

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

Introduction

To establish the approach the Shire will take for dealing with complaints about alleged breaches of the Division 3 behaviour requirements included in the *Local Government Act 1995* (the Act) pursuant to Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021*.

Objective

To ensure transparency, fairness, and accountability in handling complaints of alleged breaches of the Code of Conduct for Council Members, Committee Members and Candidates.

Scope

This policy only applies to Division 3 behavioural complaints made pursuant to the *Local Government (Model Code of Conduct) Regulations 2021* and the Code of Conduct for Members, Committee Members and Candidates.

Definitions

Term	Definition
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 for Members, Committee Members and Candidates applies to the individual from that point. Any alleged breach of the Code of Conduct for Members, Committee Members and Candidates may only be addressed if and when the individual is elected as a council member.
Complaints Officer	The person or persons authorised to deal with complaints under Division 3 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
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 of Conduct for Members, Committee Members and Candidates has occurred.

Term	Definition
Investigator	is a suitably qualified person or organisation appointed by the Chief Executive Officer to review and consider complaints.
Refer to the Shire of Toodyay (Shire) Glossary (Definitions) located on the Shire website for definitions not listed: https://www.toodyay.wa.gov.au/documents/470/corporate-documents-glossary-(definitions)	

Policy Statement

The Shire is committed to upholding the highest standards of conduct and accountability.

This policy is limited to Division 3 complaints about breaches of the Shire's Code of Conduct for Members, Committee Members and Candidates.

The following "alleged breach matters" are not dealt with by this policy however, references for how these types of complaints are dealt with are provided below:

- (a) Minor breach matters of Members, Committee Members or Candidates
(ref: <https://www.dlgsc.wa.gov.au/local-government/local-governments/compliance-and-governance/breaches-of-the-local-government-act/minor-breach-findings/make-a-minor-breach-complaint>)
- (b) Serious breach matters of Members or Committee Members
(ref: <https://www.dlgsc.wa.gov.au/local-government/local-governments/compliance-and-governance/breaches-of-the-local-government-act/make-a-serious-breach-complaint>); or
- (c) Allegations of Minor Misconduct by Public Officers
(ref: <https://www.wa.gov.au/organisation/public-sector-commission/minor-misconduct-public-officers>)

Note: The Governance Coordinator may update these references on a regular basis without the need for the policy returning to Council.

1. Complaint management principles

The Shire's complaint management principles include the following:

- (a) a person can make a complaint without worrying about any backlash;
- (b) complaints will be addressed quickly and handled fairly and impartially;
- (c) complaints will be considered based on the order in which they are received; and
- (d) complaints relating to candidates will only be addressed if and when the individual is elected as a member.

2. Who receives the Complaint

Complaints are recorded and forwarded to the person authorised to deal with complaints under Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021*.

3. What is a Complaint?

- (a) A complaint that shows or implies that conduct on the part of a Member, Committee Member or Candidate in connection with their role or the exercise of their functions may be perceived to constitute a breach of the standards of conduct prescribed under Division 3 of the Code of Conduct for Members, Committee Members and Candidates.
- (b) Prior to making a complaint, the complainant must discuss the complaint with the Shire's Complaints Officer to determine whether the complaint is a Division 3 complaint.
- (c) If the Complaints Officer has a conflict of interest in the matter, the complainant is to discuss the complaint with the Shire's Governance Coordinator.
- (d) An individual making a complaint must demonstrate whether they have made any efforts to resolve their complaint with the Respondent and provide reasons for why they have chosen not to make efforts to resolve the issue with the person complained about.

4. What complaints may be declined at the outset?

The Complaints Officer may decline to deal with the complaint if they are satisfied that:

- (a) it is an unacceptable complaint in accordance with this policy; or
- (b) is misconceived or considered trivial, or frivolous, or vexatious or not made in good faith; or
- (c) is not made in a way that would allow the alleged conduct and any alleged breaches of the Code to be readily identified.

5. What is an Acceptable Complaint

An acceptable complaint is:

- (a) made within one month after the alleged breach of the Code has occurred;
- (b) made by completing the Shire's complaint form, ensuring that sufficient detail and supporting evidence is included to facilitate an assessment of the complaint by the appointed Complaints Officer; and
- (c) lodged by the person making a complaint and not a representative of that person by providing the completed complaint to the Shire via records@toodyay.wa.gov.au

6. What is an Unacceptable Complaint

An unacceptable complaint is:

- (a) a complaint lodged anonymously;
- (b) where the complainant has made a complaint under the rules of conduct division 4 of the code that relates to the same or similar circumstances of the complaint made under division 3 of the code of conduct;
- (c) a complaint made with the intent of addressing personal grievances or disagreements;

- (d) a complaint made to express dissatisfaction with a member, or committee member's, lawfully made decisions or performance of their role; and
- (e) a complaint made where behaviour occurred at a council or committee meeting and the behaviour was dealt with by the presiding member at that meeting; and
- (f) a complaint about the policies or procedures of council;
- (g) a complaint about the conduct of a member arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of division 3 standards within the code of conduct.

