

Terms of Reference



Name	Behaviour Complaints Committee		
Responsible Division	Executive Services		
Administrative Support	Manager Governance and Strategy		
Council Adoption Date	26 May 2026	Version Number	Draft 2.0
Amendment Dates		Next Review Date	

1. Role of the Committee

1.1. The Behaviour Complaints Committee is a committee of Council established under section 5.8 of the Local Government Act 1995 and authorised by Council, in accordance with clause 14B of the Local Government (Model Code of Conduct) Regulations 2021, to perform some of Council's functions for dealing with behaviour complaints under Schedule 1 of the Model Code of Conduct, as adopted by the Shire of Harvey.

2. Objectives of the Committee

2.1. To perform the function of finding alleged breaches under the behaviour complaints process. Such complaints are made under Schedule 1 (Model Code of Conduct), Division 3 (Behaviour) of the Local Government (Model Code of Conduct) Regulations 2021, as adopted by the Shire of Harvey.

2.2. Council has power under clause 14B(2) of the Local Government (Model Code of Conduct) Regulations 2021 to authorise the Behaviour Complaints Committee to perform certain functions including:

- Dismiss a behaviour complaint in accordance with clause 13 of the Code of Conduct and provide written reasons for the dismissal
- Make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based on evidence from which it may be concluded that it is more likely than not that the breach occurred (clause 12(3))
- Determine and record reasons for any finding made
- Where a finding is made that a breach has occurred, determine that:
 - No further action should be taken, or
 - That a plan to address the behaviour of the person to whom the complaint relates should be prepared and implemented, in accordance with clauses 12(4) to 12(6).

The Behaviour Complaints Committee may only exercise this authority in accordance with the conditions imposed by Council on the authorisation granted under clause 14B Local Government (Model Code of Conduct) Regulations 2021.

3. Membership of the Committee

- 3.1. The Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act.
- 3.2. Membership of the Behaviour Complaints Committee will comprise of at least three Council Members, appointed by Council in accordance with s.5.10 of the Act.
- 3.3. In addition, at least three Council Members will be appointed as Deputy Committee Members in accordance with s.5.11A of the Act.
- 3.4. If a Committee Member is identified in a behaviour complaint as either the complainant or the respondent, that Committee Member must not take part in the consideration or determination of the complaint and is to excuse themselves from the Committee's proceedings for that matter. For the duration of the handling of the complaint, the Committee Member is to be replaced by a Deputy Committee Member appointed by the Presiding Member of the Committee.

4. Authorised Shire Officers – Behaviour Complaints Officers

- 4.1. Council may authorise, by absolute majority, one or more Shire officers to receive behaviour complaints and withdrawals of complaints in accordance with clause 11(3) of Schedule 1 (Model Code of Conduct) of the Local Government (Model Code of Conduct) Regulations 2021.
- 4.2. An officer authorised under clause 11(3) is referred to for administrative purposes as a Behaviour Complaints Officer.
- 4.3. The functions of an authorised Behaviour Complaints Officer include:
 - Receiving behaviour complaints and withdrawals of complaints in the approved form.
 - Assessing complaints for compliance with the procedural requirements of the Code of Conduct, including assessment of whether:
 - The complaint is made in accordance with the Code of Conduct, the Behaviour Complaints Policy, and the approved complaint form.
 - The approved complaint form has been completed correctly and in full.
 - The complaint is supported by sufficient and coherent information to enable it to be considered under the Code of Conduct.
 - The complaint identifies, or reasonably relates to, an alleged breach of a provision of the Code of Conduct.

- Referring complaints to the Behavioural Complaints Committee in accordance with the Code of Conduct, including determining whether a complaint must be referred to the Inspector.
- Providing administrative and procedural support to Council, the Behaviour Complaints Committee, or any person authorised under clause 14B.
- The Officer cannot make findings or determinations reserved to Council or an authorised decision-maker.
- The Officer cannot determine the merits of a complaint and cannot exercise Council's decision-making functions under clauses 12 or 13 of the Code of Conduct.

5. Appointment of an Authorised Independent Assessor

- 5.1. In accordance with clause 14B(3) of Schedule 1 (Model Code of Conduct) of the Local Government (Model Code of Conduct) Regulations 2021, Council may, by resolution carried with an absolute majority, authorise a person who is not a council member, employee of a local government, or otherwise disqualified under the Regulations, to perform Council's functions under clauses 12 and 13 of the Code of Conduct.
- 5.2. A person authorised under clause 14B(3) is referred to for administrative purposes as an Authorised Independent Assessor.
- 5.3. A Council resolution appointing an Authorised Independent Assessor must include:
 - A statement that Council is satisfied the person is suitably qualified and experienced to perform the functions
 - An explanation of the basis on which Council is so satisfied
 - A statement that Council is satisfied the person is impartial and does not have a close association with any council member or employee of the Shire.
- 5.4. An Authorised Independent Assessor may perform the same functions as Council or a Council-authorised committee under clauses 12 and 13 of the Code of Conduct, for and on behalf of the local government, subject to any conditions imposed by Council in the authorising resolution.
- 5.5. The Assessor may collect evidence, form assessments and provide recommendations for consideration by the Behavioural Complaints Committee.
- 5.6. Council may authorise an Authorised Independent Assessor to perform all functions of the local government in the determination of a behaviour complaint, these Terms of Reference do not provide the Authorised Independent Assessor to make binding findings as to whether a complaint is substantiated. The Authorised Independent Assessor is to only form

assessments and recommendations to assist the Behavioural Complaints Committee to make those findings.

