

**5.15 COMPLAINTS MANAGEMENT FRAMEWORK - CODE OF CONDUCT FOR ELECTED MEMBERS, COMMITTEE MEMBERS AND CANDIDATES**

- Attachments:**
1. Code of Conduct Behaviour Complaints Management Policy - (draft)
  2. New Delegation 2.2.31 - Appointing External Complaints Officer - (draft)
  3. New Delegation 2.1.2 - Behaviour Complaints Committee - (draft)
  4. Behaviour Complaints Committee - Terms of Reference (draft)
  5. Complaint Form - updated

**RECOMMENDATION:****That Council:**

1. **APPROVES** the Code of Conduct Behaviour Complaints Management Policy, at Attachment 1, for the purpose of public notice;
2. **AUTHORISES** the Chief Executive Officer to provide local public notice of the proposed new policy and invite public comments for a period of at least 21 days;
3. **NOTES** that at the conclusion of the public notice period any submissions received would be presented to Council for consideration;
4. **APPROVES** by **ABSOLUTE MAJORITY**:
  - 4.1 in accordance with section 5.8 of the *Local Government Act 1995*, the establishment of the Behaviour Complaints Committee for the purpose of dealing with Division 3 – Behaviour complaints under the Code of Conduct for Council Members, Committee Members and Candidates; and
  - 4.2 in accordance with section 5.10 of the *Local Government Act 1995*, the appointment of all Council Members to the Behaviour Complaints Committee as committee members;
5. **DELEGATES** by **ABSOLUTE MAJORITY**:
  - 5.1 in accordance with section 5.42 of the *Local Government Act 1995*, to the Chief Executive Officer the authority to appoint an external Complaints Officer to receive complaints and withdrawal of complaints related to the City of Vincent Code of Conduct for Council Members, Committee Members and Candidates, as detailed in Attachment 2; and
  - 5.2 in accordance with section 5.16 of the *Local Government Act 1995*, authority to the Behaviour Complaints Committee to deal with complaints in accordance with clause 12 and 13 of the *Local Government (Model Code of Conduct) Regulations 2021*, as detailed in Attachment 3; and
6. **ADOPTS** the:
  - 6.1 Terms of Reference for the Behaviour Complaints Committee as at Attachment 4; and
  - 6.2 updated complaint form at Attachment 5.

**PURPOSE OF REPORT:**

To establish a Complaints Management Framework for the management of complaints made under the Code of Conduct for Council Members, Committee Members and Candidates.

**BACKGROUND:**

On 3 February 2021, the [Local Government \(Model Code of Conduct\) Regulations 2021](#) (Regulations) took effect requiring all local governments to:

- authorise one or more persons to receive complaints and withdrawals of complaints;
- approve the form for making a complaint of an alleged breach under Regulation 11 of the Model Code;
- adopt a Code of Conduct modelled on the Regulations Model Code; and
- develop a procedure for dealing with complaints under Division 3 of the Model Code.

The City has actioned all but the final point above.

The Code provides that procedures in dealing with complaints under the Code, may be determined by the local government to the extent that it is not provided for in the provisions around behaviour. There is currently no complaints process listed in the Code and therefore it is up to Council to determine that process

At its 9 February 2021 meeting, Council appointed the CEO to receive complaints and adopted a [Complaint Form](#) for the lodgement of complaints under Division 3 of the Model Code.

At its 23 March 2021 meeting, Council approved a [Code of Conduct for Council Members, Committee Members and Candidates](#). (Nominated Members Code).

**DETAILS:**

The City' s [Policy No. 4.1.3 – Customer Service Complaints Management](#) (4.1.3) provides the procedure and guidelines for processing complaints against Council Members however it does not ensure that a complaint received in relation to an alleged breach of Division 3 of the Nominated Members Code is managed on the basis of fairness and impartiality.

In accordance with the Department of Local Government, Sport and Cultural Industries (DLGSCI) [Guidelines](#) on the Model Code of Conduct for Council Members, Committee Members and Candidates, Council Members who have made a complaint, or are the subject of a complaint, have an impartiality interest, however are not required to leave a meeting for debate or decision.

The Western Australian Local Government Association (WALGA) has developed a Behavioural Complaints Management Framework incorporating a Code of Conduct Behaviour Complaints Management Policy, guidelines, a template Behaviour Complaint Form, Behaviour Complaints Committee Terms of Reference and Behaviour Complaints Committee Delegation for use by the local government sector.

