

Council Policy – Behavioural Complaints Procedure Policy

Responsible Directorate	Corporate Services
Responsible Business Unit/s	Governance
Responsible Officer	Manager Corporate Performance
Affected Business Units	Governance

1. Objective

In accordance with clause 15(2) of the Model Code of Conduct contained in Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021* and the Shire of Serpentine Jarrahdale's Code of Conduct for Council Members, Committee Members and Candidates (the Code of Conduct), this Policy details the process for dealing with complaints about alleged breaches of the Code of Conduct.

This Policy establishes a framework for an effective and transparent complaints handling processes. The principles of procedural fairness and natural justice apply to all complaints under this Policy.

2. Scope

This Policy applies to complaints made in accordance with clause 11 of the Code of Conduct and a behavioural complaint referred to the Shire of Serpentine Jarrahdale (the Shire) by the Local Government Inspector under regulation 6 of the *Local Government (Local Government Inspector) Regulations 2025*

The Policy applies to:

- Elected Members, Committee Members, Candidates;
- any person who submits a complaint in accordance with this Policy;
- Complaints Officers; and
- Independent Complaint Facilitator

A complaint about an alleged breach by a candidate cannot be dealt with unless the candidate has been elected as an Elected Member for the Shire of Serpentine Jarrahdale (the Shire).

This Policy does not apply to complaints involving allegations of:

- serious misconduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority; or
- conduct breach of Division 4 – Rules of Conduct of the *Local Government (Model Code of Conduct) Regulations 2021* which must be referred to the Local Government Inspector.

3. Procedural Fairness

The principles of procedural fairness and natural justice will apply when dealing with a complaint under this Policy, including:

- a) the Respondent will be afforded a reasonable opportunity to be heard, respond and provide supporting documentation to be used by the Independent Complaint Facilitator during the assessment and before any findings are made or a plan implemented.
- b) Council should be objective and impartial, with an absence of bias or the perception of bias;
- c) any findings made will be based on proper and genuine consideration of the evidence; and
- d) all parties will follow the process and procedures outlined in the Code of Conduct and this Policy.

4. 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.

5. Confidentiality

In accordance with section 8A.36 of the *Local Government Act 1995* (the Act), all complaints must be dealt with confidentially.

The Act specifies that a person “*must not directly or indirectly, disclose or use information that the complaint has been made or information about any detail of the complaint*”.

A penalty of \$10,000 applies for breaching confidentiality.

The Shire will take all reasonable steps to maintain confidentiality when dealing with a complaint.

Elected Members and local government employees who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role in accordance with the confidentiality provisions of section 8A.36.

In order to allow a Respondent to understand and respond to the complaint against them, the name of the Complainant will be provided to the Respondent. The Complainant’s contact information will not be provided to the Respondent.

In accordance with regulation 4A(b) of the *Local Government (Administration) Regulations 1996* the meeting that a complaint is to be discussed at is to be closed to the public.

A breach complaint, or information related to a breach complaint, is no longer subject to confidentiality requirements once any of the following occurs:

- a) the complaint is dismissed or withdrawn under the Shire’s Code of Conduct, or
- b) a finding is made under the Shire’s Code of Conduct as to whether the alleged breach has occurred.

When Council has found that a breach has occurred, it may, under Regulation 29A of the *Local Government (Administration) Regulations 1996*, resolve that the completed complaint form, response form and Complaint Report be made available for public inspection by including them as attachments to the minutes of the meeting.

The Complainant and Respondent should be aware that the Complaint Report may be subject to a Freedom of Information request, noting that they must be consulted before any documents are released, and exemptions may apply.

6. Roles

6.1 Complaints Officer

In accordance with clause 11(3) of the Code of Conduct, authorised Complaints Officers are listed at Authorisation 1.17 of the Shire's Register of Delegations and Authorisations.

The Complaints Officer is authorised under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints.

The Complaints Officer is responsible for:

- a) receiving complaints in accordance with this Policy;
- b) communicating with the Complainant to advise the complaint has been accepted or rejected in accordance with this Policy and the Code of Conduct;
- c) engaging an Independent Complaint Facilitator in accordance with Council Policy – Procurement of Goods or Services up to \$250,000;
- d) liaising with and providing administrative support to the Independent Complaint Facilitator appointed under this Policy;
- e) liaising with the Chief Executive Officer to facilitate the calling and convening of Council meetings, if required;
- f) taking necessary steps to terminate the complaint if the complaint is withdrawn in accordance with this Policy; and
- g) undertaking their functions in accordance with this Policy.

