WALGA Policy Development Framework
Code of Conduct Behaviour Complaints Management Policy

**WALGA Note:**

WALGA recognises and shares Local Government concerns regarding the complaints mechanism introduced in the Local Government (Model Code of Conduct) Regulations 2021. In particular, the role of Council in deciding complaints and a lack of mechanisms for managing conflicts of interest are problematic.

At its meeting on [2 December 2020](https://walga.asn.au/getattachment/00fee069-a95f-4129-aa31-567b6f303127/Full-Minutes-State-Council-2-December-2020.pdf), State Council resolved that WALGA:

* **Does not support the inclusion of local level complaints about alleged behavioural breaches and Local Governments dealing with complaints provisions in Division 3, Clauses 10 and 11; and**
* **Supports an external oversight body to manage local level complaints involving council members as prefaced in the Local Government Review Panel Report, City of Perth Inquiry Report and Select Committee into Local Government Report, to be considered in a future Local Government Act.**

Therefore, this Framework is drafted on the basis of minimising both actual and perceived bias due to conflict of interests. Our aim is to recommend processes that minimise Council involvement and remove opportunities for conflicts to arise through the use of external parties.

WALGA recognises that some Local Governments may not be willing or able to incur the expense of using external parties, and some Local Governments may simply prefer a different approach. Therefore, this Framework identifies some points at which a Local Government may consider whether to refer a complaint to an external party (rather than referring all complaints). WALGA can provide further advice on how this may be achieved, as well as an option for handling a complaint wholly internally.

DLGSCI has produced [Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates](https://www.dlgsc.wa.gov.au/docs/default-source/local-government/local-government-act-review/model-code-of-conduct-guidelines.pdf?sfvrsn=b507b9c3_4). These Guidelines confirm that Council Members who have made a complaint, or are the subject of a complaint, would have an impartiality interest, however this does not require them to leave a meeting for debate or decision. WALGA’s view, based on the sector’s advocacy position, is that the presence and participation of Council Members directly involved in the complaint creates a clear apprehension of bias and is incompatible with the principles of procedural fairness. Therefore, this Framework proposes the option of establishing a Complaints Committee with delegated authority that can only be exercised in the absence of Council Members who are parties to the complaint. Local Governments may identify other arrangements suitable for their circumstances.

Section 2.7(2)(b) of the Local Government Act sets the policy-making role of a Council, therefore it is strongly recommended that Local Governments provide opportunities for Council to contribute to this development of a Complaints policy.

**Instructions for use:**

This Framework includes suggested wording only and Local Governments should review the content and consider, develop and implement policy suitable to their operational requirements. This Framework also includes extensive WALGA Notes identifying further considerations for Local Governments. These Notes should be deleted from the adopted Complaints Policy. Local Governments should ensure they review the final result to confirm that there are no omissions or inconsistences and that numbering and internal references are correct.

**Remember:**

Policy implementation is given effect through induction, ongoing training and operational procedures which evidence that Council Members, Committee Members and Candidates have been made aware of and are accountable for their obligations under the Local Government’s adopted Code of Conduct and Complaints Policy.

**Feedback:**

WALGA welcomes feedback on the content of this document, particularly if your Local Government has identified issues, opportunities or improved practices in relation to the Local Government (Model Code of Conduct) Regulations 2021. Your suggestions will inform the continuous improvement and updates of this document for the assistance of all Western Australian Local Governments. Your feedback will also inform WALGA’s advocacy where legislative amendment is deemed necessary. Please provide any comments to WALGA’s Governance and Procurement team - governance@walga.asn.au or call 9213 2514.

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Policy Objective

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and <<Shire/ Town / City of XXX>> Code of Conduct for Council Members, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the <<Shire/ Town / City of XXX>> Code of Conduct for Council Members, Committee Members and Candidates.

To give effect to the <<Shire/ Town / City>>’s commitment to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

Policy Scope

This Policy applies to complaints made in accordance with Clause 11 of the <<Shire/ Town / City of XXX>> Code of Conduct for Council Members, Committee Members and Candidates.

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

Definitions

**Act** means the *Local Government Act 1995*.

**Behaviour Complaints 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 Behaviour Complaints Committee is outlined in Part 2.3 of this Policy.

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| ***WALGA Note:****For further discussion of the role of a Behaviour Complaints Committee see the WALGA Note at Part 2.3 of this Policy*.  |

**Behaviour 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 withdrawals of complaints. The role of the Behaviour Complaints Officer is addressed in Part 2.1 of this Policy.