The Framework is drafted on the basis of minimalising both actual and perceived bias due to conflict of interests and recommends a process that minimalises Council involvement.

WALGA's view, based on the sector's advocacy position, is that the presence and participation of Council Members directly involved in the complaint creates a clear apprehension of bias and is incompatible with the principles of procedural fairness.

Code of Conduct Behaviour Complaints Management Policy

Administration has developed a draft Code of Conduct Behaviour Complaints Management Policy (Policy) based on the WALGA template policy with minor amendments to provide clarification to the scope of the policy and to include a provision to provide the opportunity for parties to have support during alternative dispute resolution. All changes from the WALGA template have been marked up in red.

The draft Policy has been prepared for Council consideration at **Attachment 1**.

Delegation to Chief Executive Officer (CEO) to appoint external Complaints Officers

The CEO has the ability to appoint an external Complaint Assessor to assist a Complaints Officer in managing a Complaint, however, on occasion it may be preferable to have the entire process managed by an external Complaints Officer. To ensure that Complaints are resolved in a timely manner, Administration is proposing that Council delegate this function to the CEO.

A draft delegation has been prepared for Council consideration at **Attachment 2**.

### Behaviour Complaints Committee

The WALGA Framework proposes the option of establishing a Complaints Committee with delegated authority that can only be exercised in the absence of Council Members who are parties to the complaint. WALGA's reasoning for this is that the presence and participation of Council Members directly involved in the complaint creates a clear apprehension of bias and is incompatible with the principles of procedural fairness.

Administration is recommending that Council establish a whole of Council Behaviour Complaints Committee for the purpose of dealing with Complaints.

A draft delegation has been prepared for Council consideration at **Attachment 3** and draft committee terms of reference at **Attachment 4**.

### Complaint Form

At its 9 February 2021 meeting, Council adopted a [Complaint Form](#) for the lodgement of complaints under Division 3 of the Model Code. Since its adoption, WALGA have developed a template Behaviour Complaint Form for use by the local government sector.

The WALGA Complaint Form requires information necessary to assess a complaint by including the specific breaches that could relate to the complaint and identifying whether the person being complained about is a Council Member, committee member or candidate.

Administration is recommending that Council amend the Complaints Form to align with the WALGA template.

An updated Complaints Form has been prepared for Council consideration at **Attachment 5**.

### **CONSULTATION/ADVERTISING:**

In accordance with the City's [Community and Stakeholder Engagement Policy](#), public notice of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website;
- notice posted to the City's social media;
- notice published in the local newspapers;
- notice exhibited on the notice board at the City's Administration and Library and Local History Centre; and
- letters distributed to relevant local businesses and community groups.

Public notice of this proposed new policy will be provided from January 2022.

### **LEGAL/POLICY:**

- *Local Government Act 1995*;
- *Local Government Legislation Amendment Act 2019*;
- *Local Government (Administration) Regulations 1996*;
- *Local Government (Administration) Amendment Regulations 2021*; and
- *Local Government (Model Code of Conduct) Regulations 2021*.

Code of Conduct for Council Members, Committee Members and Candidates.

The City's [Policy Development and Review Policy](#) sets out the process for the development and review of the City's policy documents.

### **RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to establish a Complaints Management Framework for the management of complaints made under the Code of Conduct for Council Members, Committee Members and Candidates.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes.

**PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

**FINANCIAL/BUDGET IMPLICATIONS:**

Nil.



# Code of Conduct Behaviour Complaints Management Policy

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| Legislation / local law requirements                      | Local Government (Model Code of Conduct) Regulations<br>Local Government (Administration) Regulations 1996<br>Meeting Procedures Local Law |
| Relevant delegations                                      | Delegation 2.1.2 – Behaviour Complaints Committee<br>Delegation - 2.2.31 Appointing External Complaints Office                             |
| Related policies, procedures and supporting documentation | Code of Conduct for Council Members, Committee Members and Candidates<br>Purchasing Policy   |

## PRELIMINARY

### INTRODUCTION

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the City's [Code of Conduct Elected Members, Committee Members and Candidates](#) (Nominated Members Code).

A Complaint must be made and dealt with in accordance with this policy.

### PURPOSE

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and the Nominated Members Code, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the Code.

### OBJECTIVE

To give effect to the City of Vincent's commitment to an effective, transparent, fair, and accessible complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

### SCOPE

This Policy applies to complaints made in accordance with Clause 11 of the City of Vincent Nominated Members Code.

