.

6.8. If the Authorised Person or Investigator (as appropriate) decides to prepare a Plan, the Respondent is to be consulted and any submissions made by the Respondent are to be considered before preparing and implementing a plan.

## **7. COMPLYING WITH PLAN REQUIREMENTS**

- 7.1. The Authorised Person will monitor the actions in timeframes set out in a Plan.
- 7.2. Failure to comply with a requirement included in a Plan is a minor breach under section 5.105(1) of the Act and the Code of Conduct.
- 7.3. The Authorised Person must provide a report advising Council of any failure to comply with a requirement included in a Plan.

## **8. PUBLICATION OF FINDINGS**

- 8.1. Within 14 days of a decision by the Investigator determining the outcome of a complaint, the Authorised Person must:
  - 8.1.1. give the complainant and the respondent –
    - 8.1.1.1. a copy of the finding; and
    - 8.1.1.2. a copy of Authorised Person or Investigator (as appropriate) reports, minus any attachments
  - 8.1.2. publish the Authorised Person or Investigator (as appropriate) report minus all attachments on the Shire's website.
  - 8.1.3. complete any further action required by Council.

## **9. DECISION MAKING**

### **9.1. Finding**

- 9.1.1. 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.
- 9.1.2. 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 the Code of Conduct.

### **9.2. Action**

- 9.2.1. In deciding whether to take no further action, or prepare and implement a Plan, the following is to be considered:
  - 9.2.1.1. the nature and seriousness of the breach(es).
  - 9.2.1.2. the Respondent's submission in relation to the contravention.
  - 9.2.1.3. whether the Respondent has breached the Code of Conduct knowingly or carelessly.
  - 9.2.1.4. whether the Respondent has breached the Code of Conduct on previous occasions.
  - 9.2.1.5. likelihood or not of the Respondent committing further breaches of the Code of Conduct.
  - 9.2.1.6. personal circumstances at the time of conduct.

- 9.2.1.7. need to protect the public through general deterrence and maintain public confidence in Local Government; and
- 9.2.1.8. any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

## 10. PLAN REQUIREMENTS

- 10.1. A proposed plan may include requirements for the Respondent to do one or more of the following:
  - 10.1.1. engage in mediation.
  - 10.1.2. undertake counselling.
  - 10.1.3. undertake training; and/or
  - 10.1.4. take other action considered appropriate (e.g., an apology).
- 10.2. The Proposed Plan may also outline:
  - 10.2.1. the actions to be taken to address the behaviour(s).
  - 10.2.2. who will be responsible for those actions.
  - 10.2.3. any assistance the Local Government will provide to achieve the intent of the Plan; and/or
  - 10.2.4. a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

## 11. ROLES

### 11.1. Authorised Persons

- 11.1.1. In accordance with clause 11(3) of the Code:
  - 11.1.1.1. the Shire President is authorised to receive complaints and withdrawal of complaints under the Code; or
  - 11.1.1.2. where the complainant is made by, or about the Shire President, the Deputy Shire President is authorised to receive complaints and withdrawal of complaints under the Code.
- 11.1.2. The authority of the Authorised Person includes the power to:
  - 11.1.2.1. Accept complaints and withdrawal of complaints.
  - 11.1.2.2. Dismiss a Complaint in accordance with the Code of Conduct,
  - 11.1.2.3. Make 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.
  - 11.1.2.4. Where a Finding is made that a breach has occurred, determine:
    - 11.1.2.4.1. To take no further action where appropriate; or



11.1.2.4.2. Prepare and implement a plan to address the behaviour of the person to whom the Complaint relates.

11.1.3. The Authorised Person must report to council:

11.1.3.1. Successfully mediated, resolved and withdrawn complaints – to be presented in an information report through the Audit and Risk Management Committee.

11.1.3.2. Complaint findings and actions prescribed – to be presented in an information report through the Audit and Risk Management Committee.

11.1.3.3. All complaint findings made by an Investigator for final determination.

11.1.4. Where the Authorised Person appoints a suitably qualified and experienced Investigator, with administrative assistance provided by the Chief Executive Officer, they will endeavour to do so within a reasonable period and in accordance with Council's Procurement Policy.

## 11.2. Investigator

11.2.1. The Investigator is an impartial third party, who may be appointed by the Authorised Person where:

11.2.1.1. the Complaint is sufficiently serious or complex in nature such that it warrants the appointment of an independent party to undertake an investigation; or

11.2.1.2. the Complaint is not considered serious or complex in nature, however a conflict of interest (or the perception of a conflict of interest) preclude the Authorised Person from making a determination in relation to the complaint; and

11.2.1.3. mediation is either not appropriate given the nature of the complaint, is not agreed to by both parties, is terminated or does not achieve an agreed outcome.

11.2.2. Where a Complaint is referred to an Investigator, the Authorised Person is to provide to the Investigator the Complaint, any supporting documents, and appropriate response documents.

11.2.3. In undertaking their functions, the Investigator will apply the Principles of this Policy.

11.2.4. The Investigator will:

11.2.4.1. Seek any clarification through the Authorised Person.

- 11.2.4.2. Make 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.
- 11.2.4.3. Where a finding is made that a breach has occurred,
  - 11.2.4.3.1. recommend that no further action, taken; or
  - 11.2.4.3.2. recommend a plan to address the circumstances of or the behaviour of the person to whom the Complaint relates.
- 11.2.5. The details of all complaints dealt with by the Investigator will be reported direct to council for final determination.