- 5.7. The Behavioural Complaints Committee may adopt the assessment and recommendations, but is not obliged to do so, as the Committee is ultimately required to exercise its own judgment on whether the complaint is substantiated.
- 5.8. Where a complaint is substantiated and the Committee does not consider that no further action should be taken, it shall be part of the Authorised Independent Assessor's role to thereafter:
 - Prepare a plan to address the elected members' behaviour
 - Consult with the elected member in the formulation of that plan
 - Implement the plan
- 5.9. The assessor may not enact any decisions or deliver outcomes, behavioural plans or discuss the contents of complaints outside of the elected Behavioural Complaints Officer, the Committee and Council.

6. Meetings

6.1 Convening of Meetings

Meetings of the Behaviour Complaints Committee are to be convened as required by the Chief Executive Officer, or an authorised Behaviour Complaints Officer, in consultation with the Committee Presiding Member, in accordance with the Local Government Act 1995 and the Standing Orders Local Law 2017.

6.2 Conduct of Meetings

Meetings of the Behaviour Complaints Committee are to be conducted in accordance with the Local Government Act 1995, the Local Government (Administration) Regulations 1996, and the Standing Orders Local Law 2017, and are required to:

- Be called and convened by the Chief Executive Officer, as required, in consultation with the Committee Presiding Member.
- Be closed to members of the public for any part of the meeting that relates to the consideration or determination of a behaviour complaint, in accordance with section 5.23(2)(b) of the Local Government Act 1995.
- Make Committee Notice papers and Agendas publicly available in accordance with the requirements of the Local Government (Administration) Regulations 1996 and section 5.96A of the Local Government Act 1995, except for agenda items and supporting documentation relating to behaviour complaints or other confidential matters that are to be considered behind closed doors.

- Make Committee minutes publicly available in accordance with the Local Government (Administration) Regulations 1996 and section 5.96A of the Local Government Act 1995, except for those parts of the minutes that relate to matters considered at a closed meeting or that are determined to be confidential under section 5.23(2) of the Act.

7. Authority

7.1. The Behaviour Complaints Committee is authorised by Council, by resolution carried with an absolute majority in accordance with clause 14B(2) of Schedule 1 (Model Code of Conduct) of the Local Government (Model Code of Conduct) Regulations 2021, to perform Council's functions under clauses 12 and 13 of the Code of Conduct for and on behalf of the local government, with the exception of the following functions:

- To prepare a plan to address the behaviour of the person to whom the complaint relates
- As part of (a), to consult with the person to whom the complaint relates
- To implement the plan to address the behaviour of the person to whom the complaint relates.

This authorisation operates in conjunction with section 5.16 of the Local Government Act 1995 and is recorded in the Shire of Harvey's relevant register of delegations and authorisations.

7.2. The Behaviour Complaints Committee must not exercise its authorised functions in relation to a behaviour complaint if a Committee Member is the complainant or the respondent in that complaint. In such circumstances, the affected Committee Member is required to excuse themselves from the Committee's proceedings and is to be replaced by a Deputy Committee Member in accordance with these Terms of Reference.

7.3. The Authorised Independent Assessor is authorised by Council, by resolution carried with an absolute majority in accordance with clause 14B(3) of Schedule 1 (Model Code of Conduct) of the Local Government (Model Code of Conduct) Regulations 2021, to perform the following of Council's functions under clause 12 of the Code of Conduct for and on behalf of the local government:

- To prepare a plan to address the behaviour of the person to whom the complaint relates
- As part of (a), to consult with the person to whom the complaint relates
- To implement the plan to address the behaviour of the person to whom the complaint relates.

7.4. This authorisation operates in conjunction with section 5.16 of the Local Government Act 1995 and is recorded in the Shire of Harvey's relevant register of delegations and authorisations.

8. Legislation

8.1 *Local Government Act 1995*

8.2 Local Government (Model Code of Conduct) Regulations 2021

8.3 Local Government (Administration) Regulations 1996

8.4 Standing Orders Local Law 2017

9. Relevant Council Policy

9.1 Code of Conduct for Council Members, Committee Members and Election Candidates

9.2 Policy 1.1.10 Code of Conduct Behaviour Complaint Policy