This Policy applies to Council Members, Committee Members, Candidates, and any person who submits a complaint in accordance with this Policy.

Complaints that are deemed outside of the scope of this policy are:

- dissatisfaction with a Council or committee member's lawfully made decisions;
- dissatisfaction with a Council or Committee member's performance of his or her role;
- minor breaches under s. 5.105(1) of the Act;
- serious breaches under s. 5.114 of the Act;
- corruption allegations; or
- personal disagreements.

# Code of Conduct Behaviour Complaints Management Policy



Complaints related to Division 4 - Rules of Conduct are dealt with by the Local Government Standards Panel. An overview of the complaint process and the complaint form can be found at the [Department of Local Government Sport and Cultural Industries](#). Any complaint for Division 4 should be on the appropriate form and sent to the CEO as the Complaints Officer.

## DEFINITIONS

**Act** means the *Local Government Act 1995*.

**Behaviour Complaints Committee** means the Committee established by the Council in accordance with s.5.8 of the Act for the purpose of dealing with Complaints. The role of the Behaviour Complaints Committee is outlined in Part 2.3 of this Policy.

**Behaviour Complaints Officer** means a person authorised in writing (*by Council resolution or by the CEO exercising delegated authority*) under clause 11(3) of the Nominated Members Code to receive complaints and withdrawals of complaints. The role of the Behaviour Complaints Officer is addressed in Part 2.1 of this Policy

**Breach** means a breach of Division 3 of the City's Nominated Members Code.

**Candidate** means a candidate for election as a Council Member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act but does not include a Council Member who has nominated for re-election. A person is a Candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act.

**Candidate Complaint** means a Complaint alleging a Breach by a Candidate. Candidate Complaints are dealt with in Part 3.2 of this Policy.

**Committee** means a committee of Council, established in accordance with s.5.8 of the Act.

**Committee Member** means a Council Member, employee of the City of Vincent or other person who has been appointed by the Council to be a member of a Committee, in accordance with s.5.10(1) of the Act. A person is a Committee Member from the date on which they are appointed, until their appointment expires or is terminated by Council resolution.

**Complaint** means a complaint submitted under Clause 11 of the Nominated Members Code.

**Complainant** means a person who has submitted a Complaint in accordance with this Policy.

**Complaint Assessor** means a person appointed by the Behaviour Complaints Officer in accordance with Part 2.2 and Part 3.8 of this Policy.

**Complaint Documents** means the Complaint Form and any supporting information, evidence, or attachments provided by the Complainant.

**Complaint Form** means the form approved under clause 11(2)(a) of the Nominated Members Code (by Council resolution or by the CEO exercising delegated authority).

# Code of Conduct Behaviour Complaints Management Policy



**Council** means the Council of the City of Vincent.

**Council or Committee Meeting** means a formal meeting of the Council or a Committee that is called and convened in accordance with the Act. It does not include informal meetings, such as workshops or briefings.

**Council Member** means a person who is currently serving a term of office as an elected member of the Council in accordance with the Act.

**Finding** means a finding made in accordance with clause 12(1) of the Nominated Members Code as to whether the alleged Breach has or has not occurred.

**Nominated Members Code** means the City of Vincent Code of Conduct for Council Members, Committee Members and Candidates.

**Plan** means a Plan that may be prepared and implemented under clause 12(4)(b) of the Nominated Members Code, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.

**Response Documents** means the response provided by the Respondent to the Complaint and includes any supporting information or evidence that is supplied.

# Code of Conduct Behaviour Complaints Management Policy



## POLICY PROVISIONS

### 1. Principles

#### 1.1 Procedural fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a Complaint under this Policy. In particular:

- the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- the decision maker should be objective and impartial, with an absence of bias or the perception of bias; and
- any findings made will be based on proper and genuine consideration of the evidence.

#### 1.2 Consistency

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

#### 1.3 Confidentiality

The City of Vincent will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, Local Government employees and contractors who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely and must not disclose or inappropriately use this information.

Complainants will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

#### 1.4 Accessibility

The City of Vincent will ensure that information on how to make a complaint, including this Policy, is available at the City of Vincent's Administration Building and on the City of Vincent's website. The City of Vincent will make information available in alternative formats if requested.

Any person wishing to make a complaint may contact the Behaviour Complaints Officer if they require assistance in completing the complaint form or otherwise navigating the complaints process.