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| ***WALGA Note:****A delegation from Council to the CEO, providing authority to authorise persons to receive complaints and withdrawal of complaints, may provide flexibility. This would allow the CEO to make authorisations as necessary, to address staff changes, provide backup coverage, and make subsequent appointments based on better understanding of the Behaviour Complaints Officer role as the Local Government develops its complaints management procedure.**A delegation may not be appropriate for all Local Governments, as the Council may wish to retain the decision making function to authorise Behaviour Complaints Officers, dependent on the functions that the Council has assigned to this role through its adopted Policy for Code of Conduct Behaviour Complaints Management.**For further discussion of the role of the Behaviour Complaints Officer see the WALGA Note at Part 2.1 of this Policy.*  |

**Breach** means a breach of Division 3 of the <<Shire/ Town / City of XXX>> Code of Conduct for Council 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 3.2 of this Policy.

**Code of Conduct** means the <<Shire/ Town / City of XXX>> Code of Conduct for Council 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 <<Shire/ Town / City of XXX>> 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 Behaviour Complaints Officer in accordance with Part 2.2 and Part 3.8 of this Policy.

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| ***WALGA Note:****For further discussion on the role of the Complaint Assessor see the WALGA Note at Part 2.2 of this Policy.*  |

***C*omplaint 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 <<Shire/ Town / City of XXX>>.

**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.

**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 that may be 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.

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

Policy Statement

# Principles

## 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 should 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.

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| ***WALGA Note:****Local Governments may wish to refer to the Ombudsman WA Guidelines:* [*Procedural fairness (natural justice)*](https://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf) *for detailed commentary on these principles.*  |

## 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.

## Confidentiality

The <<Shire/ Town / City of XXX>> will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, Local Government 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.

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| ***WALGA Note:****There is no direct statutory provision for confidentiality of behaviour breach allegations under the Act or Local Government (Model Code of Conduct) Regulations 2021.* *Local Governments may therefore wish to include in this Policy specific steps they will take to maintain confidentiality, and any limits on confidentiality. This information could be included in the Complaint Form and any internal procedures. For example:** *In order to allow the Respondent to understand and respond to the complaint against them, the name of the Complainant will be provided to the Respondent, unless the Complainant provides reasons this should not occur.*
* *The Complainant’s contact information will not be provided to the Respondent.*
* *The Complainant’s name and contact information will not be included in any publicly available documents such as meeting agenda or minutes.*
* *The Complainant should be aware that Complaint Documents may be subject to an FOI request, noting that they must be consulted before any documents are released, and exemptions may apply.*

*In accordance with Local Government (Administration) Regulations 1996, r.11(d) the details of decisions made at Council or Committee meetings must be included in the minutes. Local Governments should consider how resolutions are drafted to ensure that they are suitable for inclusion in the public record.**A breach of confidentiality by Council Members or Committee Members under an adopted Complaints Policy would breach the Code of Conduct clause 8(2)(b) requirement to comply with all Local Government Policies. In the case of Council Members, this may also be a breach of Rule of Conduct 18(1).*  |

## Accessibility

The <<Shire/ Town / City of XXX>> will ensure that information on how to make a complaint, including this Policy, is available at the <<Shire/ Town / City>>’s Administration Building and on the <<Shire/ Town / City>>’s website. The <<Shire/ Town / City>> will make information available in alternative formats if requested.

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

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| ***WALGA Note:****Local Governments may wish to include the contact information for the Behaviour Complaints Officer under Part 1.4. If the contact information changes more frequently than the Policy is reviewed, the information could be inserted as an administrative note to the administrative/working versions of the Policy, or otherwise made publicly available when publishing the Policy on the Local Government’s website.* |

# Roles

## Behaviour Complaints Officer

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

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

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

The Behaviour Complaints Officer will liaise with the Local Government to facilitate the calling and convening of Council or Behaviour Complaints Committee meetings if required.

