Background and Issues

The Shire of Manjimup is committed to observing the highest standards of ethics and integrity in engagements between the elected members, the Shire's employees and all persons with whom the Shire has official dealings. Engagements will be frank and honest and the Shire at all times will act, and be seen to act, in good faith and in an impartial, accountable and proper manner.

Objectives

This policy sets out the procedure for handling complaints against a Councillor or the Chief Executive Officer (CEO) to ensure that concerns are treated in a fair and prompt manner. The provisions of this policy outline the minimum procedural requirements for adjudicating a complaint. Any additional provisions must be consistent with this policy.

Legislative References

Local Government Act 1995
Shire of Manjimup *Code of Conduct*
Shire of Manjimup *Standing Orders Local Law*
Corruption and Crime Commission Act 2003
Vexatious Proceedings Restriction Act 2002
Local Government (Model Code of Conduct) Regulations 2021

Area of Application

This policy is limited to complaints about breaches of the Shire's Code of Conduct and the Standing Orders Local Law by Councillors and the CEO. It does not deal with complaints about services delivered by the Shire or complaints against any other employee of the Shire. The process for handling those complaint types is detailed in Corporate Policy 2.3.10 *Complaints System* and Council Policy 1.2.7 *Support for Staff who make Public Interest Disclosures.*

Confidentiality as required by other statutory mechanisms is not to be impinged by the application of this policy.

The CEO has a responsibility to notify the Corruption and Crime Commission of suspected misconduct under Section 28 of the *Corruption and Crime Commission Act 2003*. This policy does not remove or override that obligation.

Definitions

Authorised Officer: a person authorised under clause 11(2) of the *Local Government (Model Code of Conduct) Regulations 2021* to provide investigative services under the provisions of this policy. The CEO may appoint themselves to investigate a matter if they have no interest in the matter.

CCC: the Corruption and Crime Commission.

Code of Conduct: the Shire of Manjimup Code of Conduct for Council Members, Committee Members and Candidates

Complaint: a substantiated allegation about a breach, or breaches, of the Shire's Code of Conduct and/or Standing Orders Local Law by a Councillor, or Councillors, or the CEO.

Council: the body of elected members convened in an ordinary or special council meeting.

Councillor: means a person elected and holding valid office under the *Local Government Act 1995* as a member of the council of the Shire of Manjimup.

DLGSC: the Department of Local Government, Sport and Communities.

PSC: Public Sector Commission.

Standing Orders: The Shire of Manjimup Standing Orders Local Law.

Policy Measures

1. Who Can Make a Complaint and Who Will Investigate

a) Any person may make a complaint alleging a breach of the Code of Conduct or the Standing Orders.
b) The process outlined in this policy does not prevent a complainant from making a complaint directly to the Local Government Standards Panel, CCC, PSC or DLGSC. However, a complainant is encouraged to exhaust the provisions of this policy before escalating a complaint to the Standards Panel, CCC, PSC or the DLGSC.
c) Complaints about the conduct of Councillors must be submitted in writing to the CEO.
d) Complaints concerning the CEO must be addressed to the Shire President.
e) A complaint under this policy will be investigated by the Authorised Officer unless it appears, in the opinion of the CEO or the Shire President, that it is trivial, frivolous or vexatious.
f) An Authorised Officer who has a close personal relationship with either the complainant or the person the subject of the complaint must disclose this to the CEO and is disqualified from participating in the investigation.
g) The Authorised Officer may only commence and follow through with an investigation referred by the CEO, Shire President or another elected member.

2. Responsibilities of the CEO, Shire President and Council

a) Within one week of receiving a complaint, or such other time directed by the Council, the CEO must refer it to the Authorised Officer.
b) If the Authorised Officer declares a conflict outlined in clause 2(f) of this policy, the CEO, or the Shire President, must appoint an alternative Authorised Officer.
c) The CEO is authorised to determine whether a complaint falls within the scope of this policy and refer it to the Authorised Officer if need be. This does not prevent the Shire President or Council from referring a complaint to the Authorised Officer.
d) An anonymous complaint may be referred to the Authorised Officer if there is sufficient evidence and/or specific detail of the alleged behaviour or action that warrants an investigation.
e) Reports from the Authorised Officer will be considered by Council in open session unless the Council resolves otherwise and the decision to consider the matter behind closed doors complies with the provisions of section 5.23(2) of the *Local Government Act 1995*.
f) In deciding the appropriateness of any sanctions recommended by the Authorised Officer the Council must not conduct a re-hearing of evidence already considered by the Authorised Officer. In deliberating on alternative sanctions Council must consider the options listed in clause 6(b) of this Policy.
g) An Authorised Officer recommendation and Council's decision on the recommendation must be included in the minutes of the meeting. Should Council not adopt a recommendation it must provide a reason, or reasons, for doing so and submit these to the DLGSC for review before adopting an alternative decision.
h) An elected member who is the subject of a complaint should consider declaring an impartiality interest when the matter comes before Council.
i) The CEO must report monthly to Council on complaints covered by this policy. The report will include, as a minimum, a summary of the:-