# Code of Conduct Behaviour Complaints Management Policy



## 2. Roles

### 2.1 Behaviour Complaints Officer

The Behaviour Complaints Officer is authorised in accordance with clause 11(3) of the Nominated Members Code to accept complaints and withdrawal of complaints.

The Behaviour Complaints Officer is not an advocate for the complainant or the respondent. The Behaviour Complaints Officer provides procedural information and assistance to both Complainant and Respondent.

The Behaviour Complaints Officer will liaise with and provide administrative support to a Complaint Assessor appointed under this Policy.

The Behaviour Complaints Officer will liaise with the Local Government to facilitate the calling and convening of Council or Behaviour Complaints Committee meetings if required.

In undertaking their functions, the Behaviour Complaints Officer will apply the Principles of this Policy.

### 2.2 Complaint Assessor

The Complaint Assessor is appointed by the Behaviour Complaints Officer in accordance with Part 3.8 of this Policy.

The Complaint Assessor is an impartial third party who will undertake the functions specified in this Policy. In undertaking their functions, the Complaint Assessor will apply the Principles of this Policy.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

### 2.3 Behaviour Complaints Committee

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the Act for the purpose of dealing with Complaints.

The Behaviour Complaints Committee is a Committee of Council Members only. The membership and purpose of the Behaviour Complaints Committee is outlined in the Behaviour Complaints Committee Terms of Reference.

## 3. Procedure

### 3.1 Making a complaint

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Nominated Members Code (clause 11(1)).

A Complaint must be made within one (1) month after the alleged Breach (clause 11(2)(c) of the Nominated Members Code).

# Code of Conduct Behaviour Complaints Management Policy



A Complaint must be made by completing the [Behaviour Complaint Form](#) in full and providing the completed forms to the Behaviour Complaints Officer.

A Complaint is required to include the name and contact details of the Complainant therefore anonymous complaints cannot be accepted.

Where a Complaint Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed.

Where a Complaint is made more than 1 month after the alleged breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be made (clause 11(2)(c) of the Nominated Members Code).

### 3.2 Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with 3.1, above, but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.

Within 7 days after receiving a Candidate Complaint, the Behaviour Complaints Officer will provide written notice:

- to the Complainant confirming receipt, and advising of the procedure for candidate complaints; and
- to the Respondent, including a summary of the complaint, and advising of the procedure for candidate complaints.

No action will be taken until the results of the election are declared by the Returning Officer. If the respondent is elected, then the complaint will be dealt with in accordance with this Policy. Timeframes that would otherwise commence on the receipt of a Complaint will be taken to commence on the election date.

If the Respondent is not elected, the Behaviour Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with (clause 15(1) of the Nominated Members Code).

### 3.3 Withdrawing a Complaint

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint (clause 14 of the Nominated Members Code).

A Complainant may withdraw a Complaint by advising the Behaviour Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Behaviour Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

# Code of Conduct Behaviour Complaints Management Policy



## 3.4 Notice to Complainant

Within 7 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Complainant that:

- confirms receipt of the Complaint;
- outlines the process that will be followed and possible outcomes;
- explains the application of confidentiality to the complaint;
- includes a copy of this Policy; and
- if necessary, seeks clarifications or additional information.

If the Complaint Form indicates that the Complainant agrees to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will advise the Complainant of the process in accordance with Part 3.6 of this Policy.

## 3.5 Notice to Respondent

Within 14 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Respondent that:

- advises that a Complaint has been made in accordance with the Nominated Members Code and this Policy;
- includes a copy of the Complaint Documents;
- outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- includes a copy of this Policy; and
- if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6 of this Policy.

## 3.6 Alternative Dispute Resolution

The City of Vincent recognises that Alternative Dispute Resolution may support both parties reach a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Alternative Dispute Resolution requires the consent of both parties to the Complaint and may not be appropriate in all circumstances.

To commence the process, the Behaviour Complaints Officer will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will pause the formal process.

# Code of Conduct Behaviour Complaints Management Policy



The objective of Alternative Dispute Resolution will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with Part 3.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a Complaint, even in the absence of a request from the Complainant, qualifies for consideration as Alternative Dispute Resolution.

If Alternative Dispute Resolution is commenced, both the Complainant and Respondent may decline to proceed with the process at any time. The process may also be terminated on the advice of a third party who is providing assistance to the Local Government, such as a facilitator or mediator.

