

## C23/5965 – ESTABLISHMENT OF CONDUCT COMMITTEE (AMREC) (ATTACHMENTS)

Ward	:	All
Category	:	Policy
Subject Index	:	Legislation
Customer Index	:	City of Melville
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter
Previous Items	:	M21/5810 New and Amended Regulations -Local Government (Model Code of Conduction Regulations 2021, Local Government (Administration) Amendment Regulations – 16 March 2021 Ordinary Meeting of Council. M21/5836 – Code of Conduct for Elected Members and New Policy CP-118 – Code of Conduct Behaviour Complaints Policy – 3 May 2021 Special Council Meeting. M22/5935 – Proposed New Policy CP-118 Code of Conduct Behaviour Complaints Committee for the Establishment of a Behaviour Complaints Committee – 18 October 2022 Ordinary Meeting of Council C22/5950 – Deferral of Consideration of New Policy CP-118 Code of Conduct Behaviour Complaints Committee – 13 December 2022 Ordinary Meeting of Council.
Works Programme	:	Not Applicable
Funding	:	Not Applicable
Responsible Officer	:	Corrine Newman Head of Governance

### AUTHORITY / DISCRETION

#### DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	<b>Executive</b>	<b><i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i></b>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council reviews decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

## **C23/5965 – ESTABLISHMENT OF CONDUCT COMMITTEE (AMREC) (ATTACHMENTS)**

- In May 2021, the Council adopted the Code of Conduct for Elected Members, Committee Members and Candidates as required by an amendment to the *Local Government Act 1995*.
- At the 18 October 2022 Ordinary Meeting of Council, the Council deferred the consideration of the creation of a proposed new policy CP-118 Code of Conduct Behaviour Complaints Committee to the 13 December 2022 Ordinary Meeting of Council.
- At the 13 December 2022 meeting the Council resolved to approve the officer request for a further deferral of this matter so it could be discussed at a workshop in early 2023.
- This matter has been workshopped with Elected Members and comments from Elected Members in those forums have been incorporated into the documents presented as attachments to this report.
- This Report seeks to establish a Conduct Committee in accordance with section 5.8 of the *Local Government Act 1995*, without delegated authority.

### **BACKGROUND**

At the Special Meeting of Council held 3 May 2021, the Council adopted the Code of Conduct for Elected Members, Committee Members and Candidates (the Code) as required by amendment to the *Local Government Act 1995*. There is requirement for each local government to formally determine a process to manage complaints made under Division 3 of the Code.

This matter has been considered in a variety of forums.

At the Ordinary Meeting of Council held 18 October 2022, the Council considered the report M22/5935 – Proposed New Policy CP-118 Code of Conduct Behaviour Complaints Committee, for the Establishment of a Behaviour Complaints Committee. The Council resolved to defer this matter as follows:

*“That the item be deferred to an Elected Members Engagement Session and brought back to the 13 December 2022 Ordinary Meeting of Council.”*

In December 2022 Officers sought and the Council approved a further deferral of this matter to early 2023 to enable the matter to be discussed at a workshop before being presented back to Council.

### **DETAIL**

The workshop was held with an external facilitator on 20 February 2023 and the information gathered at that workshop, along with additional input from Elected Members was formulated into draft documents that were further considered at an Elected Member Engagement Session held 7 March 2023.

## C23/5965 – ESTABLISHMENT OF CONDUCT COMMITTEE (AMREC) (ATTACHMENTS)

This Report seeks to establish a Conduct Committee, without delegated authority, under section 5.8 of the *Local Government Act 1995*. The Committee is to consider complaints made under Division 3 of the Code of Conduct for Elected Members, Committee Members and Candidates and to make a recommendation to the Council as to whether such a complaint should:

- be dismissed;
- be upheld and a Finding be made, and

Where a Finding is made, to:

- take no action
- outline a Plan to be implemented.

In all instances, the Committee is to provide reasons for its recommendation.

