

SHIRE OF NANNUP – Council Policy



Policy Number:	ADM27
Policy Type:	Administration
Policy Name:	Council Member, Committee Member and Candidate Code of Conduct Complaint Handling Policy
Policy Owner:	Chief Executive Officer
Date of Approval	
Council Resolution #	

POLICY STATEMENT

The Shire of Nannup is committed to addressing behavioural complaints under Division 3 of the Council Member, Committee Member and Candidate Code of Conduct (Complaint/s) (the Code) in an effective, transparent and fair manner.

OBJECTIVE AND PURPOSE

This Policy establishes the process by which the Shire of Nannup Council deals with Complaints.

DEFINITIONS

DEFINITIONS: Any definitions listed in the following table apply to this document only.

Term	Means
Act	means the Local Government Act 1995.
Action Plan	means a Plan that may be prepared and implemented under the Code, to address the behaviour of the person to whom the Complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.
Candidate	means a candidate for election as a Council Member.
Code	means the Shire of Nannup Council Member, Committee Member and Candidate Code of Conduct.
Committee Member	A person appointed by resolution of Council to a committee established under the <i>Local Government Act 1995</i> .
Complaint	means a complaint submitted under section 11 of the Code
Complainant	means a person who has submitted a Complaint.
Complaints Administrator	means an employee or external third party appointed by the Complaints Officer to undertake the administration of the Complaint.
Complaint Form	means the form approved under section 11(2)(a) of the Code
Complaints Officer	means a person authorised in writing by Council resolution under section 11(3) of the Code of Conduct to receive Complaints and withdrawals of Complaints.

Council	means the Council of the Shire of Nannup.
Council Meeting	means a formal meeting of the Council 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.
Respondent	means a person who is the subject of a Complaint submitted under section 11 of the Code.

SCOPE

This Policy applies to:-

- a) complaints made in accordance with section 11 of the Code;
- b) Council Members, Committee Members, Candidates; and
- c) any person who submits a Complaint.

This Policy does not apply to complaints:-

- a) relating to Rules of Conduct under Division 4 of the Code;
- b) about services delivered by the Shire;
- c) against employees of the Shire;
- d) involving allegations of serious misconduct, corruption, fraud; or
- e) about other criminal or corrupt conduct.

IMPLICATIONS

The Shire will incur costs should it choose to engage an external third party to determine a Complaint and appropriately provide resource capacity to assist the Complaints Officer and the Complaint Administrator to receive and deal with Complaints.

IMPLEMENTATION

1. ***Making a Complaint***

- a) Any person may make a Complaint within one month after the alleged breach of the Code occurred.
- b) A Complaint must be made by completing the Division 3 Complaint Form in full and providing the completed forms to the Complaints Officer. The Complaint Form inclusive of instructions and contact details is available on the Shire's website or by contacting the Complaints Officer.
- c) A Complaint in relation to a Candidate must be made in accordance with the above but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member. 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 Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with.

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

2. Complaints Officer

- a) The Chief Executive Officer (and in their absence or where a conflict of interest exists, the Executive Manager Corporate Services) is authorised as the Complaints Officer.
- b) The Complaints Officer is authorised to receive Complaints (see Appendix 1).
- c) The Complaints Officer will conduct a preliminary review to confirm that the Complaint has been properly made and is within jurisdiction and required time frames. If the Complaint is determined not to be properly made or within jurisdiction, the Complaints Officer will provide the Complainant the opportunity to amend.
- d) The Complaints Officer will as the first course of action, offer the parties 'Alternative Dispute Resolution' (refer Section 5).
- e) The Complaints Officer may appoint a Complaints Administrator to assess the Complaint. The Complaints Administrator may either be an impartial Employee of the Shire or a third party appointed in accordance with the Shire's Purchasing Policy.
- f) The Complaints Officer is not an advocate for the complainant or the respondent. The Complaints Officer provides procedural information and assistance to both Complainant and Respondent.

3. Complaints Administrator

- a) If Alternative Dispute Resolution is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Complaints Officer may appoint a Complaints Administrator where time, or the complexity of the Complaint, precludes this function being undertaken by the CEO or Executive Manager Corporate Services (Complaints Officer).
- b) The Complaints Officer will liaise with the Complaint Administrator to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.
- c) The Complaints Administrator is to review and consider a Complaint and to report on their findings and recommended course of action to the Shire's Complaints Officer for consideration by Council.
- d) The Complaints Administrator is not to assess a Complaint if they have an actual or perceived conflict of interest in relation to a Complaint.

