

# POLICY

## CODE OF CONDUCT BEHAVIOUR

### COMPLAINTS HANDLING

<b>ASPIRATION</b>	Leadership
<b>RESPONSIBLE DIRECTORATE</b>	Office of the CEO
<b>RESPONSIBLE BUSINESS UNIT</b>	City Legal
<b>RELEVANT LEGISLATION</b>	<i>Local Government Act 1995</i>

#### 1. Objective

To establish, in accordance with clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and the City of Armadale Code of Conduct for Council Members, Committee Members and Candidates (the Code), the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Part 5 of the Code.

To give effect to the City of Armadale'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.

#### 2. Scope

This Policy applies to:

1. complaints alleging a breach of the Part 5 behavioural requirements in clause 8.1 of the Code (Behavioural Breach).
2. Council Members, Committee Members, Candidates and any person who submits a complaint alleging a Behavioural Breach in accordance with this Policy.

This Policy does not apply to complaints:

- a) alleging a conduct breach and recurrent breach or specified breach as defined by 8A.3 and 8A.4 of the Act respectively;
- b) relating to services delivered by the City;
- c) against employees of the City;
- d) involving allegations of serious misconduct, corruption or fraud; or
- e) about other criminal or corrupt conduct.

#### 3. Policy

##### 3.1 Principles

##### 3.1.1 Procedural fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a Complaint under this Policy. In particular:

- the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- Council should be objective and impartial, with an absence of bias or the perception of bias; and
- any findings made will be based on proper and genuine consideration of the evidence.

### **3.2 Consistency**

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

### **3.3 Confidentiality**

Confidentiality about complaints is governed by s.8A.36 of the *Local Government Act 1995*. Persons including the complainant, the respondent, City officers performing functions, and any person who becomes aware of complaint details must not disclose or use information that a complaint has been made or any detail of the complaint, except where authorised under regulation 11 of the *Local Government (Local Government Inspector) Regulations 2025*. Unauthorised disclosure is an offence (penalty: fine).

### **3.4 Accessibility**

The City of Armadale will ensure that information on how to make a complaint, including this Policy, is available at the City of Armadale's Administration Building and on the City of Armadale's website. The City of Armadale will make information available in alternative formats if requested.

Any person wishing to make a complaint may contact the Behaviour Complaints Officer if they require assistance in completing the complaint form or otherwise navigating the complaints process.

### **3.5 Roles**

#### **3.5.1 Behaviour Complaints Officer**

The Behaviour Complaints Officer is authorised in accordance with clause 8.1(3) and (4) of the Code to accept complaints and withdrawal of complaints.

The Behaviour Complaints Officer is not an advocate for the Complainant or the Respondent. The Behaviour Complaints Officer provides procedural information and assistance to both Complainant and Respondent.

The Behaviour Complaints Officer will liaise with and provide administrative support to a Complaint Assessor appointed under this Policy.

Where Council is required to make a finding in respect of a complaint, the Behaviour Complaints Officer will liaise with the CEO to facilitate the calling and convening of Council meetings if required.

In undertaking their functions, the Behaviour Complaints Officer will apply the Principles of this Policy.

#### **3.5.2 Complaint Assessor**

The Complaint Assessor is appointed by the Behaviour Complaints Officer in accordance with Part 3.8 of this Policy.

The Complaint Assessor is an impartial third party who will undertake the functions specified in this Policy. In undertaking their functions, the Complaint Assessor will apply the Principles of this Policy.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

#### **3.5.3 Council**

Council will determine matters relating to complaints in the manner described in clauses 8.2 and 8.3 of the Code and in accordance with this Policy.

## **3.6 Procedure**

### **3.6.0 Triage**

On receipt of any complaint or enquiry, the Behaviour Complaints Officer will:

1. determine whether the allegations, if proven, would constitute a Behavioural Breach under the Code;
2. if not, advise the complainant in writing that the matter is outside this Policy and provide information on making complaints to the Inspector;
3. where regulation 3A of the *Local Government (Model Code of Conduct) Regulations 2021* applies, refer the complaint to the Inspector and cease dealing with it under this Policy unless and until the Inspector refers the matter back to the City; and
4. if the matter appears to involve criminal conduct, corruption, or other matters outside the Code, refer in accordance with the City's relevant reporting protocols.