A [Draft Terms of Reference for the Conduct Committee](#) has been prepared which includes the input of Elected Members gathered at the forums mentioned earlier in this report.

The Draft Terms of Reference for the Committee provides for the membership of the Committee to comprise the Mayor and six Elected Members, ideally with each Ward being represented. The remaining Elected Members take the role of Deputy Member for each ward.

Nominations for the roles of Member and Deputy would be as follows:

	Ward	Member	Deputy
<b>Mayor</b>			
<b>Elected Member</b>	Applecross – Mt Pleasant		
<b>Elected Member</b>	Bateman – Kardinya- Murdoch		
<b>Elected Member</b>	Bicton- Attadale – Alfred Cove		
<b>Elected Member</b>	Bull Creek – Leeming		
<b>Elected Member</b>	Central		
<b>Elected Member</b>	Palmyra – Melville - Willagee		

At the Ordinary Meeting of Council held 16 March 2021, the Council adopted the “Complaint About Alleged Breach Form”, as required by Clause 11(2) of the Code to be for the form complaints were to be made on. This form was initially provided by the Department of Local Government when the new legislation was introduced. The Western Australian Local Government subsequently produced a model form, the Behaviour Complaints Form, which has been revised and amended based on Elected Member input. The revised form provides for additional information to be provided as part of the complaint process, including the ability to seek an Alternative Dispute Resolution process.

It is recommended that the Complaint About and Alleged Breach Form be revoked and replaced with the [City of Melville Conduct Complaints Form](#).

## **C23/5965 – ESTABLISHMENT OF CONDUCT COMMITTEE (AMREC) (ATTACHMENTS)**

A [Draft New CP-118 Code of Conduct Policy](#) has also been prepared based on the comments of Elected Members at the recent forums. It is recommended that the draft policy be referred to the Conduct Committee for finalisation and report back to the Council for adoption as soon as practicable.

### **STAKEHOLDER ENGAGEMENT**

#### **I. COMMUNITY**

No engagement with the City's community is required in regard to this matter.

#### **II. OTHER AGENCIES / CONSULTANTS**

No engagement with other agencies or consultants is required for this report.

### **STATUTORY AND LEGAL IMPLICATIONS**

The *Local Government Act* and the *Local Government (Model Code of Conduct) Regulations 2021* set out the requirement for the City to adopt a Code of Conduct and to have processes and documents in place to support the management of Behaviour Complaints.

### **FINANCIAL IMPLICATIONS**

There will be costs associated with resourcing a new Committee, however it is anticipated that these costs can be absorbed in the current approved budget for the 2022-2023 financial year.

### **POLICY IMPLICATIONS**

There are no policy implications associated with this Report.

### **CONCLUSION**

Further to input from Elected Members, it is recommended that the Council consider the establishment of the Conduct Committee by endorsing the Terms of Reference and the City of Melville Conduct Complaint Form presented with this Report. It is also recommended that the first item of business for the new Committee be the consideration of the Draft New CP-118 Code of Conduct Policy and report back to the Council as soon as practicable.

The establishment of the Conduct Committee will ensure that complaints made under Division 3 of the Code of Conduct for Elected Members, Committee Members and Candidates are dealt with in an equitable and timely manner.

**C23/5965 – ESTABLISHMENT OF CONDUCT COMMITTEE (AMREC) (ATTACHMENTS)**

**OFFICER RECOMMENDATION (5965)**

**ABSOLUTE MAJORITY**

**That the Council:**

- 1. by absolute majority decision endorse the establishment of a Conduct Committee for the City of Melville.**
- 2. Adopt the Terms of Reference for the Conduct Committee.**
- 3. Appoint the following as the Membership to the Conduct Committee.**

	Member	Deputy
Mayor		
Elected Member		
Elected Member		
Elected Member		
Elected Member		
Elected Member		
Elected Member		