[Where mutually agreed, parties to the complaint may request permission for a support person to be present during the Alternative Dispute Resolution process.](#)

If Alternative Dispute Resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the Complaint, the Behaviour Complaints Officer will resume the formal process required under this Policy.

### 3.7 Order of Complaints

Complaints will normally be dealt with in the order in which they are received.

If more than one Complaint is received that relates to the same alleged behaviour, the Behaviour Complaints Officer may decide to progress those Complaints concurrently.

### 3.8 Appointment of Complaints Assessor

If Alternative Dispute Resolution is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Behaviour Complaints Officer will appoint a suitably qualified and experience Complaint Assessor, in accordance with the City of Vincent's [Purchasing Policy](#).

The Behaviour Complaints Officer will endeavour to appoint a Complaint Assessor within a reasonable period. The Behaviour Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.

### 3.9 Search of Local Government Records

The Complaint Assessor may request the Behaviour Complaints Officer to search for any relevant records in the City of Vincent's Record Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer will be requested to identify any Local Government records that provide evidence that may support a decision as to whether:

- the behaviour occurred at a Council or Committee Meeting,
- the behaviour was dealt with by the person presiding at the meeting, and/or
- the Respondent has taken remedial action in accordance with the City of Vincent [Meeting Procedures Local Law 2008](#).

# Code of Conduct Behaviour Complaints Management Policy



The Complaints Assessor must provide the Respondent with a copy of any records that are identified. In addition, where a clarification or additional information has been sought from the Complainant by either the Behaviour Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

### 3.10 Assessment of the Complaint

The Complaint Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under Part 3.4 and Part 3.5 of this Policy.

The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to be heard before forming any opinions or drafting the Complaint Report or recommendations.

### 3.11 Complaint Report

The Complaint Assessor will prepare a Complaint Report that will:

- outline the process followed, including how the Respondent was provided with an opportunity to be heard;
- include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
- include recommendations on each decision that may be made by the Complaints Committee; and
- include reasons for each recommendation, with reference to Part 4 of this Policy.

If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 12(4)(b) of the Nominated Members Code and Part 4.4 of this Policy, the Complaint Report must include a Proposed Plan.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Complaints Committee. The Behaviour Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

### 3.12 Complaints Committee Meeting

The Agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with s.5.23(2) of the Act.

The Behaviour Complaints Committee will consider the Complaint Report and attachments and give due regard to the recommendations.

In accordance with Regulation 11(d)(a) of the *Local Government (Administration) Regulations 1996*, reasons for any decision that is significantly different from the Officer Recommendation must be recorded in the meeting minutes.

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Committee will determine whether or not to dismiss

# Code of Conduct Behaviour Complaints Management Policy



the Complaint in accordance with Clause 13 of the Nominated Members Code and Part 4.2 of this Policy.

If the Behaviour Complaints Committee dismisses a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 13(2) of the Nominated Members Code. This concludes the process for this Complaint.

If the Complaint is not dismissed, the Behaviour Complaints Committee will consider the Complaint and make a Finding as to whether the alleged Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 12 of the Nominated Members Code and Part 4.3 of this Policy.

If the Behaviour Complaints Committee finds that the alleged Breach **did not** occur, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 12(7)(a) of the Nominated Members Code. This concludes the process for this Complaint.

If the Behaviour Complaints Committee finds that the alleged breach **did** occur, the Committee will decide whether to take no further action in accordance with clause 12(4)(a) of the Nominated Members Code or prepare a plan to address the behaviour in accordance with clause 12(4)(b) of the Nominated Members Code and Part 4.4 of this Policy.

If the Behaviour Complaints Committee decides to take no further action, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 12(7)(a) of the Nominated Members Code. This concludes the process for this Complaint.

If the Behaviour Complaints Committee decides to prepare a Plan, the Committee will first consult with the Respondent in accordance with clause 12(5) \* of the Nominated Members Code. The Behaviour Complaints Committee will consider any submissions made by the Respondent before preparing and implementing a Plan.

### 3.13 Compliance with Plan Requirement

The Behaviour Complaints Officer will monitor the actions in timeframes set out in a Plan.

Failure to comply with a requirement included in a Plan is a minor breach under section 5.105(1) of the Act and clause 23 of the Nominated Members Code.

The Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

# Code of Conduct Behaviour Complaints Management Policy



## 4. Decision Making

### 4.1 Objective and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 1 of this Policy.

### 4.2 Dismissal

The Behaviour Complaints Committee must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Nominated Members Code if it is satisfied that -

- (a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (b) either —
  - (i) the behaviour was dealt with by the person presiding at the meeting; or
  - (ii) the Respondent has taken remedial action in accordance with the City of Vincent Meeting Procedures Local Law 2008.

