



Code of Conduct Policy

Policy Type: Council Policy Policy Owner: Chief Executive Officer	Policy No. CP- 118 Review Date: 16 May 2023
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Policy Objectives

To establish, in accordance with Clause 15(2) of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.

To give effect to the City of Melville's commitment to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Elected Members, Committee Members and Candidates.

Policy Scope

This Policy applies to complaints made in accordance with Clause 11 of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.

This Policy applies to Elected Members, Committee Members, Candidates and any person who submits a complaint in accordance with this Policy.

Definitions / Abbreviations Used In Policy

Act means the *Local Government Act 1995*.

Conduct Committee means the Committee established by the Council in accordance with s.5.8 of the Act for the purpose of dealing with Complaints. The role of the Conduct Committee is outlined in Part 2.3 of this Policy.

Conduct Complaints Officer means a person authorised in writing [*by Council resolution or by the CEO exercising delegated authority*] under clause 11(3) of the Code of Conduct to receive complaints and withdraw complaints. The role of the Conduct Complaints Officer is addressed in Part 2.1 of this Policy.

Breach means a breach of Division 3 of the City of Melville Code of Conduct for Elected 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 Breach by a Candidate. Candidate Complaints are dealt with in Part 3.6 of this Policy.



Code of Conduct means the City of Melville Code of Conduct for Elected 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 Melville 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 11 of the Code of Conduct.

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

Complaint Assessor means a person appointed by the Conduct Complaints Officer in accordance with Part 2.2 and Part 3.10 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 11(2)(a) of the Code of Conduct [*by Council resolution or by the CEO exercising delegated authority*].

Council means the Council of the City of Melville.

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.

Elected Member has the same meaning as **Council Member**.

Finding means a finding made in accordance with clause 12(1) of the Code of Conduct as to whether the alleged Breach has or has not occurred.

Plan means a Plan prepared and implemented under clause 12(4)(b) of the Code of Conduct, 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.

Records means records of the City of Melville saved in the City of Melville's Document Management System.

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

Respondent means the person the subject of a Complaint submitted in accordance with this Policy.



Policy Statement

1 Principles

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;
- the decision maker will 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.

1.2. 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.

1.3. Confidentiality

The City of Melville will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, City of Melville employees and contractors who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely, and must not disclose or inappropriately use this information.

Complainants will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

1.4 Accessibility

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

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

2 Roles

2.1 Conduct Complaints Officer

The Conduct Complaints Officer is authorised in accordance with clause 11(3) of the Code of Conduct to accept complaints and withdraw complaints.

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

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



The Conduct Complaints Officer will facilitate the calling and convening of Council or Conduct Committee meetings as required.

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

2.2 Complaint Assessor

The Complaint Assessor is appointed by the Conduct Complaints Officer in accordance with Part 3.10 of this Policy.

The Complaint Assessor must be 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 Conduct Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

2.3 Conduct Committee

The Conduct Committee is a Committee of Council established in accordance with s.5.8 of the Act for the purpose of dealing with Complaints related to Division 3 of the Code of Conduct.

The Conduct Committee is a Committee of Council Members only. The membership and purpose of the Conduct Committee is outlined in the Conduct Committee Terms of Reference.

In assessing a complaint, the Conduct Committee will apply the Principles of this Policy.

3 Procedure

3.1 Making a Complaint

The process for making a complaint is set out in clause 11 of the Code of Conduct.

- A Complaint must be made within one (1) month of the date the alleged Breach (*clause 11(2)(c) of the Code of Conduct*).
- A Complaint must be made by completing the Conduct Complaint Form in full, including any relevant supporting information, and providing the completed forms to the Conduct Complaints Officer.
- Where a Complaint Form is submitted that omits required details, the Conduct Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed.
- A Complaint is required to include the name and contact details of the Complainant therefore anonymous complaints cannot be accepted.

Where a Complaint is made more than 1 month after the alleged breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be made (*clause 11(2)(c) of the Code of Conduct*).

3.2 Complaint Registered in Document Management System

The Conduct Complaints Officer will ensure all documents associated with the allegation are registered in a **secure area within** the City's Document Management System, **only accessible by appointed Conduct Complaints Officer/s**.



3.3 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 Conduct Complaints Officer may decide to progress those Complaints concurrently.

3.4 Notice to Complainant

Within 7 days after receiving a Complaint, the Conduct Complaints Officer will provide written notice to the Complainant 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, seeks clarifications or additional information.

If the Complaint Form indicates that the Complainant agrees to participate in Alternative Dispute Resolution, the Conduct Complaints Officer will advise the Complainant of the process in accordance with Part 3.9 of this Policy.

3.5 Notice to Respondent

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

- advises that a Complaint has been made in accordance with the Code of Conduct 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.

3.6 Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with 3.1, 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 Conduct 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 Conduct Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with [*clause 15(1) of the Code of Conduct*].