4. Function and Responsibilities of the Complaints Officer or Complaints Administrator

- a) The Complaints Officer or Complaints Administrator is to undertake the following –
 - i) In the case of a Complaints Administrator, provide written notice of their appointment to the Complainant and the Respondent;

- ii) Acknowledge receipt of the Complaint in writing to the Complainant;
 - iii) Advise the Respondent in writing (attaching all relevant documents) of the Complaint and the process to assess the Complaint;
 - iv) liaise with the Respondent and facilitate the Response (to be received within 14 days). An extension of time may be sought but may not exceed 20 days;
 - v) make a finding on the balance of probabilities¹ ; and
 - vi) prepare a report and recommendation to Council.
- b) The Complaints Administrator, if appointed, may request the Complaints Officer to search for any relevant records in the Shire's Record Management System. In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the 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 Shire's Standing Orders Local Law.
- c) The Respondent must be provided 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 Complaints Officer or the Complaints Administrator, copies must also be provided to the Respondent.
- d) The findings and subsequent recommendation will be put to Council by the Complaints Officer.
- e) A recommendation based on findings must either –
- i) recommend that the Council find that no breach of the Code has occurred;
 - ii) recommend that the Council find that a breach of the Code has occurred and that no further action should be taken; or
 - iii) recommend that the Council find that a breach of the Code has occurred and an Action Plan for counselling and training be prepared and implemented.
- e) The Complaints Officer or Complaints Administrator must provide reasons for their finding/s and recommendation/s.

5. ***Alternative Dispute Resolution***

- a) The Shire recognises that 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.
- b) To commence the process, the 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 Complaints Officer will pause the

¹ The balance of probability threshold is derived pursuant to clause 12(3) of Schedule 1 of the Local Government (Model Code of Conduct) Regulations 2021, which requires that any finding of a breach 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.

formal process.

- c) The Mediator may be the Complaints Officer or other such person as determined by the Complaints Officer. To maintain a separation of roles, the Complaints Administrator is not to be appointed to mediate between the parties.
- d) 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. 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.
- e) 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 aiding the Local Government, such as a facilitator or mediator.
- f) If Alternative Dispute Resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the Complaint, the Complaints Officer will resume the formal process required under this Policy.

6. Assessment of Complaint

- a) The Complaints Officer and Complaints Administrator have no investigatory powers.
- b) The Complaints Officer or Complaints Administrator will make their determination regarding the occurrence of a breach/breaches of the Code in consideration only of –
 - i) the evidence and information provided by the Complainant in the completed Complaint Form; and
 - ii) the submission (if received) by the Respondent.

7. Council Determination

- a) A confidential report is to be prepared for Council that must include the following -
 - i) the substance of the Complaint;
 - ii) the nature and extent of the assessment into the Complaint;
 - iii) the substance of the Response;
 - iv) the finding;
 - v) a recommendation; and
 - vi) any recommended Action Plan for training and/or counselling to address the behaviour of the Respondent (if in breach).
 - vii) Any submissions from both the parties to the Complaint relating to the recommended course of action.
- b) The Respondent and Complainant will be provided with a draft copy of the Complaint Report and recommended Action Plan by the Complaints Officer and both may make a submission relating to the

Action Plan, before the Complaint Administrator finalises the Complaint Report.

- c) Council's determination of a Complaint must:
 - i) be based on proper and genuine consideration of the Complaints Officer or Complaint's Administrator's finding, their report and recommendation; and
 - ii) not consider or take into account any irrelevant factors.
- d) In determining a Complaint, Council may resolve that a breach of the Code has -
 - i) occurred and to take no action;
 - ii) occurred and to implement an Action Plan;
 - iii) not occurred and dismiss the Complaint; or
 - iv) dismiss the Complaint on the determination that the behaviour to which the Complaint relates occurred at a Council Meeting (section 13 of the *Local Government (Model Code of Conduct) Regulations 2021*) and either the behaviour was dealt with by the Presiding Person or the person responsible for the behaviour has taken remedial action in accordance with Standing Orders Local Law.
- e) The Respondent is to declare an interest and leave the Council Chamber whilst the matter is being considered.