### 4.3 Finding

A Finding that the alleged breach has occurred 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 (clause 12(3) of the Nominated Members Code).

This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of Division 3 of the Nominated Members Code.

### 4.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the Complaints Committee may consider:

- the nature and seriousness of the breach(es);
- the Respondent's submission in relation to the contravention;
- whether the Respondent has breached the Nominated Members Code knowingly or carelessly;
- whether the Respondent has breached the Nominated Members Code on previous occasions;
- likelihood or not of the Respondent committing further breaches of the Nominated Members Code;
- personal circumstances at the time of conduct;
- need to protect the public through general deterrence and maintain public confidence in Local Government; and
- any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

# Code of Conduct Behaviour Complaints Management Policy



## 4.5 Plan Requirements

The Proposed Plan may include requirements for the Respondent to do one (1) or more of the following:

- engage in mediation;
- undertake counselling;
- undertake training;
- take other action the Complaints Committee considers appropriate (e.g., an apology).

The Proposed Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Nominated Members Code.

The Proposed Plan may also outline:

- the actions to be taken to address the behaviour(s);
- who is responsible for the actions;
- any assistance the Local Government will provide to assist achieve the intent of the Plan; and
- a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

| OFFICE USE ONLY          |   |
|--------------------------|---|
| Responsible Officer      | Please use title only                     |
| Initial Council Adoption | DD/MM/YYYY                                |
| Previous Title           | Applicable if the policy has been renamed |
| Reviewed / Amended       | DD/MM/YYYY                                |
| Next Review Date         | MM/YYYY                                   |



## 2.2.31 Appointing External Complaints Officer

*Delegation from Council to CEO*

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| <b>Head of power to Delegate:</b><br><i>Power that enables a delegation to be made</i>  | <i>Local Government Act 1995:</i><br>s5.42 Delegation of some powers and duties to the CEO.  |
| <b>Express Power or Duty Delegated:</b>   | <i>Local Government (Model Code of Conduct) Regulations 2021:</i><br>r11(3) Complaint about alleged breach<br>"The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawal of complaints."   |
| <b>Delegate:</b>  | Chief Executive Officer  |
| <b>Function:</b><br><i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i> | For the CEO to appoint an external Complaints Officer to receive complaints and withdrawal of complaints related to the City of Vincent Code of Conduct for Council Members, Committee Members and Candidates.   |
| <b>Council Conditions on this Delegation:</b>   | Any appointment under this delegation excludes a current or former City of Vincent Council Member, Committee Member, candidate, or employee.<br><br>Any appointed external Complaints Officer must comply with the requirements contained in the: <ul style="list-style-type: none"> <li>• Code of Conduct for Council Members, Committee Members and Candidates; and</li> <li>• Code of Conduct Behaviour Complaints Management Policy</li> </ul> |
| <b>Express Power to Sub-Delegate:</b>   | Nil.   |
| <b>Compliance Links:</b>  | Code of Conduct for Council Members, Committee Members and Candidates; and<br>Code of Conduct Behaviour Complaints Management Policy;  |
| <b>Record Keeping:</b>  | Each person appointed Complaints Officer will have their name and relevant details recorded in the appropriate file  |

