

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

## POLICY STATEMENT

The prescribed Model Code of Conduct (the Code) for Council Members, Committee Members and Candidates as published in the Governance Gazette on 2 February 2021 is prescribed by regulation for the purposes of section 5.103 of the *Local Government Act 1995* (the Act). Division 3 of the Code deals with behaviour and Division 4 relates to Rules of Conduct.

The Code, which applies to all Council Members, Committee Members and Candidates members across the Local Government sector in Western Australia, outlines sanctions which may be imposed by Council on a Member where a breach of the Code is found to be sustained.

## POLICY SCOPE

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This Policy applies to complaints received against a Council Member, Committee Member or Candidate under the Code, which may relate to behaviour (a breach of Division 3). It does not deal with complaints about services delivered by the City or complaints against any other employee of the City.

Council Members and employees (including the CEO) have a responsibility to notify the Corruption and Crime Commission (CCC) of suspected serious misconduct as defined in section 4 of the *Corruption Crime and Misconduct Act 2003*.

## POLICY DETAILS

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### 1. Definitions

**Candidate** refers to an individual who has had their nomination for election accepted by a Returning Officer under section 4.49 of the Act. Any alleged breach of the Code may only be addressed if and when the individual is elected as a council member.

**Council Member** refers to an individual who has been elected as a council member under the Act. The requirements of the Code also apply to a council member who is a committee member on a council committee.

**Committee Member** includes any council member, local government employee or unelected member of the community who has been engaged by the council to participate in a council committee.

**Council** means the Council Members of the City of Bunbury

**Evidence** means the available facts or information indicating whether an allegation is true or valid.

**Local government** means the body corporate that is the local governing body made up of the Council, Chief Executive Officer and administrative staff appointed and managed by the CEO.

A complaint that is considered to be of a **major** nature, is one that has the potential to cause a high to extreme risk to the City of Bunbury, as determined by the CEO.

A complaint that is considered to be a **minor** nature, is one that has the potential to cause a low to medium risk to the City of Bunbury, as determined by the CEO.

**Natural Justice / Procedural Fairness** refers to the process by which all parties are:

- Advised of the complaint (and supporting evidence) against them, and
- Treated fairly and without bias; and
- Have the right to be heard; and
- Notified of the decision, the evidence relied on and the reasons for the decision.

## **2. Complaint about alleged breach of Division 3 in the Code of Conduct [Clause 11 of the Code]**

2.1. A person who wants to make a complaint alleging a breach of Division 3 of the Code of Conduct by a Council Member, Committee Member or Candidate may make the complaint in writing to the Chief Executive Officer (CEO).

2.2 The complaint must:

- Be in writing on the Complaint About Alleged Breach form available on the City's website and identify the provisions of the Code that are alleged to have been breached;
- Be accompanied by supporting information in the complainant's possession (or otherwise point to the availability of relevant evidence) to assist with any investigation and decision of Council;
- Identify the Member(s) whom it is alleged has breached the Code; and
- Be made within one month after the occurrence of the alleged breach.

## **3. Preliminary Assessment of Complaint**

3.1 The CEO will provide acknowledgement of the complaint within two working days of receipt

3.2 The CEO will review the complaint and:

- Assess the complexity, severity and risk associated with the complaint (if the complaint involves multiple parties then coordinating communication is to be established between all parties, including the complainant);
- Determine if the complaint relates to behaviour, that falls under Division 4 of the Code, if so, refer to point 8 within this Policy.
- Determine if the complaint will be processed (if not, deal with the complaint in accordance with the "dismissal of complaints" section 6 of this policy);
- Provide a copy of the complaint to an appointed independent consultant.
- Determine a timeframe for the response; and
- Record the receipt of complaint in the Council Member Complaints Register [DOC/436902].

3.3 The CEO will advise the complainant that their complaint has been received and the process moving forward, including the timeframe for an outcome.

3.4 A copy of the complaint will be given to the member about whom the complaint is made within seven days to allow them an opportunity respond to the allegations in writing.

#### **4. Processing of complaint**

- 4.1 The independent consultant will review the complaint details and where necessary, contact the complainant to seek any further information required, and what kind of resolution the complainant is seeking.
- 4.2 The independent consultant will review all the information provided by the complainant and the member about whom the complaint was made.
- 4.3 The consultant may recommend:
- (a) meetings be held with the complainant and the Member about whom the complaint was made; or
  - (b) professional mediation or conciliation between parties to attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Member.
- 4.4 Where the matter is resolved via conciliation or mediation to the satisfaction of all the parties the withdrawal of complainant (refer to Policy point 7) process can be used.
- 4.5 Where the complaint is not resolved/withdrawn, the consultant will provide a report to Council to enable them to consider whether the alleged matter which is the subject of the complaint, did occur and make a finding on whether the matter constitute a breach of the Code of Conduct.
- 4.6 The report will be presented at a Council Meeting in confidence.
- 4.7 The Council, based on the complaint and other evidence received within the report, must be satisfied that, on the balance of probabilities, it is more likely than not that a breach occurred.
- 4.8 If the Council makes a finding that a breach of the Code of Conduct did occur, the Council may;
- Take no further action; or
  - Prepare and implement a plan (refer to Policy point 5) to address the behaviour of the Member to whom the complaint relates.
- 4.9 The complainant and the Member about whom the complaint is made will be notified in writing of Council's finding and the reasons for its finding. If the finding is that the alleged breach has occurred, the Council must also include notification of its decision to take no future action or implement a plan to address the behaviour.
- 4.10 The CEO will record the details of the decision in the Council Member Complaints Register [DOC/436902].