### **3.6.1 Making a Complaint**

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a Behavioural Breach of Part 5 of the Code [*clause 8.1(1) of the Code*].

A Complaint must be made within one (1) month after the alleged Behavioural Breach [*clause 8.1(2)(c) of the Code*].

A Complaint must be made by completing the Behaviour Complaint Form in full and providing the completed forms to the Behaviour Complaints Officer.

A Complaint must be made in accordance with the Behaviour Complaint Form and specify which behavioural requirement(s) of the Code is alleged to have been breached.

A Complainant must provide sufficient identifying information to enable lawful dealing with the complaint, including provision of notices and procedural fairness steps. If the Complainant seeks confidentiality from the Respondent, the Behaviour Complaints Officer will consider this request case-by-case, balancing procedural fairness and any safety considerations, and obtain external advice where required.

The Complainant's contact information will not be provided to the Respondent.

The Complainant's name and contact information will not be included in any publicly available documents such as meeting agenda or minutes.

The Complainant should be aware that Complaint Documents may be subject to an FOI request, noting that they must be consulted before any documents are released, and exemptions may apply.

Where a Complaint Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed.

Where a Complaint is made more than 1 month after the alleged Behavioural Breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be made [*clause 8.1(2)(c) of the Code*].

A Complaint will not be actioned if the Complaint is withdrawn by the Complainant, or is not on the form approved by the Council.

### **3.6.2 Candidate Complaints**

A Complaint in relation to a Candidate must be made in accordance with Part 3.6.1, above, but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.

Within 7 days after receiving a Candidate Complaint, the Behaviour Complaints Officer will provide written notice:

- To the Complainant confirming receipt, and advising of the procedure for candidate complaints; and
- To the Respondent, including a summary of the complaint, and advising of the procedure for candidate complaints.

No action will be taken until the results of the election are declared by the Returning Officer. If the Respondent is elected, then the complaint will be dealt with in accordance with this Policy. Timeframes that would otherwise commence on the receipt of a Complaint will be taken to commence on the election date.

If the Respondent is not elected, the Behaviour Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with [*clause 8.5(1) of the Code*].

### **3.6.3 Withdrawing a Complaint**

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint [*clause 8.4 of the Code*].

A Complainant may withdraw a Complaint by advising the Behaviour Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Behaviour Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

### **3.6.4 Notice to Complainant**

Within 7 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Complainant to the person's last known place of residence or the person's last known email address that:

- confirms receipt of the Complaint;
- outlines the process that will be followed and possible outcomes;
- explains the application of confidentiality to the Complaint;
- includes a copy of this Policy; and
- if necessary, after referral to the Complaints Assessor, seeks clarifications or additional information.

If the Complaint Form indicates that the Complainant agrees to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will advise the Complainant of the process in accordance with Part 3.6.6 of this Policy.

### **3.6.5 Notice to Respondent**

Within 14 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Respondent that:

- advises that a Complaint has been made in accordance with the Code and this Policy;
- includes a copy of the Complaint Documents;
- outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- includes a copy of this Policy; and
- if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

The Respondent will be given 14 days to provide a response. In the event a Respondent requests more time to provide a response, an extension of up to 14 days may be granted, however no additional extensions are to be granted.

In the event the Respondent fails or refuses to provide a response within the period stated, including any approved extension, written notice will be given to the Respondent's last known place of residence or email to the Respondent's last known email address, advising them that they have 7 days to provide a response. Failure to respond will result in the matter being dealt with by the Council without any further reference to that person.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6.6 of this Policy.

### **3.6.6 Alternative Dispute Resolution**

The City of Armadale recognises that Alternative Dispute Resolution may support both parties reach a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Alternative Dispute Resolution requires the consent of both parties to the Complaint and may not be appropriate in all circumstances. Alternative Dispute Resolution may be facilitated by an independent/external third party who is appropriately qualified and experienced in Alternative Dispute Resolution.

