

Complaints of alleged breach of the Code of Conduct for Members, Committee Members and Candidates

Introduction

This policy is made in accordance with s.105 (*Division 9 Conduct*) of the *Local Government Act 1995* (the Act) and Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations).

Objective

To outline the Shire of Toodyay's approach regarding the management of complaints of alleged breaches of the Shire's Code of Conduct for Council Members, Committee Members and Candidates.

Scope

This policy applies to Members, Committee Members and Candidates.

Complaints that are inappropriate under this policy are:

- (a) Complaints made with the intent of addressing personal grievances or disagreements;
- (b) Complaints made to express dissatisfaction with a Member, or Committee Member's, lawfully made decisions or performance of their role;
- (c) Complaints made where behaviour occurred at a Council or Committee Meeting and the behaviour was dealt with at that meeting;
- (d) Minor breach matters of Members, Committee Members or Candidates;
- (e) Serious breach matters of Members or Committee Members; or
- (f) Allegations of Minor Misconduct.

Definitions

Term	Definition
Act	Local Government Act 1995.
breach	means a minor breach; or a serious breach (as defined below).
Candidate	an individual is considered a candidate once their nomination for election is accepted, by a Returning Officer, under s.4.49 of the Act. The Code of Conduct applies to the individual from that point. Any alleged breach of the Code of Conduct may only be addressed if and when the individual is elected as a council member.
CEO	Chief Executive Officer

Term	Definition
Code	Code of Conduct for Council Members, Committee Members and Candidates under Division 9 of the Act that guides the decisions, actions and behaviours of Council Members, Committee Members and Candidates.
Committee member	under the Regulations, a 'committee member' includes any council member, local government employee or unelected member of the community who has been engaged by the council to participate in a council committee.
Complaint	means a complaint made under clause 11(1) of the Code of Conduct.
Complaint Form	The Shire's approved Complaint About Alleged Breach Form, as a form to be used when making a complaint through this policy.
Complaints Officer	means the person who is the complaints officer under section 5.120 for the local government concerned;
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the Local Government Act 1995 and under the Shire's Standing Orders Local Law 2008.
Evidence	references to 'evidence' in the Regulations means the available facts or information indicating whether an allegation is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as other relevant information, to decide whether an alleged breach of the Code has occurred.
Investigator	is a suitably qualified person or organisation appointed by the Chief Executive Officer to review and consider complaints.
Member	means in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.
Minor Breach	has the meaning given in section 5.105(1), and it includes a recurrent breach;
Minor misconduct	Allegations of Corruption, Crime or Misconduct (s.4(d) of the <i>Corruption, Crime and Misconduct Act 2003</i>)
Model Code	means the model code of conduct prescribed for the purposes of section 5.103(1);

Term	Definition
Other Terms Used	Other terms used in this policy that are also used in the Act have the same meaning as they have in the Act unless the contrary intention appears.
Party	when used in connection with a complaint, means — (a) the person who made the complaint; or (b) the person against whom the complaint was made.
Primary Standards Panel	means the standards panel established under section 5.122(1);
Recurrent Breach	has the meaning given in section 5.105(2);
Regulations	Local Government (Model Code of Conduct) Regulations 2021
Rule Of Conduct	means a provision of the model code that is specified in the model code to be a rule of conduct;
Serious Breach	has the meaning given in section 5.105(3);
Shire	the Shire of Toodyay.
Shire President	means a mayor or president elected by the Council from amongst the councillors.
Standards Panel	means a standards panel established under section 5.122(1) or (2).
Suitably Qualified:	an independent person or organisation with demonstrated previous experience and expertise in investigating and reviewing complaints and/or legislative breaches.

Policy Statement

This policy is limited to complaints about breaches of Division 3 of the Shire's Code. A person may make a complaint, in accordance with the Code, alleging a breach of a requirement set out in Division 3 of the Code.

1. Cost of Complaints Process

No fee will be charged to lodge a complaint under this policy.

An Investigator will charge the Shire a fee to cover the costs of dealing with a complaint. This fee is charged for each complaint, whether or not a breach is found.