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

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| ***WALGA Note:****This framework is drafted on the basis that the Behaviour Complaints Officer is a Local Government employee. Local Governments should review the functions that are allocated to the Behaviour Complaints Officer under this Policy and consider the skills, knowledge and training required.* *External Behaviour Complaints Officer**Local Governments may authorise an external party as the Behaviour Complaints Officer. Local Governments would need to consider:** *What role the Behaviour Complaints Officer would play under their Policy and therefore the scope of services to be provided;*
* *What would be the necessary qualities in an external party;*
* *How that external party would be selected (procurement process);*
* *How a contract/performance would be managed;*
* *How the external party would receive complaints and withdrawals of complaints;*
* *How the external party would ensure they have available capacity to receive complaints and fulfil their role within the scope of services defined by the Local Government;*
* *How the external party would liaise with the Local Government;*
* *How the external party would keep and manage records in accordance with the Local Governments Recordkeeping Plan;*
* *How the external party would access Local Government records;*
* *Which Local Government employee would prepare reports to the Council or Behaviour Complaints Committee?*
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## Complaint Assessor

The Complaint Assessor is appointed by the Behaviour Complaints Officer in accordance with Part 3.8 of this Policy.

The Complaint Assessor is 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 Behaviour Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

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| ***WALGA Note:****Local Governments should give serious consideration to the role of the Complaint Assessor, and the scope of their activities under this Policy. Local Governments should decide whether the Complaint Assessor may undertake an investigation, and if so the scope of the investigation, or whether they should simply request a written response from the Respondent and review all documents provided (the Complaint Documents, any Local Government Records identified by the Behaviour Complaints Officer, and Response Documents).**Based on this decision, Local Governments may wish to develop specifications for the assessment process which may form the basis for a procurement process when appointing the Assessor. Local Governments could choose to be very detailed in this consideration, for example by identifying criteria by which Complaints can be categorised (minor/major etc.) and developing corresponding specifications for each category. Some or all of these specifications could be included in this Policy.**As a minimum, Local Governments should ensure that they have sufficient oversight and control of the work that will be undertaken by the Complaint Assessor to be satisfied that the process will be reasonable and proportionate in scope and cost and align with the Principles set out in Part 1. Consider contract management, performance and value for money.*  |

## Behaviour Complaints Committee

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the Act for the purpose of dealing with Complaints.

The Behaviour Complaints Committee is a Committee of Council Members only. The membership and purpose of the Behaviour Complaints Committee is outlined in Council Policy <XXX> Behaviour Complaints Committee Terms of Reference.

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| ***WALGA Resources:****WALGA has developed a template Behaviour Complaints Committee Terms of Reference and template Behaviour Complaints Committee Delegation to assist the implementation of Part 2.3 of this Policy.**The Behaviour Complaints Committee is proposed to operate under delegated authority in accordance with s.5.16 of the Act with a critical condition prohibiting the Behaviour Complaints Committee from exercising its delegated authority if the Complainant or Respondent attend a meeting as a Behaviour Complaints Committee Member.* *The Terms of Reference for the Behaviour Complaints Committee provides that it is a requirement before the Committee can exercise delegated authority that a Committee Member will submit an apology for any meeting of the Behaviour Complaints Committee that will consider a Complaint in which they are either the Complainant or Respondent.* |

# Procedure

## Making a complaint

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct *[clause 11(1) of the Code of Conduct]*.

A Complaint must be made within one (1) month after the alleged Breach *[clause 11(2)(c) of the Code of Conduct].*

A Complaint must be made by completing the Behaviour Complaint Form in full and providing the completed forms to the Behaviour Complaints Officer.

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| ***WALGA Resources:****WALGA has developed a Template Behaviour Complaint Form incorporating requirements from specific details that will assist the Behaviour Complaints Officer deal with a Complaint, including the option to direct a Complaint for Alternative Dispute Resolution.* *WALGA can assist Local Governments that may wish to incorporate a Statutory Declaration as a Behaviour Complaint Form document, that requires a Complainant to attest to the truthfulness and accuracy of the information provided.*  |

A Complaint must be made in accordance with the Behaviour Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached.

A Complaint is required to include the name and contact details of the Complainant therefore anonymous complaints cannot be accepted.

Where a Complaint Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed.

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]*.

## 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 Behaviour 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 Behaviour Complaints 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]*.

## Withdrawing 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 Behaviour Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Behaviour Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

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| ***WALGA Note:****Certain Parts of this Framework require the Behaviour Complaints Officer to undertake particular functions. Local Governments wishing to reduce officer involvement even further could choose to bring forward Part 3.8 Appointment of a Complaints Assessor, so that a Complaint Assessor is appointed on receipt of a Complaint. Part 3.4 Notice to Complainant, Part 3.5 Notice to Respondent, and Part 3.6 Alternative Dispute Resolution, could then be re-drafted to allocate Behaviour Complaints Officer functions to the Complaint Assessor. Timeframes may need to be reviewed if an external appointment is made.*  |

## Notice to Complainant

Within 7 days after receiving a Complaint, the Behaviour 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 Behaviour Complaints Officer will advise the Complainant of the process in accordance with Part 3.6 of this Policy.

