

Policy

City of Cockburn Behaviour Complaints



Policy Type

Council

Policy Purpose

The objective of the policy is to prescribe the processes for the management of complaints involving council members, committee members and candidates in matters relating to alleged breaches of the behaviour requirements in Division 3 of the Code of Conduct.

Policy Statement

(1) Scope

1.1 This policy applies to:

- 1.1.1. Complaints made in accordance with clause 11 of the Code of Conduct;
- 1.1.2. Council Members, Committee Members, Candidates; and
- 1.1.3. Complainants

(2) Process for Making a Complaint

2.1. Making a Complaint

- 2.1.1. A person may make a Complaint within one month after the alleged Behaviour Breach occurred.
- 2.1.2. A Complaint must be made by completing the Complaints Form in full and lodging it with the City's Behaviour Complaints Officer.
- 2.1.3. A Complaint cannot be submitted anonymously.

2.2 The Behaviour Complaints Officer is to:

- 2.2.1. Give notice to the Complainant in writing where a Complaint is not compliant, giving the opportunity to address if applicable.
- 2.2.2. Give notice to the Complainant within 14 days, confirming receipt of the Complaint and providing a copy of this Policy.
- 2.2.3. Inform the Respondent within 14 days, acknowledging the Complaint has been received, and providing a copy of this Policy.
- 2.2.4. Deal with and consider, so far as is practicable, Complaints based on the order in which they are received.
- 2.2.5. Prior to taking the steps outlined in clauses 2.2.1 to 2.2.4 above, make an assessment as to whether r.3A of the Code of Conduct Regulations applies, and if so, refer to the Complaint to the Inspector for actioning under s.105(3) of the Act.
- 2.2.6. Only progress a Complaint relating to a Candidate if and when the Candidate is elected as a Council Member.

(3) Options for Dealing with Complaint Prior to Referral to Complaint Assessor

3.1. Dismissal of Complaint

- 3.1.1. The Behaviour Complaints Officer must make an assessment of whether there are grounds to refer the complaint directly to the Complaints Committee, for the Complaints Committee to dismiss the Complaint under clause 13 of the Code of Conduct.

3.2. Summary Decision on Complaints

- 3.2.1. The Behaviour Complaints Officer may decide to refer a Complaint directly to the Complaints Committee, without the appointment of a Complaint Assessor, if the General Counsel considers that:
- 3.2.1.1. the Complaint is misconceived as there is insufficient evidence to substantiate any alleged breach;
 - 3.2.1.2. the Complaint is frivolous as it deals with conduct that is so minor as to merit disregard; or
 - 3.2.1.3. the Complaint alleges a Breach by an Elected Member that relates to the same conduct as a previous Complaint which has been found by the Complaints Committee not to constitute a breach of the Code of Conduct.

3.3. Respondent to be Notified of Referral

- 3.3.1. The Behaviour Complaints Officer must inform the Respondent if a complaint is to be referred to the Complaints Committee pursuant to clauses 3.1 or 3.2, and give the Respondent a reasonable opportunity to be heard on the proposed referral.

(4) Alternative Dispute Resolution

- 4.1. The Behaviour Complaints Officer must offer both parties Alternative Dispute Resolution, such as mediation.
- 4.2. Where both parties agree to engage in Alternative Dispute Resolution, the Behaviour Complaints Officer will determine the process and appoint an appropriate consultant.
- 4.3. Any Alternative Dispute Resolution Process may be terminated at any time by the Complainant, Respondent, Behaviour Complaints Officer or consultant.
- 4.4. 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.
- 4.5. The Behaviour Complaints Officer is to only offer Alternative Dispute Resolution if a Complaint is to progress to referral to a Complaint Assessor.

(5) Appointment of Complaint Assessor

- 5.1. If a Complaint has not been resolved under clauses (3) and (4) above, the Behaviour Complaints Officer will appoint a Complaint Assessor to assess each Complaint and prepare a Report for the CEO to provide to the Complaints Committee.
- 5.2. The Behaviour Complaints Officer will provide the completed Complaints Form to the Complaint Assessor, together with any supporting evidence provided by the Complainant.