    i. number of complaints received;
    ii. nature of the issues raised by complainants;
    iii. outcomes of complaints; and
    iv. estimated cost of dealing with complaints.

3. Authorised Officer – Jurisdiction

a) The complaint handling function of the Authorised Officer is limited to consideration of, making enquiries into, and reporting on, complaints alleging breaches of the Code of Conduct or Standing Orders Local Law, made about elected members or the CEO. It does not include other employees of the Shire of Manjimup
b) An allegation leading to a complaint that the Authorised Officer himself or herself has breached the Code of Conduct during the

course of an investigation should be referred to the DLGSC for appropriate action.

c) Complaints regarding non-disclosure of interests as defined by section 5.60 of the *Local Government Act 1995* cannot be dealt with by the Authorised Officer but reported direct to the DLGSC, CCC or PSC.
d) The Authorised Officer cannot deal with complaints that occurred prior to the date of appointment as Authorised Officer.

4. Authorised Officer – Duties

a) The primary duty of the Authorised Officer is to establish the facts of an allegation, make findings of fact and make a recommendation to Council on any action considered appropriate to the circumstances.
b) The Authorised Officer must action the investigation of a complaint without delay.
c) The Authorised Officer will, in writing, inform a person who is the subject of a complaint about the process being undertaken to deal with the matter.
d) The Authorised Officer must ensure proper records of investigations are kept.
e) The Authorised Officer will report directly to Council including: –

i. attending meetings of the Council in an advisory capacity;
ii. when requested, provide advice on complaints and investigative processes; and
iii. where, at the conclusion of an investigation he or she makes a finding that the conduct constituted a breach, make a recommendation on the sanction, or other action, that should follow.

f) Any report concluding that a breach has occurred should be in the form of a summary of the enquiries undertaken and include sufficient information for the Council to be satisfied the Councillor or CEO has breached the Code of Conduct or Standing Orders Local Law. As a minimum the report will contain:

i. The nature of the complaint and the standard of conduct that is alleged to have been breached.
ii. The process undertaken by the Authorised Officer in assessing and enquiring into the complaint.
iii. Reference to any submission(s) received.
iv. The facts of the matter.
v. Any findings and the reasons for those findings.
vi. Any recommendations to Council.

g) In conducting enquiries, the Authorised Officer must follow the rules of procedural fairness and will:-

i. provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;
ii. provide the person the subject of the complaint with an opportunity to place before the Authorised Officer or other person undertaking the enquiry any information the person considers relevant to the enquiry;
iii. act fairly and without prejudice or bias;
iv. ensure that no person decides a case in which they have a conflict of interest; and
v. conduct the enquiries without undue delay.

5. Assessment Criteria and Actions

h) The Authorised Officer in assessing a complaint will have regard to the following grounds: –

i. whether there is any prima facie evidence of a breach of the Code of Conduct or Standing Orders Local Law by an elected member or the CEO; and
ii. whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties; and
iii. whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct or Standing Orders Local Law; and
iv. whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the DLGSC, CCC, PSC or the WA Police; and
v. whether there is an alternative and satisfactory means of redress; and
vi. how much time has elapsed since the events, the subject of the complaint, took place. (Any incidence that occurred prior to the appointment of the Authorised Officer may not be considered); and
vii. how serious the complaint is and the significance it has for Council; and
viii. whether the complaint is one of a series indicating a pattern of conduct.

