

Policy P699 Breaches of the Councillor Code of Conduct

Responsible Business Unit/s	Office of the Chief Executive Officer
Responsible Officer	Chief Executive Officer
Affected Business Unit/s	Office of the Chief Executive Officer, Governance

Policy Objectives

The City's Councillor Code of Conduct guides decisions, actions and behaviours of council members, elected and unelected committee members, and candidates in the local government elections. The Councillor Code of Conduct provides a high-level process that gives the local government the ability to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected. This policy provides the framework to assess alleged breaches of Division 3 of the Councillor Code of Conduct and (where appropriate) prepare and implement a plan to address the behaviour of the person to whom the complaint relates (pursuant to clause 12(4) of the Councillor Code of Conduct).

Policy Scope

This policy applies to all Council Members, elected and unelected Committee Members and candidates in the local government elections. A complaint about alleged breaches of Division 3 of the Councillor Code of Conduct by a candidate in the local government elections cannot be dealt with under this policy unless the candidate is elected as a council member for the City.

Definitions

For the purpose of this policy, the term Councillor includes all Council Members, elected and unelected Committee Members, and candidates in the local government elections.

Policy Statement

A complaint about a breach of the Councillor Code of Conduct must —

- (a) Be made on the Code of Conduct Breach Form in **attachment (a)**;
- (b) Be given to the Chief Executive Officer; and
- (c) Be made within one month after the occurrence of the alleged breach.

Within 14 days of receiving the complaint, the Chief Executive Officer must:

- (a) give to the person making the complaint an acknowledgment in writing that the complaint has been received; and
- (b) give to the Councillor about whom the complaint is made a copy of the complaint.

The Chief Executive Officer is to then commence dealing with the complaint in accordance with the Policy and Division 3 of the Councillor Code of Conduct.

Assessment Process

The Chief Executive Officer is to engage a suitably qualified independent person or body, external to the City (External Body), to conduct a confidential assessment into the complaint.

The External Body will determine whether the complaint is within jurisdiction, and if not, provide a report to the Chief Executive Officer recommending that the complaint be dismissed.

If the complaint is within jurisdiction, the External Body must ensure that the Councillor about whom the complaint is made will be provided with an opportunity to respond to the allegations and submit evidence in support of their response.

At the conclusion of the assessment process, the External Body is to provide a confidential report to the Chief Executive Officer. The confidential report must include:

- findings in relation to the allegation based on the available evidence;
- that if a finding alleges that a breach did occur, that it is based on evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur;
- findings as to whether substantiated allegations amount to a breach of Division 3 of the Councillors Code of Conduct; and
- Reasons for those findings.

The External Body must also provide recommendations in accordance with clause 12(4), and reasons for the recommendations, in the confidential report. These recommendations must be either:

1. That no further action be taken; or
2. That a plan be prepared to address the behaviour of the person to whom the complaint relates.

If the External Body recommends option 2 (that a plan be prepared), then the External Body is to recommend either:

- Mediation;
- Counselling;
- Training; or
- Or other action within the meaning of clause 12(6)(d).

The role of Council

Within 14 days of receiving the confidential report, the Chief Executive Officer is to provide a copy of the confidential report to the Councillor to whom the complaint relates.

The Chief Executive Officer is to then provide the confidential report from the External Body in a confidential item to be considered at the next available Council meeting.

Before Council make a finding on the complaint, the presiding member must give the Councillor to whom the complaint relates a reasonable opportunity to be heard.

If the Councillor to whom the complaint relates is the presiding member, then the presiding member must step down as chair for that item and the deputy presiding member is to become the chair.

When Council makes a finding that an alleged breach of Division 3 of the Councillor Code of Conduct has occurred, it 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.

If Council makes a finding that an alleged breach of Division 3 of the Councillor Code of Conduct has occurred, the Council may:

- Take no further action; or
- Prepare and implement a plan under clause 12(4)(b) of the Councillor Code of Conduct that incorporates all of the elements of the Plan Recommendation (as recommended by the External Body); or
- Prepare and implement a plan under clause 12(4)(b) of the Councillor Code of Conduct that incorporates some (but not all) of the elements of the Plan Recommendation (as recommended by the External body).

For the avoidance of doubt it is not open to Council to prepare and implement a plan under clause 12(4)(b) of the Councillor Code of Conduct that incorporates elements that do not form part of the Plan Recommendation (as recommended by the External Body).

Should Council determine to impose a plan on the Councillor to whom the complaint relates, then that Councillor must be consulted with when that plan is prepared. That Councillor must comply with all reasonable measures contained within that plan.

If Council makes a finding in relation to the complaint, the Chief Executive Officer must give the complainant, and the person to whom the complaint relates, written notice of:

- Council's finding and the reasons for its finding; and
- If Council's finding is that the alleged breach has occurred – the Council Plan Decision

Should the Councillor not comply with the plan within a reasonable timeframe, then the Chief Executive Officer is to refer the matter to the Local Government Standards Panel as a breach of regulation 23 of the Local Government (Model Code of Conduct) Regulations 2021.

Legislation / Local Law Requirements

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021.

City of South Perth Councillor Code of Conduct.

Other Relevant Policies / Key Documents

Councillor Code of Conduct Breach Form – **attachment (a)**

**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*

- NOTE:** A complaint about an alleged breach must be made —
- (a) in writing in the form approved by the local government
 - (b) to an authorised person
 - (c) within one month after the occurrence of the alleged breach.

Name of person who is making the complaint:	
Name:	
_____	_____
<u>Given Name(s)</u>	<u>Family Name</u>

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

Name of the local government (city, town, shire) concerned:

Name of council member, committee member, candidate alleged to have committed the breach:

State the full details of the alleged breach. Attach any supporting evidence to your complaint form.

Date of alleged breach:
_____ / _____ / 20_____

SIGNED:
Complainant's signature:
Date of signing: _____ / _____ / 20_____

Received by Authorised Officer
Authorised Officer's Name:
Authorised Officer's Signature:
Date received: _____ / _____ / 20_____

NOTE TO PERSON MAKING THE COMPLAINT:

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 to the authorised officer within one month after the occurrence of the alleged breach.

Signed complaint form should be marked as confidential and be forwarded to:

**Complaints Officer (Elected Members)
City of South Perth
Cnr Sandgate St and South Terrace
South Perth, WA 6151**