



SHIRE OF  
**HARVEY**

*A Breath of Fresh Air*



## 1.1.10 Behavioural Complaint Management Policy

### 1. Policy Purpose

To establish, in accordance with the Local Government (Model Code of Conduct) Regulations 2021 and the Shire of Harvey Code of Conduct for Council Members, Committee Members and Candidates, a clear, consistent and legally compliant framework for the receipt, assessment and determination of behaviour complaints.

This Policy gives effect to the Shire's commitment to an effective, transparent, fair and accessible complaints handling process that supports and promotes high standards of conduct.

This Policy also provides for the performance of Councils functions in relation to behavioural complaints through:

- 1.1. The Council
- 1.2. Authorised Behavioural Complaints Committee
- 1.3. Authorised Shire Officers – Behaviour Complaints Officers
- 1.4. Authorised Independent Assessor

In accordance with clause 14B of the Local Government (Model Code of Conduct) Regulations 2021 and any authorisations made by Council.

### 2. Policy Scope

This Policy applies to behaviour complaints made under clause 11 of Schedule 1 (Model Code of Conduct) of the Local Government (Model Code of Conduct) Regulations 2021.

This Policy applies to Council Members, Committee Members, Candidates, and any person involved in a behaviour complaint.

This Policy governs the handling, assessment and determination of behaviour complaints by Council, an authorised Behaviour Complaints Committee, or an authorised independent person, in accordance with clause 14B of the Regulations and any Council authorisation.

## 3. Policy

### 3.1. Principles

All behaviour complaints will be managed in accordance with the following principles:

#### 3.1.1 Procedural Fairness

The respondent will be given a reasonable opportunity to be heard before any finding or decision is made. All processes and recommendations must be based on proper consideration of the evidence.

#### 3.1.2 Consistency

Complaints will be managed consistently, having regard to the circumstances and merits of each matter.

#### 3.1.3 Confidentiality

The Shire will take reasonable steps to maintain confidentiality in the handling of complaints, subject to legislative requirements.

#### 3.1.4 Accessibility

Information about the complaints process will be publicly available and assistance provided where required.

### 3.2 Roles and Responsibilities

#### 3.2.1 Behaviour Complaints Officer (Authorised Person)

The Behaviour Complaints Officer is authorised under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints.

The Behaviour Complaints Officer:

- Receives and assesses complaints for procedural compliance
- Manages all administrative aspects of the complaint
- Facilitates communication between parties
- Refers complaints to an independent assessor
- Provides administrative support to the behaviour complaints committee.

The Behaviour Complaints Officer must not determine the merits of a complaint or make findings under clauses 12 or 13 of the Code of Conduct.

#### 3.2.2 Independent Assessor

An Independent Assessor is appointed by Council in accordance with clause 14B of the Regulations.

The Independent Assessor is responsible for:

- Investigating the complaint
- Gathering and reviewing relevant evidence
- Ensuring the respondent is provided a reasonable opportunity to be heard
- Applying the principles of procedural fairness
- Preparing a report with recommended findings.

The Independent Assessor does not determine the outcome of the complaint. However, in the event that the Behaviour Complaints Committee finds that an alleged breach did occur, and determines that a Plan should be prepared to address the behaviour of the respondent, the Independent Assessor is to have the responsibilities of:

- Preparing the Plan
- As part of preparing the Plan, consulting with the Respondent
- Implementing the Plan.

### 3.2.3 Behaviour Complaints Committee

The Behaviour Complaints Committee is authorised by Council to perform its functions under clauses 12 and 13 of the Code of Conduct.

The Committee is responsible for:

- Considering the Independent Assessor's report and recommendations;
- Determining whether to dismiss a complaint;
- Making a finding as to whether a breach has occurred; and
- Determining whether a plan should be prepared to address the behaviour of the respondent (but not actually making the plan or implementing it)

## 3.3 Complaint Process

Behaviour complaints will be managed in the following stages:

### **a. Receipt and Preliminary Assessment**

The Behaviour Complaints Officer receives the complaint and assesses it for compliance with the requirements of the Code of Conduct, including whether the complaint has been lodged within one month of the alleged behaviour, in accordance with clause 11(2).