i) Before commencing an enquiry into a complaint the Authorised Officer must initially decide whether to: -

i. resolve the complaint without investigation by making a recommendation to the Council for a resolution such as, but not limited to, mediation, informal agreement or negotiated settlement and give the complainant advice on the resolution in writing; or

ii. conduct an investigation and arrive at a finding on whether or not a breach has occurred; or
iii. not commence an enquiry - or discontinue making an enquiry - where it subsequently becomes evident that the matter should be referred to another body or person; and refer the matter to that body or person as well as advising the Council and complainant in writing. Referral to another body or person will constitute finalisation of a matter and no further action is required by the Shire; or
iv. dismiss a complaint because it is, in the opinion of the Authorised Officer, trivial, frivolous and/or vexatious. The definition of 'vexatious proceedings' in section 3 of the *Vexatious Proceedings Restriction Act 2002* is to be used as a guide to determine whether a complaint is vexatious. The Authorised Officer must not dismiss a complaint if he or she is uncertain or has any doubt whether the complaint is trivial, frivolous or vexatious.

j) In determining what action to recommend the Authorised Officer may decide either to: –

i. take no further action and give the complainant the reason/s in writing, and those reasons may include, but are not limited to, the complaint being outside the jurisdiction of the Authorised Officer, or
ii. resolve the complaint by use of alternative and appropriate strategies including, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
iii. discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
iv. deal with the matter by conducting an investigation and reporting the outcome to Council.

k) Any report concluding that a breach has occurred should be in the form of a summary of the enquiries undertaken and include sufficient information for the Council to be satisfied the Councillor or CEO has breached the Code of Conduct or Standing Orders Local Law. As a minimum the report should contain:-

i. the nature of the complaint and the standard of conduct that is alleged to have been breached.
ii. the process undertaken by the Authorised Officer in assessing and enquiring into the complaint.
iii. reference to any submission(s) received
iv. the facts of the matter.

v. any findings and the reasons for those findings.
vi. any recommendations to Council.

l) Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Authorised Officer should proceed to finalise the matter taking into consideration all available information that has been received.

6. Authorised Officer – Recommendations for Breaches

a) Where in the opinion of the Authorised Officer a breach has occurred the Authorised Officer may recommend any of the following actions against the person who committed the breach: -

i. dismiss the complaint and recommending no further action;
ii. censure the elected member for misbehaviour;
iii. require the elected member or CEO to apologise to any person adversely affected by the breach;
iv. require training;
v. require mediation;
vi. counsel the elected member or CEO; and
vii. revise any of council's policies, procedures and/or the Code of Conduct.

b) Before making a recommendation under clause 6(a) above, the Authorised Officer will have regard to the following:-

i. the seriousness of the breach;
ii. whether the breach can be easily remedied or rectified;
iii. whether the subject person has remedied or rectified their conduct;
iv. whether the subject person has expressed contrition;
v. whether the breach is technical or trivial only;
vi. whether the breach represents repeated conduct;
vii. the degree of reckless intention or negligence of the subject person;
viii. the extent to which the breach has affected other parties or the council as a whole;
ix. the harm or potential harm to the reputation of local government and of the council arising from the conduct;
x. whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;
xi. whether an educative approach rather than a punitive response would be more appropriate;
xii. the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action; and

xiii. what action or remedy would be in the public interest.

c) Where the Authorised Officer considers it appropriate he/she may make a recommendation to Council, without making a finding on whether or not the breach alleged in the complaint occurred.

d) Where the Authorised Officer makes findings, the findings and the reasons for those findings will be submitted in writing to the Council, the complainant and the person who is the subject of the complaint.

7. Local Government Standards Panel

a) The Local Government Standards Panel has jurisdiction over elected members only. Allegations concerning breaches of this Code by non-elected members of committees and the CEO cannot be referred to the Local Government Standards Panel.

b) If the Local Government receives a complaint intended to be made to the Standards Panel, the Local Government should ensure it is referred to the Standards Panel and not dealt with by the Authorised Officer or Council. However, if the complainant is agreeable and has not yet formally submitted the complaint to the Local Government Complaints Officer (as defined by s. 5.120 of the *Local Government Act 1995),* it may be dealt with by referring it to the Authorised Officer for investigation and report to Council.

8. Corruption and Crime Commission (CCC)

a) The Authorised Officer must not investigate, or be requested to investigate, cases or allegations of serious misconduct. The Authorised Officer will deal only with matters that involve minor behavioural breaches identified in the Code of Conduct.

b) The CCC is to be informed of allegations concerning minor breaches of the Code and be advised that: –

i. the matter is being dealt with by the Authorised Officer; and
ii. the outcome will be provided for the CCC's review in accordance with the *Corruption and Crime Commission Act 2003*.

ADOPTED 25 JUNE 2020
REVIEWED MARCH 4 2021

NEXT DUE FOR REVIEW MARCH 2025

The Administration of this Policy is by Office of CEO