The Complaints Officer is not an advocate for the Complainant or Respondent. They provide procedural information and assistance to both parties.

6.2 Independent Complaint Facilitator

The Independent Complaint Facilitator is appointed by the Complaints Officer to review and consider one or more complaints and to prepare a report on the findings and recommend a course of action for consideration by Council. An Independent Complaint Facilitator may also be engaged by the Complaints Officer to support an alternative dispute resolution process.

The Independent Complaint Facilitator is an impartial third party required to undertake the complaints process in accordance with this Policy and must ensure that the principles of procedural fairness and natural justice are upheld and maintained throughout the process.

All complaints processes must be conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest. An Independent Complaint Facilitator must declare they are impartial and have no close association with any member of the Council or an employee of the Shire.

To be eligible to be engaged as an Independent Complaint Facilitator, a person cannot be:

- a) a member of the council of any local government;
- b) a member of the governing body of any regional subsidiary;
- c) an employee of any local government or regional subsidiary;
- d) an employee of WALGA or the Local Government Professionals Australia (WA);

- e) a member of the governing body of, or an employee or, a body corporate the activities of which are, wholly or partly, advocating or otherwise acting for, or on behalf of, 1 or more of the following –
- (i) local governments;
 - (ii) member of councils;
 - (iii) employees of local governments.

The appointment of the Independent Complaint Facilitator is considered an exempt purchase under the provision of the Shire's Council Policy – Procurement of Goods or Services up to \$250,000 subject to the person being selected from the WALGA Panel of Preferred Suppliers or the Common Use Agreement HRS2021 – Human Resource and Investigation Services (Category 1).

Complaints must be managed in a cost effective and efficient manner. Prior to commencing the complaints process, the Complaints Officer will develop a scope of work. In instances where the scope of work expands, the Independent Complaint Facilitator must seek approval from the Complaints Officer prior to undertaking the additional work.

7. Complaint Process

The below process is to be read in conjunction with the 'Code of Conduct Behaviour Complaints Process Flowchart' at **Appendix 1**.

7.1 Making a Complaint

Any person may make a complaint alleging that an Elected Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct and lodge a Code of Conduct Complaint Form (**Appendix 2**) with the Complaints Officer.

In accordance with clause 11 of the Code of Conduct, a complaint regarding an alleged breach of the Code of Conduct must be made:

- in writing using the approved Complaint Form;
- to the person authorised by the Local Government (the Complaints Officer); and
- within 1 month after the occurrence of the alleged breach.

If the Respondent is a Candidate, in accordance with clause 15 of the Code of Conduct, 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.

If the Respondent is not elected, the Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the complaint cannot be dealt with.

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 Complaints Officer may decide to progress those complaints concurrently.

The Shire will incur the cost to engage an Independent Complaint Facilitator and appropriately provide resource capacity to assist the Independent Complaint Facilitator to receive and deal with complaints.

A complaint shall not be assessed under this Policy if the complaint meets at least one of the following:

- a) it is withdrawn by the Complainant;

- b) the alleged breach occurred more than one month before the date the complaint was made;
- c) the alleged conduct relates to a person who is not an elected member of the Shire, a Committee member or a person who was a candidate and was not elected;
- d) the allegation does not identify a clause of Division 3 of the Code of Conduct that is alleged to have been breached;
- e) it is not made on the Complaints Form approved by Council;
- f) the complaint is made anonymously;
- g) alleges a breach of the Rules of Conduct Division 4 of the Code of Conduct;
- h) duplicate of a complaint made by the same person for the same matter; or

7.2 Referral of complaint to the Local Government Inspector

In accordance with regulation 3A of the *Local Government (Model Code of Conduct) Regulations 2021*, the Complaints Officer will submit the complaint to the Local Government Inspector if the person the subject of a complaint has, on at least 2 previous occasions, been found under the Code of Conduct to have committed, on or after 1 January 2026, a breach under this Code.