## 2.1.2 Behaviour Complaints Committee

*Delegation from Council to CEO*

|   |   |
|---|---|
| <b>Head of power to Delegate:</b><br><i>Power that enables a delegation to be made</i>  | <i>Local Government Act 1995:</i><br>s.5.16 and 5.17 Delegation of some powers and duties to certain committees   |
| <b>Express Power or Duty Delegated:</b>   | <i>Local Government (Model Code of Conduct) Regulations 2021:</i><br>Clause 12 Dealing with a complaint<br>Clause 13 Dismissal of complaint   |
| <b>Delegate:</b>  | Behaviour Complaints Committee  |
| <b>Function:</b><br><i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i> | <ol style="list-style-type: none"> <li>1. Authority to make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur (<i>MCC.cl.12(1) and (3)</i>).<br/>In making any finding the Committee must also determine reasons for the finding (<i>MCC.cl.12(7)</i>).</li> <li>2. Where a finding is made that a breach has occurred, authority to: <ol style="list-style-type: none"> <li>a. take no further action (<i>MCC.cl.12(4(a))</i>); or</li> <li>b. prepare and implement a plan to address the behaviour of the person to whom the complaint relates (<i>MCC.cl.12(4)(b), (5) and (6)</i>).</li> </ol> </li> <li>3. Authority to dismiss a complaint and if dismissed, the Committee must also determine reasons for the dismissal (<i>MCC.cl.13(1) and (2)</i>).</li> </ol> |
| <b>Council Conditions on this Delegation:</b>   | <ol style="list-style-type: none"> <li>a. The Committee will make decisions in accordance with the principles and specified requirements established in the Code of Conduct Behaviour Complaints Management Policy.</li> <li>b. That part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act.</li> <li>c. The Committee is prohibited from exercising this Delegation where a Committee Member in attendance at a Committee meeting is either the Complainant or Respondent to the Complaint subject of a Committee agenda item.</li> <li>d. In the event of (c) above, the Committee may resolve to defer consideration to a future meeting at which the conflicted Committee Member is absent.</li> </ol>  |
| <b>Express Power to Sub-Delegate:</b>   | Nil.  |
| <b>Compliance Links:</b>  | Code of Conduct for Council Members, Committee Members and Candidates;<br>Conduct Behaviour Complaints Management Policy; and<br>Behaviour Complaints Committee Terms of Reference  |
| <b>Record Keeping:</b>  | Committee Minutes shall record the details of each decision made under this delegation in accordance with the requirements of <i>Local Government (Administration) Regulation 19</i> .  |

## Notes:

The purpose of Condition (c) and (d) is to require that a Committee Member who is identified as either the Complainant or Respondent is required to recuse themselves by notifying the Presiding Member of their intention to be an apology for the meeting at which the Complaint is an agenda item.



CITY OF VINCENT

## BEHAVIOUR COMPLAINTS COMMITTEE TERMS OF REFERENCE

### 1. OBJECTIVES

To establish Terms of Reference for the Behaviour Complaints Committee of the City of Vincent

### 2. COMMITTEE FUNCTION

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the *Local Government Act 1995* (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the City of Vincent's Code of Conduct for Council Members, Committee Members and Candidates (Nominated Members Code).

The extent of authority provided to the Behaviour Complaints Committee is specified in the relevant Delegated Authority, and includes:

- Dismissing a behaviour complaint in accordance with clause 13 of the Nominated Members Code and providing reasons for any such dismissal.
- Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur (clause 12(3) of the Nominated Members Code).
- Determining reasons for such a Finding.
- Where a Finding is made that a breach has occurred, determining:
  - To take no further action; or
  - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority.

### 3. MEMBERSHIP

The Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act.

Membership of the Behaviour Complaints Committee will comprise of all Council Members, appointed by Council in accordance with s.5.10 of the Act.

The Delegated Authority Condition prescribes that if an appointed Committee Member is identified in the Complaint as either the Complainant or the Respondent, they are to recuse themselves from the Committee's Function by providing an apology.

### 4. MEETING SCHEDULE

Meetings are to be scheduled as required by the CEO or Behaviour Complaints Officer in consultation with the Committee Presiding Member.

### 5. DELEGATED AUTHORITY

The Behaviour Complaints Committee will act under Delegated Authority in accordance with s.5.16 of the Act. The delegation is recorded in the City of Vincent Register of Delegations.

It is a Condition of Delegated Authority that the Behaviour Complaints Committee will be unable to exercise delegated authority if the Complainant or Respondent attend as a Complaints Committee Member.



CITY OF VINCENT

## BEHAVIOUR COMPLAINTS COMMITTEE TERMS OF REFERENCE

### 6. COMMITTEE GOVERNANCE

Complaints Behaviour Committee meetings are required to:

- be called and convened by the CEO, as required, in consultation with the Committee's Presiding Member;
- include public question time *[Admin.r. 5]*
- make the Committee Notice Papers and Agenda publicly available *[s. 5.94(p), s. 5.96A(f)]*, with the exception of agenda content that relates to that part of the meeting which will be closed to members of the public under s.5.23(2) *[Admin.r. 14]*; and
- make Committee minutes publicly available *[s. 5.94(n), s. 5.96A(h)]*, with the exception of Minutes content that relates to that part of the meeting which was closed to the public or was determined as confidential under s.5.23(2).

## Complaint Form

### Alleged Breach - Division 3 of the Code of Conduct for Council Members, Committee Members and Candidates

**Note:**

Please read the City's [Behaviour Complaints Code of Conduct Behaviour Complaints Management Policy](#) on our website before submitting a complaint.