To commence the process, the Behaviour Complaints Officer will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will pause the formal process.

The objective of Alternative Dispute Resolution will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with Part 3.6.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a Complaint, even in the absence of a request from the Complainant, qualifies for consideration as Alternative Dispute Resolution.

If Alternative Dispute Resolution 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 a third party who is providing assistance to the City, such as a facilitator or mediator.

When the Behaviour Complaints Officer invites the parties to participate in Alternative Dispute Resolution, 14 days are to be given to the parties to allow each party to consider the invitation. No extensions are to be granted to the 14 day period and where one or both parties to the complaint do not respond to the invitation within 14 days, the Behaviour Complaints Officer is to proceed with dealing with the matter in accordance with this policy.

If Alternative Dispute Resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the Complaint, the Behaviour Complaints Officer will resume the formal process required under this Policy.

### **3.6.7 Order of Complaints**

Complaints will normally be dealt with in the order in which they are received.

If more than one Complaint is received that relates to the same alleged behaviour, the Behaviour Complaints Officer, after referral to the Complaint Assessor, may decide to progress those Complaints concurrently.

### **3.6.8 Appointment of Complaint Assessor**

A suitably qualified and experienced Complaint Assessor may be appointed in accordance with the City of Armadale's Procurement Policy.

The Behaviour Complaints Officer will endeavour to appoint a Complaint Assessor within a reasonable period. The Behaviour Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.

### **3.6.9 Search of Local Government Records**

The Complaint Assessor may request the Behaviour Complaints Officer to search for any relevant records held by the City.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer will be requested to identify any Local Government records that provide evidence that may support a decision as to whether:

- the behaviour occurred at a Council or Committee Meeting,
- the behaviour was dealt with by the person presiding at the meeting, and/or
- the Respondent has taken remedial action in accordance with the City of Armadale *Standing Orders Local 2000*.

The Complaint Assessor must provide the Respondent with a copy of any records that are identified. In addition, where a clarification or additional information has been sought from the Complainant by either the Behaviour Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

### **3.6.10 Assessment of the Complaint**

The Complaint Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under Part 3.6.4 and Part 3.6.5 of this Policy.

The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to be heard before forming any opinions, or drafting the Complaint Report or recommendations.

The evidence presented to Council must be of a sufficient quality and relevance to lead to a conclusion as to whether or not the conduct alleged, on the balance of probabilities, likely occurred. It also means that the evidence relied on to arrive at a finding must be confined to the matter that is before it, and that has been put to the Respondent. Individual grievances or disagreements that have not been the subject of a previous finding of a breach involving the Respondent cannot form part of Council's deliberations.

Council's function in this respect is that of a quasi-judicial tribunal that is required to make a determination on the matter based on the documents and information before it. Consequently, great care must be taken to ensure Council's deliberations are not affected by bias or inference.

### **3.6.11 Complaint Report**

The Complaint Assessor will prepare a Complaint Report that will:

- outline the process followed, including how the Respondent was provided with an opportunity to be heard;
- include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments;
- include recommendations on each decision that may be made by Council; and
- include reasons for each recommendation, with reference to Part 4 of this Policy.

If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 8.2(5)(b) of the Code and Part 4.4 and 4.5 of this Policy, the Complaint Report may include a Proposed Plan.

The Respondent is to be provided with a draft copy of the Complaint Report and any Proposed Plan, and an opportunity to make submissions, before the Complaint Assessor finalises the Complaint Report and Proposed Plan (if applicable). The written response of the Respondent to the Proposed Plan is to

be included within the Complaint Report and form part of the material considered by Council to satisfy clause 8.2(6) of the Code.

A Plan should not include measures that are intended to be a punishment, and instead should focus on mechanisms to encourage positive behaviour and prevent negative behaviour from occurring again in future. However, the purpose of the consultation is to ensure the actions set out in the Plan correspond with the availability of the Respondent to be involved in them (for example, scheduling appointments and training around the person's job, family commitments etcetera), not whether the Respondent agrees with the actions or not.