Council shall ensure adequate resources are allocated annually in the Shire's Annual Budget to provide for the Complaints Officer of the Shire to engage Investigators to deal with a complaint.

2. Complaint Process

2.1 Complaint initiated

Any person may make a complaint alleging a breach of Division 3 of the Code as follows:

- (i) A complaint must be made in writing using the Shire's Complaint Form;
- (ii) The complainant lodges the Complaint Form together with supporting evidence for the complaint with the Shire's Complaints Officer;
- (iii) The complainant must provide details in their complaint with supporting information and evidence;
- (iv) The alleged complaint must be lodged within 1 month of the occurrence of the alleged breach;
- (v) Complaints must be submitted by the person making a complaint;
- (vi) Complaints cannot be submitted anonymously;
- (vii) The complainant must provide contact details (address or email).

2.2 Complaint received

The Complaints Officer will, within fifteen working days:

- (i) Contact the complainant acknowledging that the complaint has been received;
- (ii) as part of the acknowledgment process, provide the complainant with a copy of the Shire's Complaints of alleged breach of the Code;
- (iii) provide the Member who is the subject of the complaint with a copy of the complaint form and the Shire's Complaints of alleged breach of the Code, including the name of the complainant; and
- (iv) send the Complaint with supporting evidence to the investigator.

2.3 Complaints addressed

Complaints will be addressed and considered based on the order in which they are received. Complaints relating to Candidates will only be addressed if and when the individual is elected as a Member.

2.4 Appointment of Investigator

The Shire's Complaints Officer must appoint an independent investigator to review complaints.

2.5 Mediation

An Investigator will offer mediation to both parties as the first option before progressing with the complaint. If issues raised in the complaint are resolved to the satisfaction of both parties, the complainant must lodge a withdrawal of complaint in writing to the Complaints Officer.

3. Investigator making a Finding

Before making a finding in relation to a complaint, the investigator must provide the Member who is the subject of the complaint with an opportunity to respond to the allegations in the complaint and an opportunity to provide their own comments and evidence for consideration within ten working days of the notification of the complaint.

After reviewing a complaint, the investigator, must make a finding as to whether the alleged breach of the Code has or has not occurred.

3.1 Report on Findings

The Investigator must provide details of their assessment to the Complaints Officer within twenty working days from the receipt of a complaint form from the Complaints Officer.

Should the Investigator make a finding on the alleged breach of the Code, they must inform the Complaints Officer by providing the reasons for the finding and outcome in their written report.

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.

Should the Investigator make a finding on the alleged breach of the Code, the Investigator must, within their report, include a recommendation if further action is required and if that is the case, prepare an action plan to address the behaviour of the person to whom the complaint relates.

The Investigator may also recommend to Council that the complaint be dismissed in accordance with clause 11 of the *Local Government (Model Code of Conduct) Regulations 2021*.

3.2 Action Plans

When preparing an action plan the Investigator must consult with the person about whom the complaint was made.

The Member must be provided with the opportunity to be involved in matters such as the timing of meetings or training.

The action plan may include a requirement for the person about whom the complaint was made to do one or more of the following:

- i. engage in mediation;
- ii. undertake counselling;
- iii. undertake training; or
- iv. take other action the local government considers appropriate.

An action plan should be designed to provide Members, Committee Members, or Candidates, with the opportunity and support to demonstrate the professional and ethical behaviour expected.

The plan should outline:

- i. the behaviour(s) of concern;
- ii. the actions to be taken to address the behaviour(s);

- iii. who is responsible for the actions; and
- iv. an agreed timeframe for the actions to be completed.

4. Withdrawing a complaint

A complainant may withdraw their complaint at any time before Council considers it. The withdrawal of a complaint must be in writing and addressed to the Complaints Officer.

5. Informing Council

The Complaints Officer is responsible for informing Council.

If Council are required to make a decision in regard to the complaint, the Complaints Officer will submit to Council, a confidential report that includes information received from the Investigator.