(6) Assessment

- 6.1. The Complaint Assessor will undertake an assessment of the Complaint in accordance with this Policy.
- 6.2. The Complaint Assessor will provide the Respondent with a reasonable opportunity to be heard before forming any opinions or preparing the Report.
- 6.3. The Complaint Assessor may request relevant records of the City from the Behaviour Complaints Officer, copies of which must be provided to the Respondent.
- 6.4. The Complaints Assessor may request the Complainant provide any additional information or documents.
- 6.5. Where the Complainant or the City has provided any clarification or additional information, that information must be provided to the Respondent.
- 6.6. The Complaints Assessor may not, while investigating a Complaint, request information or documents, or interview any person, other than the Complainant, the Respondent or an employee of the City.

(7) Report

- 7.1. The Complaint Assessor will prepare a Report and after considering the Complaint, make a determination as to whether or not the alleged Behaviour Breach has occurred.
- 7.2. The Complaint Assessor must perform their investigation, consideration, and determination on a Complaint on the basis of the documents and claims before them, and in accordance with due process, consistent with the provisions of this Policy.
- 7.3. The Complaint Assessor must attend the Complaints Committee meeting at which the Report is to be considered to present the Report and answer questions relating to the matters considered in the Report.

(8) Withdrawal of Complaint

- 8.1. A Complainant may withdraw their Complaint any time before it is considered by the Complaints Committee.
- 8.2. The withdrawal of a Complaint must be:
 - 8.2.1 in writing; and
 - 8.2.2 given to the Behaviour Complaints Officer.

(9) Complaints Committee

- 9.1. The Agenda will be prepared on the basis that the part of the meeting that deals with the Report will be held behind closed doors in accordance with r.4A(b) of the Administration Regulations.
- 9.2. The Complaints Committee will consider the Report and attachments, giving due regard to the recommendations.
- 9.3. The Complaints Committee will not be livestreamed for the public.

(10) Finding

- 10.1. The Complaints Committee must not make a Finding without the Respondent first having been given a reasonable opportunity to be heard. The Complaints Committee may accept compliance with clause 14.2 of this Policy as provision of a reasonable opportunity to be heard.
- 10.2. A Finding that the alleged Behaviour 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.
- 10.3. Having due regard to the Report, the Complaints Committee must:
 - 10.3.1. dismiss the Complaint in accordance with clause 13 of the Code of Conduct;
 - 10.3.2. find that the alleged Behaviour Breach has occurred; or
 - 10.3.3. find that the alleged Behaviour Breach has not occurred.
- 10.4. If the Complaints Committee makes a Finding that the alleged Behaviour Breach has occurred, it may resolve to:
 - 10.4.1. take no further action; or
 - 10.4.2. prepare and implement an Action Plan recommended by the Complaint Assessor, with or without modifications as it thinks fit.
- 10.5. If the Complaints Committee makes a Finding in relation to a Complaint, it must give written notice of the following to the Complainant and Respondent:
 - 10.5.1. its Finding and the reasons for its Finding; and
 - 10.5.2. if its Finding is that the alleged Behaviour Breach occurred, its decision under clause 10.4.

(11) Action Plan

- 11.1. When preparing an Action Plan in accordance with this Policy, the Complaint Assessor must consult with the Respondent.
- 11.2. An Action Plan may include a requirement for the Respondent to do one or more of the following:
 - 11.2.1. engage in mediation;
 - 11.2.2. undertake counselling;
 - 11.2.3. undertake training; or
 - 11.2.4. take other action of an instructive, but not punitive nature, as is appropriate to the circumstances of the case.
- 11.3. An Action Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of Council Members.
- 11.4. The Action Plan should outline:
 - 11.4.1. the behaviour(s) of concern;
 - 11.4.2. the actions to be taken to address the behaviour(s);
 - 11.4.3. who is responsible for the actions; and
 - 11.4.4. an agreed timeframe for the actions to be completed.

(12) Informing of Complaints Committee Finding

- 12.1. When the Complaints Committee makes a Finding in relation to a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of:
 - 12.1.1. the Finding and the reasons for the Finding; and
 - 12.1.2. if the Finding is that the alleged Behaviour Breach has occurred, the Complaints Committee's decision on the course of action to be taken.

(13) Compliance

- 13.1. The Behaviour Complaints Officer is to monitor the actions set out in an Action Plan.
- 13.2. Failure to comply with a requirement included in an Action Plan is a breach of clause 23 of the Code of Conduct, and is a minor breach under s.8A.3(1) of the Act.
- 13.3. The Behaviour Complaints Officer must provide a report to Council of any failure to comply with a requirement included in an Action Plan.