## Notice to Respondent

Within 14 days after receiving a Complaint, the Behaviour 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.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6 of this Policy.

## Alternative Dispute Resolution

The <<Shire/ Town / City of XXX>> recognises that Alternative Dispute Resolution may support both parties 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.

To commence the process, the Behaviour Complaints Officer will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will pause the formal process.

The objective of Alternative Dispute Resolution will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with Part 3.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a Complaint, even in the absence of a request from the Complainant, qualifies for consideration as Alternative Dispute Resolution.

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 to the Local Government, 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 Behaviour Complaints Officer will resume the formal process required under this Policy.

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| ***WALGA Note:****Local Governments may wish to modify this section to specify the available option(s) for Alternative Dispute Resolution. For example:** *negotiation with the assistance of the Behaviour Complaints Officer or other appropriate person as intermediary;*
* *facilitation with a contracted service provider.*

*If engaging an external service provider, consider procurement and contract management issues. Some Local Governments may already have arrangements with the Citizens Advice Bureau or other community organisation. It may be appropriate when engaging a supplier to specify a time/cost threshold, for example if no agreement between the parties within a reasonable timeframe, then Alternative Dispute Resolution will be deemed as unsuccessful, and the formal complaints procedure resumed.**Local Governments should remove this section and subsequent references if they do not wish, or are not able, to make Alternative Dispute Resolution available.* |

## 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 Behaviour Complaints Officer may decide to progress those Complaints concurrently.

## 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 Behaviour Complaints Officer will appoint a suitably qualified and experience Complaint Assessor, in accordance with the <<Shire/ Town / City of XXX>>’s Purchasing Policy.

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

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| ***WALGA Note:****Local Governments should consider their preferred method of selection and appointment. Some options include:** *The Behaviour Complaints Officer undertakes procurement in accordance with the Local Government’s Purchasing Policy, based on sufficiently detailed guidance on suitable qualifications and experience.*
* *Local Governments may choose to carry out an RFQ, or other appropriate procurement process, to identify and appoint a standing Complaint Assessor for a period of time, rather than waiting for a Complaint.*
* *Local Governments could formally establish a Complaints Assessors Panel as a panel of pre-qualified suppliers, in accordance with Division 3 of the Local Government (Functions and General) Regulations 1996.*

*Local Governments may also wish to consider criteria by which a Behaviour Complaints Officer could identify Complaints which may not require external assessment. This could include the substance of the Complaint; whether it is capable of being assessed; and whether or not the Complaint includes complex allegations. This mechanism could be limited, to allow Local Governments to deal with Complaints that lack substance, without the expenditure of resources on a Complaint Assessor.* |

## Search of Local Government Records

The Complaint Assessor may request the Behaviour Complaints Officer to search for any relevant records in the <<Shire/ Town / City>>’s Record Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer will be requested to identify any Local Government records that provide evidence that may support a decision as to whether:

* the behaviour occurred at a Council or Committee Meeting,
* the behaviour was dealt with by the person presiding at the meeting, and/or
* the Respondent has taken remedial action in accordance with the <<Shire/ Town / City of XXX>> <Meeting Procedures/Standing Orders Local Law YYYY>.

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

## 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.

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| ***WALGA Note:****As outlined in the WALGA Note at Part 2.2, Local Governments may wish to include details of their assessment process in their Policy. This may empower the Complaint Assessor to undertake an investigation within defined parameters. Alternatively, the Policy may require that Complaint Assessor to request that the Respondent provide a written response, including any evidence or information that the Respondent considers relevant. The assessment would then be conducted purely on the basis of all documents provided (the Complaint Documents, any Local Government Records identified by the Behaviour Complaints Officer, and Response Documents).**The Code of Conduct requires that a Respondent is provided with a reasonable opportunity to be heard. What may be considered reasonable may depend on the process that is followed, and on the circumstances. For example, if the Complaints Assessor is empowered to gather additional evidence or information, the Respondent must be presented with this information, and have an opportunity to respond. If a Respondent is asked for a written response, the Complaint Assessor should ensure they are given a reasonable period in which to respond. It may also be reasonable to accept responses in other formats. Given this variation, Local Governments may wish to specify minimum requirements, and/or direct the Complaint Assessor to exercise their professional skill and judgment.*   |