7. Financial Implications

- (a) No fee will be charged to lodge a complaint under this policy.
- (b) The Council will set aside money in the annual municipal budget for the purpose of engaging an Independent Investigator to deal with complex complaints, at the discretion of the Complaints Officer.

8. Acknowledgement and Processing of Complaint

- (a) The Shire's Complaints Officer must within ten working days:
 - (i) contact the complainant acknowledging that the complaint has been received;
 - (ii) contact the person who is the subject of the complaint and provide them with a copy of the complaint made; and
 - (iii) provide a copy of the Shire's Complaints of alleged breach of the Code of Conduct Policy to both parties; and
- (b) The Shire's Complaints Officer may, at their discretion, choose to engage a suitably qualified and experienced independent consultant in accordance with the Shire's Purchasing Policy to act as Independent Investigator to assist with the assessment of complaints and preparation of reports for Council.
- (c) In the event an appropriate consultant cannot be engaged or is not available the Complaints Officer may refer the matter to a Shire Officer as determined by the Chief Executive Officer, to assist in assessing and processing the complaint.

8.1 Mediation Processes

Mediation is a mandatory process that will occur prior to consideration of the complaint by the Complaints Officer.

The person handling or assessing the complaint will:

- (a) give the person being complained about a chance to respond to the allegations and provide their own comments and evidence within ten working days of being notified;
- (b) arrange a mediation session for both parties to attend after receipt of that response; and

- (c) if both parties are satisfied with the resolution during mediation, the complainant must withdraw the complaint in writing to the Complaints Officer.
- (d) If the complaint is not withdrawn following the mediation session, the person handling the complaint will assess whether the alleged breach of the Code happened or not and write a report on their findings.

8.2 Report on Findings

The person handling or assessing the complaint will:

- (a) Within ten working days following mediation, create a report in which they will explain their reasons for their assessment.
- (b) This finding must be based on evidence showing it is more likely than not that the breach occurred.
- (c) If it is concluded there was a breach of the Code, a recommendation for further action must be included in the report, and a plan to address the behaviour of the person involved is to be created as an attachment to that report.
- (d) The finding can be that the Council dismiss the complaint pursuant to the *Local Government (Model Code of Conduct) Regulations 2021*.

8.3 Action Plans

- (a) When creating an action plan the person the complaint is about must be included in the process when scheduling meetings or training.
- (b) The action plan may require the person to:
 - i. participate in further mediation;
 - ii. get counselling;
 - iii. attend training; or
 - iv. take other actions considered appropriate.
- (c) The action plan should outline the professional and ethical behaviour expected of Members, Committee Members, or Candidates.
- (d) The plan should outline:
 - i. the behaviour(s) of concern;
 - ii. the actions to address the behaviour(s);
 - iii. who is responsible for these actions; and
 - iv. a timeline for completing the actions.

9. 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.

10. Reporting to Council

- (a) The Complaints Officer will inform Council of the complaint by writing a confidential report to the next available Ordinary Council Meeting that will include a “report on findings”.
- (b) The recommendation based on the report findings must either recommend that Council find that:
 - (i) no breach of the Code has occurred; or
 - (ii) a breach of the code has occurred and that no further action should be taken; or
 - (iii) a breach has occurred, and the Action Plan as received, be implemented.

11. Written Notice

The Complaints Officer must write to the complainant, and the person about whom the complaint was made; summarising the finding made and the reasons behind that finding, together with a copy of Council’s decision.

12. Review and Appeal

- (a) Decisions made through the complaints management process will be final and binding.
- (b) Both parties have no rights to request a review or appeal of the decision.

13. Confidentiality and Privacy

- (a) 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.
- (b) All parties involved in the complaints management process must maintain confidentiality and respect the privacy of individuals involved.
- (c) Information related to complaints and investigations will be handled in accordance with relevant privacy laws and regulations.

14. Follow up and Further Action

- (a) The Complaints Officer is responsible for monitoring the actions and timeframes set out in the action plan adopted by Council.
- (b) 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.
- (c) The Complaints Officer for the Shire of Toodyay will comply with the provisions of the *Local Government Act 1995* in respect to an alleged minor breach.

15. Training and Awareness

- (a) The Shire will provide training and awareness programs to Members and stakeholders on the Code of Conduct and complaints management procedures.