8. Action Plan

- a) An Action Plan may be recommended as a mechanism to encourage positive behaviour and prevent negative behaviour in the future.
- b) When resolving an action plan, the Council may consider:
 - i) the findings and recommendations;
 - ii) the Respondent's submission in relation to the Complaint;
 - iii) whether the Respondent has remedied or rectified their conduct;
 - iv) whether the Respondent has breached the Code knowingly or carelessly.
 - v) whether the Respondent has breached the Code on previous occasions.
- c) Council can resolve an Action Plan that requires the Respondent to engage in counselling and/or training.
- d) The counselling session will be undertaken by an appropriately qualified independent person appointed by the Complaints Officer.
- e) The intention of a counselling session is to allow for education around the behaviour which caused the breach, discussion around positive behaviour for the future and to ideally facilitate the opportunity for an informal apology to be made.
- f) The Respondent must engage in counselling in good faith.
- g) Failure to comply with an Action Plan is a breach of the *Local Government (Model Code of Conduct) Regulations 2021* and will be duly referred to the relevant statutory authority by the Complaints Officer.

9. Procedural Fairness

- a) The principles of procedural fairness will apply when dealing with a Complaint to the extent set out in this Policy.
- b) Procedural fairness is to be provided to the Complainant and the Respondent as follows –
 - i) A Complainant has the opportunity to receive clarification and assistance from the Complaints Officer prior to submitting a Complaint;
 - ii) As soon as reasonably practicable after the receipt of a Complaint, the Complainant will receive acknowledgment that the Complaint has been received and the Respondent will be duly notified of the Complaint;
 - iii) At first instance, both parties will be offered the opportunity to mediate the Complaint.
 - iv) If no mediation is to occur, the Respondent will be provided fourteen days to respond to the Complaint in writing;
 - v) The Respondent can seek reasonable extensions of time to provide their response, upon written confirmation from the Complaints Officer.
 - vi) Both parties will be provided with a copy of the Council Report (which will include recommendations for an Action Plan) by the Complaints Officer prior to it being considered by Council and given an opportunity to comment on the Action Plan.
 - vii) Both parties will be notified of the outcomes of the Council determination as soon as practicable by the Complaints Officer.
 - viii) If a breach has been found and it has been determined that an Action Plan is required, the Complaints Officer will consult with the Respondent about their availability for counselling and/or training;
 - ix) The Complainant will be notified that the counselling and/or training has been conducted.

10. Register

The Shire will maintain a register of Complaints lodged under the Code.

11. Confidentiality

- a) Subject to disclosure required to process and determine the Complaint, and to the extent disclosure is required by law, the Complainant, the Respondent and the Complaints Administrator are required to maintain confidentiality in respect of the Complaint and the processes undertaken to determine the Complaint.
- b) The relevant parties will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the determination of their Complaint.
- c) The Complaints Officer or the Complaints Administrators' Finding and Recommendation is provided to Council for determination through a confidential report presented in a closed session of Council.

12. Appeal

There is no mechanism to appeal a determination of Council in respect of a Complaint.

AUTHORITIES AND ACCOUNTABILITIES

The Chief Executive Officer (and in their absence or where a conflict of interest exists, the Executive Manager Corporate Services) is authorised as the Complaints Officer.

ROLES AND RESPONSIBILITIES

The Complaints Officer is authorised to receive Complaints and appoint a Complaints Administrator, if required.

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

DISPUTE RESOLUTION (if applicable)

All disputes concerning this policy will be referred to the Chief Executive Officer as the Complaints Officer or, in their absence, the Executive Manager Corporate Services.

EVALUATION AND REVIEW

This Policy is to be reviewed every three years to ensure that it meets its objective and provides clear accountability requirements unless legislative amendments or Council require an immediate review.

RELATED DOCUMENTS

Council Member, Committee Member and Candidate Code of Conduct

REFERENCES

- *Local Government Act 1995*
- *Local Government (Model Code of Conduct) Regulations 2021*
- Department of Local Government, Sport and Cultural Industries: The Minor Breach System: A guide for council members, complaints officers and members of the community.
- Department of Local Government, Sport and Cultural Industries: Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates 2021
- Other Local Government Policies, including but limited to Shire of York, Shire of Harvey, Shire of Esperance and City of Wanneroo.

RESPONSIBILITY FOR IMPLEMENTATION

Chief Executive Officer

Version OCM Ref. #	Date:	Next Review	ECM Reference #
1.			
2.			
3.			

APPENDIX 1