3.7 Convening of Conduct Committee

The Conduct Complaints Officer will advise the Committee Presiding Member of receipt of a Complaint for a meeting to be called.



3.8 Withdrawal of a Complaint

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint *[clause 14 of the Code of Conduct]*.

A Complainant may withdraw a Complaint by advising the Conduct Complaints Officer in writing that they wish to do so. After receiving a written withdrawal of the Complaint, the Conduct Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

3.9 Alternative Dispute Resolution

The City of Melville 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.

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 in accordance with Part 3.8 of this Policy.

If both the Complainant and Respondent have indicated a willingness to participate in Alternative Dispute Resolution, the Conduct Complaints Officer will pause the formal process and commence 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 in the process, such as a facilitator or mediator.

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

3.10 Appointment of Complaints Assessor

If Alternative Dispute Resolution is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Conduct Complaints Officer may appoint a suitably qualified and experienced Complaint Assessor, in accordance with the City of Melville's CP-023 Procurement Policy.

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

3.11 Search of City of Melville Records

The Complaint Assessor may request the Conduct Complaints Officer to search for any relevant records in the City of Melville's **Document** Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Conduct Complaints Officer will be requested to identify any 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 Melville's Local Government (Meeting Procedures) Local Law 2022*.

The Complaints 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 Conduct Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

3.12 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 3.4 and Part 3.5 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.

3.13 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 records as attachments; and
- include recommendations on each decision that may be made by the Complaints Committee; 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 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy, the Complaint Report must include a Proposed Plan.

The Complaint Assessor will liaise with the Conduct Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Complaints Committee.

4.1 Conduct Committee Meeting

The Conduct Committee will consider the Complaint Report and attachments and give due regard to the recommendations. Where the Conduct Committee's Recommendation is significantly different from the Report Recommendations, the reasons for the decision must be recorded in the meeting minutes.

If the conduct that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Conduct Committee will determine whether or not to dismiss the Complaint in accordance with Clause 13(1) of the Code of Conduct.

If the Conduct Committee dismisses a Complaint, the Conduct Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 13(2) of the Code of Conduct. This will conclude the process for the Complaint.

If the Complaint is not dismissed, the Conduct Committee will consider the Complaint and make a Finding as to whether the alleged Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 12 of the Code of Conduct and Part 4.3 of this Policy.



If the Conduct Committee finds that the alleged Breach **did not** occur, the Conduct Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This will conclude the process for the Complaint.

If the Conduct Committee finds that the alleged breach **did** occur, the Committee will decide whether to take no further action in accordance with clause 12(4)(a) of the Code of Conduct or whether it will prepare a Plan to address the behaviour in accordance with clause 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy.

If the Conduct Committee decides to take no further action, the Conduct Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This will conclude the process for the Complaint.

If the Conduct Committee decides to prepare a Plan, the Committee will first consult with the Respondent in accordance with clause 12(5)* of the Code of Conduct. The Conduct Committee will consider any submissions made by the Respondent before preparing a Plan.

4.2 Complaint Finding

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 must 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.

4.3 Action in Relation to Complaint

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

- the nature and seriousness of the breach(es);
- the Respondent's submissions in relation to the contravention;
- whether the Respondent has breached the Code of Conduct knowingly or carelessly;
- whether the Respondent has breached the Code of Conduct on previous occasions;
- the likelihood or not of the Respondent committing further breaches of the Code of Conduct;
- the Respondent's personal circumstances at the time of conduct;
- the 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.

4.4 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 Conduct Committee 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 of Conduct.

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 of Melville will provide to assist achieve the intent of the Plan; and
- a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

5. Decision Making

The findings of the Conduct Committee will be presented to the next available Ordinary Meeting of the Council and considered behind closed doors (in accordance with section 5.23 of the *Local Government Act 1995*). The Council may uphold or reject the Findings of the Conduct Committee, but if the Council decides to reject the findings, the reasons for the decision must be recorded in the meeting minutes.

5.1 Objective and Principles

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

5.2 Compliance with Plan Requirements

Where a Plan is made the Conduct Complaints Officer will monitor the actions in the timeframes set out in a Plan.

Failure to comply with a requirement included in a Plan is a minor breach under section 5.105(1) of the Act and clause 23 of the Code of Conduct. The Conduct Complaints Officer must provide a report to the Council advising of any failure to comply with a requirement included in a Plan.

References that may be applicable to this Policy

Legislative Requirements:	<i>Local Government Act 1995</i> <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Procedures, Process Maps, Work Instructions:	Terms of Reference – Conduct Committee City of Melville Code of Conduct for Elected Members, Committee Members and Candidates
Other Plans, Frameworks, Documents Applicable to Policy:	
Delegated Authority No:	DA-125 Authority to Appoint Officers to Receive and Withdraw Complaints

ORIGIN/AUTHORITY
Ordinary Meeting of Council

16/05/2023

Item No.
C23/LATE

Reviews