- (b) Regular updates and communication will be issued to ensure understanding and compliance with the policy.

16. Record Keeping

- (a) The Shire will maintain accurate records of all complaints received, actions taken, and outcomes achieved.
- (b) Records will be securely stored and accessible only to authorised personnel.

17. Compliance and Review

This policy may be cancelled or reviewed regularly to ensure alignment with legislative requirements, industry standards, and best practices. Members and Workers will be notified of any variation to this policy by the normal correspondence method.

18. Implementation

This policy will be disseminated to all employees, elected officials, contractors, volunteers, and stakeholders of the Shire.

Reference Information

- [Legal Representation and Costs Indemnification Policy](#) (ADM4);
- [Shire of Toodyay Customer Service Charter](#);
- Shire of Toodyay [Code of Conduct](#) for Council Members, Committee Members and Candidates;
- [Risk Management](#) Policy (ADM18) – containing the Risk Matrix tables.

Note: The Governance Coordinator may update these references on a regular basis without the need for the policy returning to Council.

Legislation

[Local Government Act 1995](#)

[Local Government \(Model Code of Conduct\) Regulations 2021.](#)

[Local Government \(Administration\) Regulations 1996](#)

Note: The Governance Coordinator may update these references on a regular basis without the need for the policy returning to Council.

Associated documents

Complaint About Alleged Breach Form ([Attachment A](#)).

Document control information	
Document Category	Governance
Document Title	Complaints of alleged breach of Code of Conduct for Members, Committee Members and Candidates

Document control information	
Document ID	GOV4
Document Owner (position title)	Chief Executive Officer
Author (position title)	Chief Executive Officer
Initial Council Adoption <i>(including Date and Resolution No.)</i>	27 April 2022 (CRN: OCM061/04/22)
Last Council Review <i>(including Date and Resolution No.)</i>	27 February 2025 (CRN. OCM035/02/25)
Date of approval	27 February 2025 (CRN. OCM035/02/25)
Approving authority	Council
Absolute or Simple Majority Decision:	Absolute
Access restrictions	Nil
Date Published	7 March 2025
Date of next review	as changes are made through local government reform

Council Policy: Complaints of Alleged Breach of Code of Conduct for Members, Committee Members and Candidates

Attachment A

Complaint about Alleged Breach

Schedule 1, Division 3 of the Local Government (Model Code of Conduct) Regulations 2021
Code of conduct for Council Members, Committee Members and Candidates

Name and Details of person making the complaint

Full Name: _____
(include Title, initials and surname of the person making the complaint)

Main Address: _____
(Residential / Premises Address including Suburb and Postcode)

Postal Address: _____
(if different from above)

Phone (H): _____ (M): _____ (W): _____

Email: _____

Name of person alleged to have committed the breach:

Full Name: _____
(include Title, initials and surname)

Position: **Council Member** **Committee Member** **Candidate**

Date that the alleged behaviour breach occurred: _____

Location where the alleged breach occurred: _____

Which of the behaviours prescribed in Division 3 of the Shire of Toodyay's Code of Conduct do you allege this person has breached?

Clause 8. Personal integrity

(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"/>
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(b) must only publish material that is factually correct	<input type="checkbox"/>
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Which of the behaviours prescribed in Division 3 of the Shire of Toodyay's Code of Conduct do you allege this person has breached?

(2) A council member or committee member —

(a) must not be impaired by alcohol or drugs in the performance of their official duties; and

(b) must comply with all policies, procedures, and resolutions of the local government.

Clause 9. Relationship with others

As a representative of the Shire of Toodyay, a council member, committee member or candidate —

(a) must not bully or harass another person in any way; and

(b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and

(c) must not use offensive or derogatory language when referring to another person; and

(d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and

(e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.

Clause 10. Council or committee meetings

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

(a) must not act in an abusive or threatening manner towards another person; and

(b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and

(c) must not repeatedly disrupt the meeting; and

(d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and

(e) must comply with any direction given by the person presiding at the meeting; and

(f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

State the full details of the alleged breach.

Attach any supporting evidence to your complaint form.

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.

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

Please note, you MUST complete this section

YES	<input type="checkbox"/>	<i>If yes, please describe the efforts that you have made.</i> <hr/> <hr/>
NO	<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> <hr/> <hr/>

The Shire of Toodyay has a policy that the Complainant and the Respondent are to participate in a mediation process 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.

Desired outcome of the Complaint

Please explain what you would like to happen as a result of lodging this complaint

Complainant please sign and date

Complainant's Signature: _____

Date of signing: _____

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

OFFICE USE ONLY: *Received by the Council Appointed Complaints Officer*

Authorised Officer's Name: _____

Authorised Officer's Signature: _____

Date received: _____