(14) Procedural Fairness

- 14.1. The principles of procedural fairness will apply when dealing with a Complaint to the extent set out in this Policy.
- 14.2. Procedural fairness is to be provided to the Complainant and the Respondent as follows:
 - 14.2.1. A Complaint will be considered in accordance with this Policy;
 - 14.2.2. A Complainant has the opportunity, as prescribed in the Complaints Form, to receive clarification and assistance from the Behaviour Complaints Officer prior to submitting a Complaint;
 - 14.2.3. In accordance with clauses 2.2.2 and 2.2.3, the Complainant will receive acknowledgment that the Complaint has been received and the Respondent will be notified of the Complaint by the Behaviour Complaints Officer;
 - 14.2.4. At first instance, and in accordance with clause (4), the Behaviour Complaints Officer will offer both parties the opportunity to participate in Alternative Dispute Resolution. If this is declined, the Complaints Assessor is to note this in the Report;
 - 14.2.5. If no Alternative Dispute Resolution is to occur, the Respondent will be provided 14 days to respond to the Complaint in writing;
 - 14.2.6. The Respondent can seek reasonable extensions of time to provide their response, upon written approval of the Behaviour Complaints Officer;
 - 14.2.7. Both parties will be notified of the Complaints Committee's determination of the Complaint;
 - 14.2.8. If a Behaviour Breach has been found and it has been determined that an Action Plan is required, the Behaviour Complaints Officer will consult with the Respondent about their availability for actions included in the Action Plan; and
 - 14.2.9. The Complainant will be informed once all actions from an Action Plan have been completed.

(15) Confidentiality of Complaints

- 15.1. Subject to disclosure required to process and determine the Complaint, and to the extent disclosure is required or permitted by law, the Complainant, the Respondent, the Behaviour Complaints Officer, the Complaints Assessor, and any other City staff with knowledge of the Complaint are required to maintain confidentiality in respect of the Complaint and the processes undertaken to determine the Complaint.
- 15.2. 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 and be a breach of the Act.

Definitions

Act means the *Local Government Act 1995*.

Action Plan means a plan that may be prepared and implemented under clause 12(4)(b) of the Code of Conduct.

Administration Regulations means the Local Government (Administration) Regulations 1996.

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

Behaviour Complaints Officer means the person authorised in writing by the Council to receive Complaints and Withdrawals of Complaints.

Candidate has the meaning given in clause 2(1) of Schedule 1 of the Code of Conduct Regulations.

City means City of Cockburn.

Code of Conduct means the Code of Conduct adopted by Council under section 5.104 of the Act.

Code of Conduct Regulations means the Local Government (Model Code of Conduct) Regulations 2021.

Committee Member has the meaning given in s.5.100(1) of the Act.

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

Complaint Assessor means an impartial third party appointed by the Behaviour Complaints Officer to undertake the functions specified in this Policy, in accordance with this Policy.

Complaints Form means the form approved by Council under clause 11(2)(a) of the Code of Conduct.

Complainant means a person who has submitted a Complaint.

Complaints Committee means the committee of Council established under clause 14B(2) of the Code of Conduct, to perform the functions of Council under clauses 12 and 13 of the Code of Conduct.

Council means the council of the City.

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 12(1) of the Code of Conduct as to whether the Behaviour Breach has or has not occurred.

Inspector has the meaning given in s.1.4 of the Act.

Report means the report for the Complaints Committee of the outcome of the investigation of a Complaint that must:

- (a) outline the process followed, including how the Respondent was provided the opportunity to be heard;
- (b) include all Complaint documents and related records, including any City records, as attachments;
- (c) include recommendations on each decision that may be made by the Complaints Committee;
- (d) include reasons for each recommendation, with reference to this Policy; and
- (e) include an Action Plan where recommended by the Complaint Assessor.

Respondent means a person who is the subject of a Complaint.

Other terms used in this Policy that are also used in the Act or the Code of Conduct have the same meaning as they have in the Act or the Code of Conduct, unless the contrary intention appears.

Related Documents:

- Code of Conduct for Council Members, Committee Members and Candidates
- Behaviour Complaint Form

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