#### **5. Action Plans [clause 12]**

- 5.1 Action plans are to be designed to provide the Member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives.
- 5.2 The Action plan should outline:
- The behaviour(s) of concern;
  - The actions to be taken to address the behaviour(s);
  - Who is responsible for the actions; and
  - An agreed timeframe for the actions to be completed.

5.3 The Action Plan must be prepared in consultation with the Member to whom the complaint relates and may include a requirement for the person to do one or more of the following:

- Engage in mediation;
- Undertake counselling;
- Undertake training;
- Take other action the Council considers appropriate.

5.4 The CEO must monitor the actions and timeframes set out in the Action Plan.

5.5 If the Member to whom the Action Plan relates does not comply with the action/s within the agreed timeframe, then under Clause 23 of the Rules of Conduct, the Member has contravened a rule of conduct and committed a minor breach (refer to Policy point 8).

## **6. Dismissal of a complaint [clause 13]**

6.1 A complaint must be dismissed if the alleged behaviour to which the complaint relates occurred at a council or committee meeting and

- the behaviour was dealt with by the presiding member; or
- The member responsible for the behaviour has taken corrective action in accordance with the City's Standing Orders Local Law.

6.2 The CEO must give a written notice of its decision to dismiss the complaint and the reasons for its decision to the complainant and the person to whom the complaint relates.

## **7. Withdrawal of a complaint [clause 14]**

7.1 A complainant may withdraw their complaint at any time before the Council makes a finding in relation to the complaint.

7.2 The complainant must withdraw their complaint in writing and provide it to the CEO.

## **8. Rules of Conduct Complaints (Division 4) [section 5.110 Act]**

8.1 Division 4 of the Code sets out the Rules of Conduct for council members and candidates that relate to the principles in Division 2 and the behaviours in Division 3.

8.2 If a member contravenes a rule of conduct they are considered to have committed a minor breach pursuant to section 5.105(1) of the Act.

8.3 A minor breach is dealt with by the Local Government Standards Panel under section 5.110 of the Act.

8.4 Any person may submit a complaint of an alleged minor breach by submitting a Complaint of Minor Breach Form (Act s.5.107[2]) with relevant supporting evidence attached to the City of Bunbury CEO (Complaints Officer) at [ceo@bunbury.wa.gov.au](mailto:ceo@bunbury.wa.gov.au) .

8.5 Within 14 days the CEO will:

- Contact the complainant acknowledging that the complaint has been received;
- Provide the council member who is the subject of the complaint with a copy of the complaint; and
- Send the complaint to the Local Government Standards Panel.

If the CEO believes that a complaint discloses a serious breach (rather than a minor breach), they will refer it to the Department of Local Government, Sporting and Cultural Industries (DLGSC).

## **9. Where agreement cannot be reached**

- 9.1 If the Council cannot agree on the resolution of a complaint or whether the complaint can be dismissed under clause 13 of the Code (refer to Policy point 6), it may decide to engage an independent person to review the complaint and make recommendations on appropriate actions.

## **10. Confidentiality**

- 10.1 The complaint will be treated with strict confidentiality until such time as the matter has been determined. The complainant and the member about whom the claim is made will also be expected to observe confidentiality.
- 10.2 The report to Council will be presented in confidence.
- 10.3 Findings of a breach of the Code will be included in the Council Member Complaints Register and made publicly available on the City's website.

## **11. Record Keeping**

- 11.1 All records received or created in relation to the complaint, assessment and finding must be registered within the City's Electronic Data Record Management System.
- 11.2 All records will be managed in accordance with the City's Record Keeping Plan.

## **12. Complaint Contact Information**

City of Bunbury:

[www.bunbury.wa.gov.au](http://www.bunbury.wa.gov.au)

[ceo@bunbury.wa.gov.au](mailto:ceo@bunbury.wa.gov.au)

Chief Executive Officer

City of Bunbury

PO Box 21

BUNBURY, WA 6230

Corruption and Crime Commission:

[info@ccc.wa.gov.au](mailto:info@ccc.wa.gov.au)

Telephone: 1800 803 186 (Mon-Fri; 9am-4pm)

Download a [Report Serious Misconduct Form](#)

## COMPLIANCE REQUIREMENTS

### LEGISLATION

- *Local Government Act 1995*
- *Local Government (Model Code of Conduct) Regulations 2021*
- *Corruption, Crime and Misconduct Act 2003*

### INDUSTRY

- [Ombudsman Western Australia Effective handling of complaints guidelines September 2020](#)
- [CCC Notifying misconduct – a guide for principal Officers of notifying authorities August 2018](#)
- [DLGSC Complaint of Minor Breach Form \(Form 1, Form 1A and Form 1B\)](#)

### ORGANISATIONAL

- [City of Bunbury Code of Conduct for Council Members, Committee Members and Candidates 2021](#) [DOC/708906]
- [City of Bunbury Complaint about Alleged Breach Form – Code of Conduct for council members, committee members and candidates](#) [DOC/729517]
- Council Member Complaints Register [DOC/436902]

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