- 4. Revoke the Complaint About Alleged Breach form adopted at the 16 March 2021 Ordinary Meeting of Council and endorsed its replacement with the revised City of Melville Conduct Complaint Form and this be published on the City of Melville website.**
- 5. Refer the Draft New Policy CP-118 Code of Conduct Policy to the Conduct Committee for finalisation and report back to the 16 May 2023 Ordinary Meeting of Council for consideration.**



City of  
**Melville**

## **Attachments Index**

**21 March 2023**

**Ordinary Meeting of the Council**

<b>Number</b>	<b>Attachment Name</b>	<b>Item Number</b>
1	Draft Terms of Reference – Conduct Committee	C23/5965
2	Revised Conduct Complaints Form	C23/5965
3	Draft New Policy – CP-118 Code of Conduct Policy	C23/5965

**CONDUCT COMMITTEE  
TERMS OF REFERENCE**

These Terms of Reference apply exclusively to the City of Melville Conduct Committee which is a formal committee established under section 5.8 of the *Local Government Act 1995* ("the Act").

**PREAMBLE**

Appropriate conduct and behaviour of Elected Members is pertinent to the effectiveness of the governance of the City's affairs, including Council and Council committee meetings.

The Council has resolved by absolute majority to establish the City of Melville Conduct Committee ("Committee") in accordance with the terms of these Terms of Reference.

**COMMITTEE FUNCTION**

The Conduct Committee is a Committee of the Council established in accordance with s5.8 of the *Local Government Act 1995 (the Act)* for the purpose of dealing with Behaviour Complaints made under Division 3 of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates (Code of Conduct).

The purpose of the Conduct Complaints Committee is to recommend to the Council:

- that a Conduct Complaint be dismissed in accordance with clause 13(1) of the Code of Conduct, and provide the reasons for doing so; or
- that a Finding be made as to whether an alleged complaint (breach) has or has not occurred, based on the evidence submitted with the complaint and the response from the person who the complaint relates to, and provide the reasons for doing so; and

Where a Finding is made that a breach has occurred, the Committee must make a recommendation to the Council to:

- take no further action, and provide the reasons for doing so; or
- outline a plan to be implemented, in accordance with clause 12(4)(b) of the Code of Conduct, to address the conduct of the person to whom the complaint relates to, and provide the reasons for doing so.

**MEMBERSHIP**

The Committee is a Committee of Council Members (only) in accordance with s.5.9(2)(a) of *the Act*. Membership of the Committee will comprise the Mayor and six Elected Members, one from each Ward, appointed by the Council in accordance with s.5.10 of *the Act*. In addition, Deputy Committee Members, one from each Ward, will be appointed by the Council in accordance with s.5.11A of *the Act*:

- (i) if an appointed Committee Member is either a complainant or a respondent to a Complaint being dealt with by the Committee, or is otherwise materially implicated in such a Complaint or other matter under consideration by the Committee, they are to recuse themselves from the Committee's deliberations on that matter and are to be replaced during and with respect to such deliberations by their designated Deputy Committee Member, or if such Deputy Committee Member is also materially implicated or conflicted, then by another Deputy Committee Member selected by the majority of the Committee Members.
- (ii) if a Committee Member is unable or unwilling to attend any Committee meeting, then that Committee Member's designated Deputy Committee Member (or if such Deputy Committee Member is also unable or unwilling to attend such Committee meeting, then another Deputy Committee Member selected by the majority of the Committee Members.

	Member	Deputy
Mayor		
Elected Member		
Elected Member		
Elected Member		
Elected Member		
Elected Member		
Elected Member		

There is no external membership associated with this Group.

### **TERM OF MEMBERSHIP**

- (a) Each Committee Member's and Deputy Committee Member's term of Membership of the Committee will be for one year, expiring in October each year. The new Committee will be appointed by absolute majority decision
- (b) The Council may by absolute majority resolve the composition of the Committee effective from the expiry date of the term of the existing Committee incumbents. Retiring Committee Members and their Deputy Committee Members are eligible for reappointment.