### **b. Referral for Assessment**

Where a complaint is valid, the Behaviour Complaints Officer refers the matter to the Independent Assessor or to the Local Government Inspector.

If a Behaviour Complaints Officer determines that a complaint is required to be referred to the Local Government Inspector under clause 11(5) of the Model Code of Conduct or regulation 3A, the Officer must refer the complaint accordingly and no further action is to be taken by the Shire, Committee or Council unless directed by the Inspector.

### **c. Investigation and Assessment**

The Independent Assessor:

- Investigates the complaint
- Gathers relevant evidence
- Provides the respondent with an opportunity to respond
- Prepares a report, including recommended findings.

### **d. Determination**

The Behaviour Complaints Officer will prepare an Officer report for the Behaviour Complaints Committee, attaching the Independent Assessor's report and recommendations as a confidential attachment.

The Officer report will summarise the complaint, outline the process undertaken, and present the Independent Assessor's recommended findings for the Committee's consideration.

The Behaviour Complaints Committee will consider the Independent Assessor's report and determine the complaint in accordance with clauses 12 and 13 of the Code of Conduct.

The Committee may:

- Dismiss the complaint.
- Determine that a breach has not occurred.
- Determine that a breach has occurred but decide to take no further action.
- Determine that a breach has occurred and require that a plan be prepared and implemented to address behaviour.
- Base its finding on evidence from which it may be concluded that it is more likely than not that the breach occurred
- Give reasons for its decision.

The Committee must dismiss a complaint where required under clause 13 of the Code of Conduct.

If the Committee determines that the alleged breach did not occur, no further action is to be taken.

If the Committee determines that a breach has occurred, it must decide whether:

- To take no further action.
- That a plan to address the behaviour should be prepared and implemented in accordance with the code of conduct.

If the decision is that a plan to address the behaviour should be prepared and implemented, the preparation and implementation of such a plan is to be referred for actioning to the Independent Assessor.

In formulating a plan, the Independent Assessor must provide the respondent with an opportunity to make submissions and have regard to those submissions.

All reports, deliberations and determinations relating to behaviour complaints are to be treated as confidential and considered by the Behaviour Complaints Committee in a closed meeting, in accordance with the Local Government Act 1995.

The determination of a behaviour complaint is a function performed by the authorised Behaviour Complaints Committee and is not required to be referred to Council.

Following a determination, in accordance with the Code of Conduct, the Behaviour Complaints Officer must provide written notice to the complainant and the respondent of:

- The decision.
- The reasons for the decision.
- If the finding was substantiated, the decision as to whether the Committee decided to take no further action or whether the Committee decided that a plan to address the behaviour of the respondent should be prepared and implemented
- In relation to any such plan, the general nature of the measures required under the plan.

The notification to the complainant and the respondent should only occur when all four of the above matters have been determined.

## 4. Register of Complaints

In accordance with clause 11(4) of the applicable Code of Conduct Regulations, the local government is to maintain a register of complaints relating to alleged breaches of the Behaviour Complaints Code of Conduct. Where a behavioural breach is found to have occurred under the Code of Conduct, the CEO must maintain and publish the required record of information on the local government's official website in accordance with section 5.96C of the *Local Government Act 1995*



The register is to include the following information for each complaint:

- The name of the respondent
- The date the complaint was made
- The nature of the complaint
- The date a decision was made
- The outcome of the complaint.

The register is to be maintained in accordance with any legislative requirements relating to confidentiality, recordkeeping, and access to information.

## 5. Strategic Objective

The policy aligns with the following Council Plan 2025-2035 Pillars:

	<p><b>People</b> A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</p>
	<p><b>Performance</b> A representative leadership that is future thinking, transparent and accountable.</p>