7.3 Receipt of a complaint

Within 5 business days of a complaint being lodged, the Complaints Officer will assess the complaint against Clause 11 of the Code of Conduct and provide written notice to the Complainant that:

- a) confirms receipt of the complaint
- b) outlines the process that will be followed and possible outcomes
- c) explains the application of confidentiality to the complaint
- d) includes a copy of this policy, and
- e) if necessary, seeks clarifications or additional information.

The Complainant will be provided with 5 business days to provide clarification or additional information (if necessary). All reasonable attempts will be made to contact the Complainant.

If the Complainant does not respond, then the complaint will progress to an assessment and an Independent Complaint Facilitator appointed, in accordance with this Policy.

If the Complaint Form indicates that the complainant agrees to participate in alternative dispute resolution, the Complaints Officer will advise the complainant of the processes in accordance with this policy.

If the complaint is referred to the Local Government Inspector, the Complaints Officer will advise the complainant.

If a complaint does not meet the requirements, the Complaints Officer will give notice as to the reasons the complaint will not be assessed.

7.4 Notice to Respondent

Within 5 business days after accepting a complaint, the Complaints Officer will provide written notice to the Respondent that:

- a) advises that a complaint has been made in accordance with the Code of Conduct and this policy;

- b) includes a copy of the Complaints Form (in accordance with the confidentiality clause in this Policy) and any supporting information provided;
- c) provides a copy of the Response Form (**Appendix 3**) and this Policy;
- d) outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes; and
- e) if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

If the Complainant has agreed to participate in alternative dispute resolution, the Complaints Officer will ask the Respondent if they are willing to participate in accordance this Policy.

The Respondent will be invited to make a written submission in relation to the complaint within 10 business days of being notified of the Complaint by the Complaint's Officer.

If the Respondent does not respond, then the complaint will progress to an assessment in accordance with this Policy.

7.5 Alternative Dispute Resolution

Alternative dispute resolution may support both parties to 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.

To commence the process, the Complaints Officer will, as the first course of action upon providing a notice, offer the Complainant and the Respondent the option of alternative dispute resolution. If both parties agree to participate in alternative dispute resolution, the Complaints Officer will appoint an Independent Complaint Facilitator to facilitate the process as required and provide written notice of the appointment to the Complainant and the Respondent. The formal complaint process will be paused until the alternative dispute resolution process reaches an outcome.

The objective of alternative dispute resolution is to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the complaint.

For example, an offer by the 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 an 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 the Independent Complaint Facilitator acting as mediator.

Where mutually agreed, parties to the complaint may have a support person present during the alternative dispute resolution process.

If alternative dispute resolution is terminated or does not result in the withdrawal of the complaint, the Independent Complaint Facilitator will resume an assessment of the complaint as required under this Policy.

7.6 Withdrawal of Complaint

In accordance with clause 14 of the Code of Conduct, the Complainant may withdraw a complaint by writing to the Complaints Officer at any time before a finding on the Complaint is made by Council.

8. Assessment of the Complaint

8.1 Powers of Independent Complaint Facilitator

The assessment of a complaint will be conducted purely on the basis of all documents provided; the complaint documents, any local government records identified by the Complaints Officer, and the response documents.

The Independent Complaint Facilitator is given the necessary powers and authority to undertake a desktop assessment process in accordance with the Code of Conduct, this Policy and industry best practice.

The Independent Complaint Facilitator may carry out the assessment on the basis of:

- a) the complaint documents provided by the Complainant;
- b) the response documents provided by the Respondent; and
- c) any local government records identified by the Complaints Officer upon a request being made by the Independent Complaint Facilitator.

If the behaviour is alleged to have occurred at a Council or Committee meeting, the Complaints Officer can be requested to identify any records that provide evidence that may support a decision as to whether:

- a) the behaviour occurred at a Council or Committee meeting
- b) the behaviour was dealt with by the person presiding that meeting, and/or
- c) the Respondent has taken remedial action in accordance with the Code of Conduct or Shire's Standing Orders Local Law.

The Respondent must be provided with a copy of any records that are identified and have an opportunity to respond. In addition, where clarification has been sought from the Complainant by either the Complaints Officer or the Independent Complaint Facilitator, copies must also be provided to the Respondent.

