

## **Council Policy & Procedure - Handling of complaints by or against elected members**

### **Objective**

1. The objective of this policy is to:
  - (a) promote positive change through mediation, and
  - (b) establish clear processes to address complaints made by or against an elected member of Council.

### **Policy Statement**

2. The City of Albany has adopted a Code of Conduct for Elected Members, Committee Members, Volunteers and Staff.
3. In adopting this policy, elected members made a public declaration of the conduct and standards of behaviour that the members of the City of Albany Council have agreed to demonstrate.

#### **Behaviour Contrary to the Code of Conduct**

4. The Council is committed to investigating and where appropriate addressing any complaints made against elected members including compliance with any statutory requirements of the *Local Government Act 1995*, *Local Government (Rules of Conduct) Regulations 2007* or any other relevant Acts or Regulations applicable to elected members in the performance of their role and responsibilities.

### **Scope**

5. This policy applies to elected members of Council, acknowledging that participation in an administrative investigation is voluntary.

### **Review**

6. This policy must be reviewed every two years after a general Local Government election, or earlier if Council considers it necessary.

### **Legislation Relating to this Policy**

7. The *Local Government Act 1995* is also complemented by guidelines and handbooks produced by the Department of Local Government (WA).
  - *City of Albany Standing Orders Local Law (Meeting Procedures)*
  - *Local Government Act 1995*
  - *Local Government (Rules of Conduct) Regulations 2007*
  - *Public Interest Disclosure Act 2003 (WA)*
  - *City Policy: Dealing with difficult customers*

## Complaint Handling Procedure

8. Each local government is to designate a senior employee to be its Complaints Officer under the *Local Government Act 1995*.
9. It is not the role of the City of Albany's Complaints Officer to decide whether a breach has occurred. That is the role of the Standards Panel. The Complaints Officer is responsible for ensuring complaints made under the *Local Government (Rules of Conduct) Regulation 2007* are appropriately referred to the Standards Panel.
10. Where there has been an allegation of criminal or illegal behaviour, this complaint will not be investigated by the Council but will be referred to the appropriate authority. For example, allegations of corruption will be referred to the Corruption and Crime Commission; allegations of other illegal behaviour may be referred to Western Australian Police or to the Department of Local Government and Communities.
11. Where a complaint made by or against an elected member relates to a matter not dealt with under an Act or Regulation that complaint must:
  - be made in writing;
  - identify allegations including providing all available evidence that supports the allegation(s); and
  - be delivered to the Mayor or Deputy Mayor (in the case of a complaint against the Mayor).
12. Acknowledgement of receipt of the complaint will be provided by the recipient, to the complainant within seven days of receiving the complaint.
13. An elected member about whom a complaint has been made will be notified within seven days of receipt of the complaint and of its substance.
14. The complaint will be treated with strict confidentiality until such time as the matter has been determined. The complainant will also be expected to observe confidentiality.
15. The Mayor or Deputy Mayor (in the case of a complaint against the Mayor) may with the approval of the parties involved, coordinate a mediation meeting. Such meeting may be facilitated by an independent third party with experience in mediation and conflict resolution.
16. The following procedures will be followed with respect to assessment and investigation of complaints depending on the level of seriousness.
17. Where the mediation meeting referred at paragraph 14, has not been able to resolve the matter:
  - (a) Council may appoint an independent assessor who will investigate the complaint.
  - (b) The investigation will be a balanced assessment of the available evidence, the relevant circumstances prevailing at the time and any other factors relevant to making a fair and reasonable judgement about the matter.
  - (c) The assessor may recommend that no further action should be taken where in the assessor's opinion the complaint is unsubstantiated, frivolous or vexatious. In this case the assessor will prepare a report to that effect and provide it to the Mayor or Deputy Mayor (in the case of a complaint against the Mayor).
  - (d) If issues of substance are identified by the assessor the following is to occur:
    - (i) The elected member the subject of the allegation(s) will be provided with a reasonable opportunity to explain his/her actions and to make a written submission on the allegations to the assessor.
    - (ii) The assessor must provide the Council with a final written report on the investigation undertaken within 30 days of receiving written instructions.

However, if the assessor forms the view that additional time will be needed to conclude the investigation and finalise the report the assessor will bring this to the attention of the Council at the earliest convenience, but at the very latest before expiration of the 30 days from instruction.

- (iii) If the assessor makes recommendations that are punitive in nature, the elected member the subject of the complaint will be provided with a reasonable opportunity to respond in writing upon the contents and findings contained in the assessor's report and on the appropriateness of the proposed penalty. Such response must be taken into account by the Council.
- (iv) The final report will be presented at a Council meeting in confidence.
- (v) On receipt of the final report and recommendation of the independent assessor the Council will determine an appropriate course of action. This may include requesting the elected member:
  - Make a private or public apology in relations to the conduct/breach; and/or
  - Undertake a particular training course or receive appropriate instruction to ensure the offending behaviour is not repeated.
- (vi) After receipt of the final report from the assessor, the Council must convey to the elected member who is the subject of the complaint and to the person who made the complaint, Council's resolution in relation to the complaint and report, which may include referral to the Local Government Standards Panel.

#### **Definitions:**

- **Local Government Standards Panel.** The standards panel has the authority to make binding decisions to resolve allegations of minor misconduct submitted by a local government. It deals with complaints about council members who it is alleged have committed a breach of one or more of the provisions of the Rules of Conduct Regulations. The panel is independent of the Minister for Local Government and the Department of Local Government and Communities (DLGC).

The standards panel also has the jurisdiction to deal with misconduct allegations that relate to conduct at meetings under the provisions of a local government's Standing Orders Local Law. The standards panel has no jurisdiction to deal with complaints made against local government employees.

- The standards panel does not have investigative powers; findings and decisions of the panel are made on the basis of the information it receives. Proceedings are normally held in private (i.e. usually parties to a complaint and members of the public are not in attendance). However, the panel may, if it considers the circumstances warrant, hear evidence and conduct its deliberations in the presence of the parties concerned. If the standards panel finds that a breach has occurred, it may deal with the complaint by dismissing it or ordering that the council member:
  - publically apologises,
  - is publically censured, or
  - undertakes training.
- The standards panel may issue an order that imposes two or more of these sanctions.

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2.1	Manager Governance & Risk	<p><i>Amended:</i></p> <ul style="list-style-type: none"> <li><i>Appended with objective;</i></li> <li><i>Scope amended to acknowledge that participation in administrative investigations is voluntary.</i></li> <li><i>Definition of the Local Governments Standards Panel included.</i></li> <li><i>Proposed Council actions modified.</i></li> <li><i>Included reference to City Policy: Dealing with difficult customers</i></li> </ul> <p><i>Prepared for review by Council Committee.</i></p>	16/02/2017
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