The recommendation in the report would ask Council to:

- i. dismiss a complaint; or
- ii. decide that the alleged breach has not occurred; or
- iii. decide that the alleged breach has occurred and resolve to adopt an action plan.

6. Written Notice

The Complaints Officer must give the complainant, and the person about whom the complaint was made a written notice of the finding and the reasons for the finding and a copy of Council's decision including any reasons for the decision that were not part of the Council report.

7. Confidentiality

It is an offence for a person to disclose that a complaint has been made and/or any details of a complaint unless Council have made a formal finding of a breach in respect of the complaint.

8. Follow up and Further Action

The Complaints Officer is responsible for monitoring the actions and timeframes set out in the action plan adopted by Council.

Where a Member, Committee Member or Candidate does not undertake the actions required by the Council following a breach of the Code, they would be breaking the rule of conduct, which is considered a minor breach, as defined in the Act.

The Complaints Officer for the Shire of Toodyay will comply with s.5.106 and s.5.107 of the Act in respect to an alleged minor breach.

Reference Information

- [Legal Representation and Costs Indemnification](#) (ADM4);
- [Shire of Toodyay Customer Service Charter](#);
- Shire of Toodyay [Code of Conduct](#) for Council Members, Committee Members and Candidates;
- [Council Delegates Roles and Responsibilities Policy](#) (GOV12); and

- [Risk Management](#) (ADM18) – containing the Risk Matrix tables.

Legislation

Local Government Act 1995 (Division 9 Conduct).

Local Government (Model Code of Conduct) Regulations 2021.

Local Government (Administration) Regulations 1996 [Part 4A — Codes of conduct for local government employees (Act s. 5.51A(4))].

Associated documents

Complaint About Alleged Breach Form (Appendix 1).

Version control information

Version No.	Date Issued	Review position	Developed by	Approved by
V1	16/04/2021	Adopted	CEO	Council
V2	27/04/2022	Amended and formatted	Executive Services	Council

Document control information	
Document Theme	Governance
Document Category	Members
Document Title	Complaints of alleged breach of Code of Conduct for Members, Committee Members and Candidates
Document ID	GOV4
Document Owner (position title)	Chief Executive Officer
Author (position title)	Executive Services
Date of approval	27 April 2022 (CRN: OCM061/04/22)
Approving authority	Council
Access restrictions	Nil
Date Published	28 April 2022
Date of last review	27 April 2022

Document control information	
Date of next review	5 February 2025
Archived antecedent documents and previous versions	Adopted 27 April 2021 OCM

Complaint About Alleged Breach Form -

Code of conduct for Council Members, Committee Members and Candidates

Schedule 1, Division 3 of the Local Government (Model Code of Conduct) Regulations 2021

This form should be completed, dated and signed by the person making a complaint of an alleged breach of the Code of Conduct. The complaint is to be specific about the alleged breach and include the relevant section/subsection of the alleged breach.

The complaint must be made in accordance with Council's Policy Complaints of Alleged Breach of Code of Conduct for Members and Candidates.

Name of person who is making the complaint:	
Name:	_____
Given Name(s)	Family Name

Contact details of person making the complaint:	
Address:	_____
Email:	_____
Contact Number:	_____

Name of council member, committee member, or candidate alleged to have committed the breach:	
Name:	_____
Given Name(s)	Family Name

Completed and signed complaint form is to be forwarded to:	
Post:	Complaints Officer, Shire of Toodyay PO Box 96 Toodyay WA 6566
Email:	Attention: Complaints Officer - records@toodyay.wa.gov.au
By Hand:	Shire of Toodyay, Admin Centre, 15 Fiennes St, Toodyay WA 6566

State the full details of the alleged breach.

Attach any supporting evidence to your complaint form.

Date of alleged breach:

Date: _____ / _____ / 20_____

Signed:

Complainant's Signature:

Date of signing: _____ / _____ / 20_____

Received by Authorised Officer:

Authorised Officer's Name

Authorised Officer's Signature:

Date received: _____ / _____ / 20_____