8.2 Procedural fairness

All assessments of a complaint are to observe due process and procedural fairness. Procedural fairness for an assessment shall include:

- a) ability for the Respondent to provide an opportunity to respond to the complaint and proposed management plan in the event a management plan is recommended;
- b) careful consideration of all evidence obtained during the course of the assessment;
- c) maintaining confidentiality;
- d) ensuring any conflicts of interest are managed appropriately;
- e) acting fairly, without bias and in an impartial manner; and
- f) conducting the assessment without undue delay.

8.3 Preparation of Complaint Report

Having completed the assessment of the complaint, the Independent Complaint Facilitator will prepare a Complaint Report for consideration by Council that will include:

- a) an executive summary of the assessment, including the substance of the complaint and how the complainant and respondent was provided with an opportunity to be heard;

- b) the complaint form and supporting documents provided by the complainant and respondent written response and any additional information provided;
- c) any other documents or information obtained during the assessment into the complaint, including any relevant records maintained by the Shire;
- d) a description of any attempts made to resolve the matter by use of alternative means (Alternative Dispute Resolution);
- e) a preliminary finding as to whether substantiated allegations constitute a breach of Division 3 of the Code of Conduct, based on evidence from which it may be concluded that it is more likely that the breach occurred than it did not;
- f) reasons for the findings, including an analysis of how each element of the breach has been established;
- g) recommendations on each decision that may be made by Council and reasons for each recommendation; and
- h) any recommended Management Plan prepared to address the behaviour of the person to whom the complaint relates.

The Complaint Report must be provided to the Complaints Officer within 28 days of receiving the complaint from the Complaints Officer.

8.4 Records Management

The Independent Complaint Facilitator must comply with the records management requirements as outlined in the contract for service. Once the assessment is finalised all records must be provided to the Complaints Officer who will ensure that the records are maintained in accordance with the Shire's record-keeping system with restricted access to ensure confidentiality.

9. Determination of Complaint

9.1 Report to Council

The Complaints Officer shall include the Complaint Report in the Agenda for the next available Council Meeting. The Complaints Officer will be responsible for the preparation of a Confidential Report which will include the Complaint Report, proposed Management Plan and submission by Respondent pursuant to clause 8.4 (if applicable). The recommendations of the Complaint Report will be provided as the Officer recommendations.

Prior to the Complaint Report being presented to Council, the Complaints Officer will provide a copy of the Complaint Report to the Complainant and Respondent.

The agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with section 5.23 of the Act.

9.2 Determination of Complaint by Council

A complaint is not to be discussed at any Council briefing session.

In accordance with section 5.105(4) and (5) of the Act, neither the Complainant nor the Respondent may –

- a) *preside at any part of a council or committee meeting relating to the complaint; or*
- b) *participate in, or be present during, any discussion or decision-making procedure of a council or committee relating to the complaint.*

Council will consider the complaint documents, response documents and Complaint Report and give due regard to the recommendations. The Independent Complaint Facilitator may attend the meeting to answer questions from Council.

If Council deviate from the Complaint Report recommendation, it must provide reasons for the difference and reasons for its findings.

The Council must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct 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 Shire's *Standing Orders Local Law 2002*

If the local government dismisses the complaint, it must give written notice of its decision to the parties of the complaint, and reasons for its decision must be recorded in the minutes if it is significantly different to the officer recommendation.

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 [clause 12(3) of the Code of Conduct]. 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 Division 3 of the Code of Conduct, having regard to the Complaint Report.

If Council makes a finding that an alleged breach of Division 3 of the Code of Conduct has occurred, Council may:

- a) take no further action; or
- b) prepare and implement a plan under clause 12(4)(b);

It is open to Council to determine that once the matter has been heard, the completed complaint form, response form and Complaint Report is made publicly available by including them as attachments to the minutes of the meeting by including the following as part of the resolution:

- c) RESOLVES in accordance with Regulation 29A of the *Local Government (Administration) Regulations 1996* that that the completed complaint form, response form and Complaint Report be made available for public inspection by including them as attachments to the minutes of the meeting.

9.3 Consultation with Respondent in relation to proposed Management Plan

In instances where Council decides to prepare a Management Plan, the Shire must consult with the Respondent in accordance with clause 12(5) of the Code of Conduct.

The Complaints Officer will invite the Respondent to make a written submission. The Respondent will be given 10 business days to make a submission on the proposed Management Plan.