The timeframe required for a Respondent to achieve practical completion of a Plan is dependent on the nature of the actions required. It may be unreasonable or unworkable for a Respondent to complete a Plan in a 4 week period if the Plan involves multiple training or mediation sessions over a number of weeks. This is something that is to be determined by the Complaints Assessor in consultation with the Respondent.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Council. The Behaviour Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

### **3.6.12 Council Meeting**

Behavioural breach complaint information is prescribed as information that may be treated on a confidential basis at a meeting for the purposes of s.5.23(4)(g) of the Act and regulation 4A(b) of the *Local Government (Administration) Regulations 1996*. The CEO will prepare the agenda and attachments on the basis that Council will consider whether lawful closure is required to protect confidentiality and compliance with s8A.36.

A Complainant and a Respondent must not preside, participate in, or be present during any discussion or decision-making procedure of a Council or Committee relating to a behavioural breach complaint [s5.105(4) of the Act]. This restriction does not prevent the Complainant and Respondent from being given a reasonable opportunity to be heard and to present evidence [s5.105(5) of the Act]. Council will provide this opportunity through written submissions and/or a structured hearing segment, after which the Complainant and Respondent must leave before Council deliberates and decides.

The Council will consider the Complaint Report and attachments and give due regard to the recommendations.

In accordance with Regulation 11(da) of the *Local Government (Administration) Regulations 1996*, reasons for any decision that is significantly different from the Officer Recommendation must be recorded in the meeting minutes.

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Council will determine whether or not to dismiss the Complaint in accordance with clause 8.3 of the Code and Part 4.2 of this Policy.

If the Council dismisses a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 8.3(2) of the Code. This concludes the process for this Complaint.

If the Complaint is not dismissed, the Council will consider the Complaint and make a Finding as to whether the alleged Behavioural Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 8.2 of the Code and Part 4.3 of this Policy.

If the Council finds that the alleged Behavioural Breach **did not** occur, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 8.3(2) of the Code. This concludes the process for this Complaint.

If the Council finds that the alleged Behavioural Breach **did** occur, the Council will decide whether to take no further action in accordance with clause 8.2(5)(a) of the Code or adopt a Proposed Plan (if prepared) or prepare an Alternate Plan to address the behaviour in accordance with clause 8.2(5)(b) of the Code and Part 4.4 of this Policy.

If the Council decides to take no further action, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 8.2(8)(a) of the Code. This concludes the process for this Complaint.

If the Council decides to prepare an Alternate Plan the Council will first consult with the Respondent in accordance with clause 8.2(6) of the Code. The Council will consider any submissions made by the Respondent before adopting and implementing an Alternate Plan.

### **3.6.13 Compliance with Plan Requirement**

Where Council adopts a plan under Code clause 8.2(5)(b) that includes a requirement of the type described in Code clause 8.2(7), the Council Member must comply under Code clause 8.6. Alleged non-compliance should be treated as a potential conduct breach and managed through the Inspector's complaints framework.

The Behaviour Complaints Officer will monitor plan milestones and report non-compliance to Council and (where appropriate) seek advice on notifying the Inspector.

### **3.6.14 Inspector's appointment of a monitor**

In accordance with regulation 14A of the *Local Government (Model Code of Conduct) Regulations 2021*, the Inspector may appoint a monitor to assist the City to deal with matters raised by a Complainant. The Inspector may direct the City to defer further dealing with the complaint and the City must comply with this direction.

## **4. Decision Making**

### **4.1 Objective and Principles**

All decisions made under this Policy will reflect the Policy Objectives in Part 1 and the Principles in Part 3.1 of this Policy.

### **4.2 Dismissal**

The Council must dismiss a Complaint in accordance with clause 8.3(1)(a) and (b) of the Code if it is satisfied that -

- (a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (b) either —
  - (i) the behaviour was dealt with by the person presiding at the meeting; or
  - (ii) the Respondent has taken remedial action in accordance with the *City of Armadale Standing Orders Local Law 2000*.