### **PRESIDING MEMBER**

The Committee Members shall elect a Presiding Member and a Deputy Presiding Member from the Committee membership as required. In the circumstance that the Presiding Member and the Deputy Presiding Member are not available, the Committee shall elect a Presiding Member from the Committee Members available.

### **MEETING SCHEDULE**

Meetings are to be called as determined by the Committee Presiding Member, or on the motion of 2 Committee members, in consultation with the CEO.

### **DELEGATED AUTHORITY**

There is no delegated authority (under s5.16 of *the Act*) associated with this Committee.

### **COMMITTEE GOVERNANCE**

- (a) Committee meetings will be convened by the CEO, as required by the Meeting Schedule above;
- (b) Committee deliberations will be resolved by simple majority vote with each Committee member being entitled to one vote. The Presiding Member of the Committee will not have a casting vote in addition to his/her deliberative vote in the case of an equality of votes for and against a motion.
- (c) A quorum for the Committee is 7.

### **ADMINISTRATION**

City officers under the direction of the CEO will:

- be responsible for coordinating meetings;
- circulate an agenda before each Committee meeting to Committee Members;
- be available to take minutes of the meeting (except for such periods as they may be invited by resolution of the Committee for the meeting to be held without City officers present) and register such Minutes in the City's Document Management System.





Instructions for making a complaint about an alleged breach of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates

## Behaviour Complaint

Please read the City of Melville Code of Conduct Behaviour Complaints Policy on our website ([insert hyperlink](#)) before submitting a complaint. This Policy details:

- How the City of Melville will process and determine a **Conduct** Complaint; and
- How confidentiality of the complaint will be handled.

To make a valid **Conduct Complaint**:

- ☐ The allegation must relate to a breach of the behaviour standards in **Division 3** of the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.
- ☐ Complete all sections of the Behaviour Complaint Form attached, including any additional information that will support assessment of the complaint. *The Behaviour Complaints Officer may contact you to clarify or ask for more information.*
- ☐ The completed Behaviour Complaint Form **MUST** be lodged with the City of Melville Behaviour Complaints Officer **within one (1) month of the alleged behaviour breach.**

*If the alleged breach occurred during a Council or Committee Meeting where the matter was raised at the Meeting and the Presiding Member dealt with the matter, a Conduct Complaint cannot be lodged. Note: if the Presiding Member has dealt with the matter, it cannot be re-opened. The Behaviour Complaints Officer may contact you to clarify or ask for more information.*

## Rules of Conduct Complaint

A Rules of Conduct Complaint refers to a breach of the Rules of Conduct outlined in Division 4 of the City of Melville's Code of Conduct for Council Members and Candidates, including Council Members when acting as a Committee Member. This type of complaint is determined by the Local Government Standards Panel, administered through the Department of Local Government, Sport and Cultural Industries. Further information about Rules of Conduct Complaints may be obtained from:

- Department of Local Government, Sport and Cultural Industries: (08) 6552 7300 or [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au); OR
- The City of Melville's Rules of Conduct Complaints Officer: (08) XXXX XXXX or [\[insert email address\]](#)

## Need Advice?

If you require advice in making a Behaviour Complaint, please contact the [\[insert LG name\]'s](#) Behaviour Complaints Officer on (08) [XXXX XXXX](#) or by email [\[insert email address\]](#)



**CODE OF CONDUCT FOR  
COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES  
Division 3**

Details of Person Making the Complaint				
<b>Complainant Name: Given Name/s and Family Name</b>				
<b>Residential Address:</b>				
<b>Postal Address:</b>				
<b>Phone:</b>	<b>Day-time:</b>		<b>Mobile:</b>	
<b>Email:</b>				

Complaint Details	
<b>1. Insert Name of Person alleged to have committed a behaviour breach:</b>	

<b>2. Select the position that the person was fulfilling at the time the person committed the alleged behaviour breach:</b>	Council Member of the City of Melville	<input type="checkbox"/>
	Member of a Committee of the City of Melville	<input type="checkbox"/>
	Candidate for election at the City of Melville	<input type="checkbox"/>