In the event that the Respondent requests an extension of time to make a submission on the proposed Management Plan, the Complaints Officer may grant an extension of up to 5 business days.

The Complaints Officer will then prepare a Confidential report for the next available Council Meeting for consideration of the Management Plan Report which is to include the following:

- a) an outline of consultation process undertaken on the proposed Management Plan; and
- b) any submission of the Respondent; and
- c) any updated recommendations in relation to the proposed Management Plan.

Council will consider the Management Plan Report in relation to the proposed Management Plan and make a determination in relation to whether Council approves the proposed Management Plan.

9.4 Notification of Complaint Determination

If Council makes a finding in relation to the complaint, the Complaints Officer must give written notice to the Complainant and Respondent of:

- a) Council's finding and the reasons for its finding; and
- b) if Council's finding is that the alleged breach has occurred – the Management Plan requirements.

A register of complaints where a breach has been found by Council and a management plan imposed shall be maintained by the Complaints Officer. The register shall record the date of the complaint, the name of the Elected Member or committee member found in breach, and the management plan as resolved by Council. This register will be published on the Shire's website in accordance with section 5.96C of the Act.

9.5 Compliance with Plan Requirements

The Complaints Officer will monitor the actions as determined in the adopted Management Plan to ensure the Respondent adheres to the agreed actions within the listed timeframes (if applicable).

Failure to comply with a requirement included in the adopted Management Plan is a Conduct breach under clause 23 of the Code of Conduct and can be reported to the Local Government Inspector by any person.

10 Transitional provisions

This Policy will commence upon adoption by Council. Any complaints received prior to this date will be assessed and determined under the previous complaints process. Under that process, Council is provided with copies of the complaint and response forms and is required to determine whether the alleged breach has been substantiated.

Definitions

Act means the *Local Government Act 1995*.

Breach means a breach of Division 3 of the Shire's Code of Conduct.

Candidate means a candidate for election as a Council Member whose nomination has been accepted by the Returning Officer under s4.49 of the Act, but does not include a council member who has nominated for re-election.

Code of Conduct means the Shire's Code of Conduct for Council Members, Committee Members and Candidates as required by the *Local Government (Model Code of Conduct) Regulations 2021*.

Committee member means a member of a Committee appointed by Council.

Complaint means a complaint made under clause 11(1) of the *Local Government (Model Code of Conduct) Regulations 2021*.

Complaint Report means the complaint report prepared by the Independent Complaint Facilitator in accordance with clause 8.3.

Complaints Officer means a person authorised under clause 11(3) of the Code of Conduct to receive complaints and withdraw complaints as contained at item 1.17 of the Shire's Register of Delegations and Authorisations

Complainant means a person who has submitted a complaint in accordance with this policy.

Independent Complaint Facilitator means an independent and suitably qualified person appointed by the Shire's Complaints Officer in accordance with this policy.

Local Government Inspector means the person holding the office of the Local Government Inspector established by section 8B.1 of the *Local Government Act 1995*.

Management Plan means a plan that may be prepared and implemented under clause 12(4)(b) of the *Local Government (Model Code of Conduct) Regulations 2021* to address the behaviour of the person to whom a complaint relates, if a finding has been made that a breach has occurred.

Respondent means a person who is the subject of a complaint submitted under clause 11 of the Code of Conduct.

Support Person means a person who is not an advocate or representative but attends meetings to provide support and reassurance.

Related Documents

- Shire of Serpentine Jarrahdale Code of Conduct for Council Members, Committee Members and Candidates
- **Appendix 1** - Code of Conduct Behaviour Complaints Process Flowchart (E26/2145)
- **Appendix 2** - Complaint Form – Code of Conduct (E25/11294)
- **Appendix 3** - Response Form – Complaint about Alleged Breach (E25/11296)

Legislation / Local Law Requirements

- *Local Government Act 1995*
- *Local Government (Model Code of Conduct) Regulations 2021*
- *Local Government (Administration) Regulations 1996*

Amendment Record

Relevant Delegations		Refer to Register of Delegations and Sub-delegations (as amended)	
		Date	Resolution Number
Council Adoption		20 July 2026	OCM-207-2026
Version	Date	Resolution Number	Amendment Details