### **4.3 Finding**

A Finding that the alleged Behavioural Breach has occurred must be based on evidence from which it may be concluded that it is more likely that the Behavioural Breach occurred than that it did not occur [clause 8.2(4) of the Code].

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 Part 5 of the Code.

#### 4.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the Council may consider:

- the nature and seriousness of the breach(es);
- the Respondent's submission in relation to the contravention;
- whether the Respondent has breached the Code knowingly or carelessly;
- whether the Respondent has breached the Code on previous occasions;
- likelihood or not of the Respondent committing further breaches of the Code;
- personal circumstances at the time of conduct;
- need to protect the public through general deterrence and maintain public confidence in Local Government; and
- any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

#### 4.5 Plan Requirements

The Proposed Plan may include requirements for the Respondent to do one (1) or more of the following:

- engage in mediation;
- undertake counselling;
- undertake training;
- take other action the Council considers appropriate (e.g. an apology).

The Proposed Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Code.

The Proposed Plan may also outline:

- the actions to be taken to address the behaviour(s);
- who is responsible for the actions;
- any assistance the City will provide to assist in complying with the Plan; and
- a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

## 5. Influencing Strategies or Plans

Strategic Community Plan 2026 – 2035

## 6. Applicable Legislation

*Local Government Act 1995*

*Local Government (Administration) Regulations 1996*

*Local Government (Local Government Inspector) Regulations 2025*

*Local Government (Model Code of Conduct) Regulations 2021*

## 7. Definitions

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

**Behaviour Complaints Officer** means a person authorised pursuant to clause 8.1(3) of the Code to receive complaints and withdrawals of complaints. The role of the Behaviour Complaints Officer is addressed in Part 3.5.1 of this Policy.

**Behavioural Breach** means a breach of Part 5 of the City of Armadale Code of Conduct for Council Members, Committee Members and Candidates.

**Candidate** means a candidate for election as a Council Member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act, but does not include a Council Member who has

nominated for re-election. A person is a Candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act.

**Candidate Complaint** means a Complaint alleging a Behavioural Breach by a Candidate. Candidate Complaints are dealt with in Part 3.6.2 of this Policy.

**City** means the City of Armadale.

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

**Committee** means a committee of Council, established in accordance with s.5.8 of the Act.

**Committee Member** means a Council Member, employee of the City of Armadale or other person who has been appointed by the Council to be a member of a Committee, in accordance with s.5.10(1) of the Act. A person is a Committee Member from the date on which they are appointed, until their appointment expires or is terminated by Council resolution.

**Complaint** means a complaint submitted under clause 8.1 of the Code.

**Complainant** means a person who has submitted a Complaint in accordance with this Policy.

**Complaint Assessor** means an external, impartial person appointed by the City in accordance with Part 3.5.2 and Part 3.6.8 of this Policy.

**Complaint Documents** means the Complaint Form and any supporting information, evidence, or attachments provided by the Complainant.

**Complaint Form** means the form approved under clause 8.1(2)(a) of the Code *[by Council resolution]*.

**Council** means the Council of the City of Armadale.

**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, 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.

**Finding** means a finding made in accordance with clause 8.2(2) of the Code as to whether the alleged Behavioural Breach has or has not occurred.

**Inspector** means the Local Government Inspector established under s.8B.1 of the Act.

**Monitor** means a monitor as provided for under Part 8B, division 5 of the Act.

**Plan** means a Plan that may be prepared and implemented under clause 8.2(5)(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 Behavioural Breach has occurred.

**Respondent** means the person who is alleged to have breached a behavioural requirement of the Code.

**Response Documents** means the response provided by the Respondent to the Complaint, and includes any supporting information or evidence that is supplied.

<b>VERSION CONTROL</b>			
<b>RELEVANT DELEGATIONS</b>	Nil.		
<b>INITIAL COUNCIL ADOPTION</b>	3/05/2021	<b>REFERENCE</b>	CEO1/5/21
<b>LAST REVIEWED</b>	26/02/2024	<b>REFERENCE</b>	CS5/3/26
	23/03/2026		
<b>NEXT REVIEW DUE</b>	March 2029		