## Complaint Report

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| ***WALGA Note:****Local Governments that do not wish to refer all complaints to a standing Complaints Committee with delegated authority should remove all references to ‘Behaviour Complaints Committee’ in the following sections, and replace with ‘Council’.* |

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 Local Government 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 Behaviour Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Complaints Committee. The Behaviour Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

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| ***WALGA Note:****Local Governments may wish to include in their Policy a requirement that the Respondent is provided with a draft copy of the Complaint Report, and an opportunity to make submissions, before the Complaint Assessor finalises the Complaint Report.* *If the Complaint Report includes a Proposed Plan, this may contribute to consultation in accordance with clause 12(5) of the Code of Conduct.*  |

## Complaints Committee Meeting

The Agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with s.5.23(2) of the Act.

The Behaviour Complaints Committee will consider the Complaint Report and attachments and give due regard to the recommendations.

In accordance with Regulation 11(d)(a) of the *Local Government (Administration) Regulations 1996*, reasons for any decision that is significantly different from the Officer Recommendation must be recorded in the meeting minutes.

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| ***WALGA Note:****The Local Government is required to include reasons when providing notice of its decisions under clauses 12(4), 12(7) and 13 of the Code of Conduct. The Complaint Report is required to provide reasons for each of its recommendations, which become the Officer Recommendations.*  |

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Committee will determine whether or not to dismiss the Complaint in accordance with Clause 13 of the Code of Conduct and Part 4.2 of this Policy.

If the Behaviour Complaints Committee dismisses a Complaint, the Behaviour 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 concludes the process for this Complaint.

If the Complaint is not dismissed, the Behaviour Complaints 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 Behaviour Complaints Committee finds that the alleged Breach **did not** occur, the Behaviour 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 concludes the process for this Complaint.

If the Behaviour Complaints 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 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 Behaviour Complaints Committee decides to take no further action, the Behaviour 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 concludes the process for this Complaint.

If the Behaviour Complaints 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 Behaviour Complaints Committee will consider any submissions made by the Respondent before preparing and implementing a Plan.

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| ***WALGA Note:****\*In actioning clause 12(5) of the Code of Conduct, the Respondent may be invited to make an oral submission or provide a written response. If the final decision to implement a Plan is referred to a subsequent meeting of the Committee, the Complaints Assessor or Behavioural Complaints Officer may provide a report attaching the written response and potentially make an associated recommendation as to the effect of a Plan.* |

## Compliance with Plan Requirement

The Behaviour Complaints Officer will monitor the actions in 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 Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

# 4. Decision Making

## Objective and Principles

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

## Dismissal

The Behaviour Complaints Committee must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct if it is satisfied that -

1. the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
2. either —
3. the behaviour was dealt with by the person presiding at the meeting; or
4. the Respondent has taken remedial action in accordance with the <<Shire/ Town / City of XXX>> <Meeting Procedures/Standing Orders Local Law YYYY>.

## 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 may 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.

## Action

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

* the nature and seriousness of the breach(es);
* the Respondent's submission 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;
* likelihood or not of the Respondent committing further breaches of the Code of Conduct;
* personal circumstances at the time of conduct;
* 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 or the conduct or mitigating its seriousness.

## 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 Complaints 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 Local Government 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.

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| ***WALGA Note:****Local Governments have broad discretion in deciding whether to take no further action or prepare and implement a Plan. Local Governments may wish to modify this Part to reflect Council’s position on when it may be appropriate to impose a Plan, and the requirements that may be included.* *The Local Government will be responsible for the cost of the Plan requirements. Local Governments may wish to consider how any activities will be arranged, booked and paid for. Local Governments may choose to specify that the administrative arrangements will be managed, for example in accordance with their Continuing Professional Development Policy.*  |

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| **Document Control Box** |
| **Document Responsibilities:** |
| **Owner:** | [insert Position Title] | **Owner Business Unit:** | [insert Unit Title] |
| **Reviewer:** | [insert Position Title] | **Decision Maker:** | Council |
| **Compliance Requirements:** |
| **Legislation:** | [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a465.html)[Local Government (Model Code of Conduct) Regulations 2021](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s52479.html) |
| **Other:** |  |
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|  | [decision date / TRIM Ref] | [brief description of the adoption / changes approved] |
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