<b>3. Date that the alleged behaviour breach occurred:</b>	
--	--

<b>4. Location where the alleged behaviour breach occurred:</b>	
---	--

<b>5. Which of the behaviours prescribed in Division 3 of [insert LG name]'s Code of Conduct do you allege this person has breached?</b>	
<b>Clause 8. Personal integrity</b>	
(1) A council member, committee member or candidate —	
a) must ensure that their use of social media and other forms of communication complies with this code; and	<input type="checkbox"/>
b) must only publish material that is factually correct	<input type="checkbox"/>
(2) A council member or committee member —	
a) must not be impaired by alcohol or drugs in the performance of their official duties; and	<input type="checkbox"/>
b) must comply with all policies, procedures and resolutions of the local government.	<input type="checkbox"/>



## City of Melville

A council member, committee member or candidate —

- When attending a council or committee meeting, a council member, committee member or candidate —

- 6. State the full details of the alleged breach.**



**7. List any additional information you have provided as part of this complaint:**

*Please ensure all information relevant to the alleged breach has been attached. This information will be the basis on which the complaint is considered.*

**8. Have you made any efforts to resolve the complaint with the Respondent?**

*Please note, you MUST complete this section*

<b>YES</b>	<i>If yes, please describe the efforts that you have made.</i>	
	<input type="checkbox"/>	
	<i>If no, please include a brief statement explaining why you have not made any efforts to resolve the issue with the person complained about.</i>	
<b>NO</b>	<input type="checkbox"/>	

9. The **Policy** that the Complainant and the Respondent be offered the opportunity to participate in an Alternative Dispute Resolution process, that if agreed to by BOTH parties, will be undertaken before the complaint is dealt with. The objective is to support both parties to reach a mutually satisfactory outcome that resolves the issues and restores the relationship between them. An outcome may be that as the Complainant, you will have absolute discretion to withdraw or continue with this Complaint. Please contact the Behaviour Complaints Officer if you would like more information.

**Would you agree to participate in an Alternative Dispute Resolution process?**

<b>YES</b>	<input type="checkbox"/>	
<b>NO</b>	<input type="checkbox"/>	

**10. Desired outcome of the Complaint**

*Please explain what you would like to happen as a result of lodging this complaint, including the opportunity to participate in Alternative Dispute Resolution.*



<b>COMPLAINANT</b> <i>please sign and date</i>	
<b>Signature:</b>	
<b>Date:</b>	

In person: City of Melville Civic Centre  
10 Almondbury Road  
BOORAGOON  
8:30am – 5:00pm Monday to Friday



## Code of Conduct Policy

<b>Policy Type:</b> Council Policy	<b>Policy No.</b> CP- XXX
<b>Policy Owner:</b> Chief Executive Officer	<b>Last Review Date:</b> XX Month 2023

### 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.

Changes to this document can only be made by the Responsible Officer via a System Improvement Request  
Printed version is uncontrolled and valid only at the time of printing

**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.

Changes to this document can only be made by the Responsible Officer via a System Improvement Request  
Printed version is uncontrolled and valid only at the time of printing

## 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 is to 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 the City's Document Management System.

### **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]*.

Changes to this document can only be made by the Responsible Officer via a System Improvement Request  
Printed version is uncontrolled and valid only at the time of printing

### **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 Record 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.

Changes to this document can only be made by the Responsible Officer via a System Improvement Request  
Printed version is uncontrolled and valid only at the time of printing





#### **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.

Changes to this document can only be made by the Responsible Officer via a System Improvement Request  
Printed version is uncontrolled and valid only at the time of printing



### References that may be applicable to this Policy

Legislative Requirements:

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

Procedures, Process Maps, Work Instructions:

Other Plans, Frameworks, Documents Applicable to Policy:

Delegated Authority No:

---

**ORIGIN/AUTHORITY**

Ordinary Meeting of Council

XX/XX/2021

**Item No.**

M23/

DRAFT