## 6. Definitions

<b>Act</b>	The <i>Local Government Act 1995 (WA)</i> .
<b>Authorised Independent Person</b>	A person authorised by Council under clause 14B of the Local Government (Model Code of Conduct) Regulations 2021 to perform the functions of Council in relation to behaviour complaints.
<b>Behaviour Complaint</b>	A complaint made under clause 11 of Schedule 1 of the Local Government (Model Code of Conduct) Regulations 2021 alleging a breach of the behavioural provisions of the Code of Conduct.
<b>Behaviour Complaints Committee</b>	A committee established and authorised by Council under clause 14B of the Local Government (Model Code of Conduct) Regulations 2021 to perform Council's functions in relation to behaviour complaints.
<b>Behaviour Complaints Officer</b>	A person authorised under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints and manage the administrative aspects of the complaint process.
<b>Candidate</b>	Has the meaning given in the <i>Local Government Act 1995 (WA)</i> and includes a person who has nominated for election to Council.
<b>CEO</b>	The Chief Executive Officer of the Shire of Harvey appointed under section 5.36 of the Local Government Act 1995.
<b>Closed Meeting</b>	A meeting or part of a meeting from which members of the public are excluded in accordance with section 5.23 of the Local Government Act 1995.
<b>Code of Conduct</b>	Schedule 1 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> and the Shire of Harvey Code of Conduct for Council Members, Committee Members and Candidates.
<b>Committee Member</b>	A person appointed by Council to a committee or other body established by Council to which the Code of Conduct applies.
<b>Complainant</b>	A person who makes a behaviour complaint under clause 11 of the Code of Conduct.
<b>Complaint Register</b>	The register of behaviour complaints maintained under clause 11(4) of the Code of Conduct.
<b>Confidential Information</b>	Information that is confidential under the Local Government Act 1995, the Code of Conduct, or any other applicable legislation.
<b>Council</b>	The Council of the Shire of Harvey.
<b>Council Member</b>	A person who holds office as a council member under the Local Government Act 1995.
<b>Independent Assessor</b>	A suitably qualified independent person appointed by Council to investigate behaviour complaints, assess evidence, and provide findings and recommendations to the Behaviour Complaints Committee.

<b>Plan</b>	A plan implemented under clause 12(4)(b) of the Code of Conduct to address behaviour that has been found to constitute a breach of the behavioural provisions of the Code of Conduct.
<b>Procedural Fairness</b>	The requirement that a person affected by a decision is given a fair opportunity to be heard, that decision-makers act without bias, and that decisions are made based on relevant evidence.
<b>Regulations</b>	The <i>Local Government (Model Code of Conduct) Regulations 2021 (WA)</i> .
<b>Respondent</b>	A council member, committee member or candidate who is the subject of a behaviour complaint.
<b>Shire</b>	The Shire of Harvey.
<b>Withdrawal of Complaint</b>	A written withdrawal of a behaviour complaint made by the complainant in accordance with clause 11(3) of the Code of Conduct.

## 7. Legislation

This Policy is to be read and applied in conjunction with the following Western Australian legislation and statutory instruments, as amended from time to time:

- *Local Government Act 1995*  
Including, but not limited to:
  - Part 5, Division 10 – Conduct of Council Members, Committee Members and Candidates
  - section 5.93 – Codes of conduct
  - section 5.96A – Complaints about minor breaches
  - section 5.96C – Record of information about conduct
  - section 5.23 – Meetings closed to members of the public
  - section 5.41G – Delegation of powers and duties to committees.
- Local Government (Model Code of Conduct) Regulations 2021  
Including:
  - Schedule 1 – Model Code of Conduct
  - clause 11 – Behaviour complaints
  - clause 12 – Dealing with behaviour complaints
  - clause 13 – Dismissal of complaints
  - clause 14B – Authorisation by local government.
- Local Government (Administration) Regulations 1996
- *State Records Act 2000*
- *Freedom of Information Act 1992*
- *Corruption, Crime and Misconduct Act 2003*
- *Equal Opportunity Act 1984*
- *Public Interest Disclosure Act 2003*
- *Occupational Safety and Health Act 1984* and/or *Work Health and Safety Act 2020* (as applicable)

## 8. Related Documents

- Behaviour Complaints Committee Terms of Reference.
- Code of Conduct for Council Members, Committee Members and Election Candidates.
- Complaint About Alleged Breach Form

Responsible Officer	Chief Executive Officer		
Responsible Directorate	Executive Services		
Responsible Business Unit	Governance and Strategy		
Version control	Date	Resolution	Number
Version 1	27.03.2021	Resolution	21/058
Version 2	27.07.2021	Resolution	21/145
Version 3	26.05.2026	Resolution	