This Procedure details:

- How the City of Vincent will process and determine a Behaviour Complaint; and
- How confidentiality of the complaint will be handled.

To make a valid **Behaviour Complaint**:

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- The allegation must relate to a breach of the behaviour standards in Division 3 of the City's [Code of Conduct for Council Members, Committee Members and Candidates](#).
- 
- Complete all sections of the Behaviour Complaint Form attached, including any additional information that will support assessment of the complaint. *The Behaviour Complaints Officer may contact you to clarify or ask for more information.*
- 
- The completed Behaviour Complaint Form **MUST** be lodged with the City's Behaviour Complaints Officer within one (1) month of the alleged behaviour breach.
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**Rules of Conduct Complaint**

A Rules of Conduct Complaint refers to a breach of the Rules of Conduct outlined in Division 4 of the City's [Code of Conduct for Council Members, Committee Members and Candidates](#), including Council Members when acting as a Committee Member. This type of complaint is determined by the Local Government Standards Panel, administered through the Department of Local Government, Sport and Cultural Industries. Further information about Rules of Conduct Complaints may be obtained from the Department of Local Government, Sport and Cultural Industries: (08) 6552 7300 or [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)

## Complaint Form

**Alleged Breach - Division 3 of the Code of Conduct for Council Members, Committee Members and Candidates**

| Name of Person Making the Complaint                             |           |  |         |
|---|-----------|--|---------|
| <b>Complainant Name:</b><br><i>Given Name/s and Family Name</i> |           |  |         |
| Contact Details   |           |  |         |
| <b>Residential Address:</b>                                     |           |  |         |
| <b>Postal Address:</b>  |           |  |         |
| <b>Phone:</b>   | Day-time: |  | Mobile: |
| <b>Email:</b>   |           |  |         |

| Complaint Details: |  |   |                          |
|--------------------|--|---|--------------------------|
| <b>1.</b>          | <b>Insert Name of Person alleged to have committed a behavior breach:</b>  |   |                          |
| <b>2.</b>          | <b>Select the position that the person was fulfilling at the time the person committed the alleged behaviour breach:</b> | Council Member of the City of Vincent         | <input type="checkbox"/> |
|                    |  | Member of a Committee of the City of Vincent  | <input type="checkbox"/> |
|                    |  | Candidate for election at the City of Vincent | <input type="checkbox"/> |
| <b>3.</b>          | <b>Date that the alleged behaviour breach occurred:</b>  |   |                          |
| <b>4.</b>          | <b>Location where the alleged behaviour breach occurred:</b>   |   |                          |

|  |   |                          |
|--|---|--------------------------|
| 5.   | <b>Which of the behaviours prescribed in Division 3 of the City’s Code of Conduct do you allege this person has breached?</b>   |                          |
| <b>Clause 8. Personal integrity</b>  |   |                          |
| (1) A Council Member, committee member or candidate —  |   |                          |
| (a)  | must ensure that their use of social media and other forms of communication complies with this code; and  | <input type="checkbox"/> |
| (b)  | must only publish material that is factually correct  | <input type="checkbox"/> |
| (2) A Council Member or committee member —   |   |                          |
| (a)  | must not be impaired by alcohol or drugs in the performance of their official duties; and   | <input type="checkbox"/> |
| (b)  | must comply with all policies, procedures and resolutions of the local government.  | <input type="checkbox"/> |
| <b>Clause 9. Relationship with others</b>  |   |                          |
| A Council Member, committee member or candidate —  |   |                          |
| (a)  | must not bully or harass another person in any way; and   | <input type="checkbox"/> |
| (b)  | must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and   | <input type="checkbox"/> |
| (c)  | must not use offensive or derogatory language when referring to another person; and   | <input type="checkbox"/> |
| (d)  | must not disparage the character of another Council Member, committee member or candidate or a local government employee in connection with the performance of their official duties; and           | <input type="checkbox"/> |
| (e)  | must not impute dishonest or unethical motives to another Council Member, committee member or candidate or a local government employee in connection with the performance of their official duties. | <input type="checkbox"/> |
| <b>Clause 10. Council or committee meetings</b>  |   |                          |
| When attending a council or committee meeting, a Council Member, committee member or candidate — |   |                          |
| (a)  | must not act in an abusive or threatening manner towards another person; and  | <input type="checkbox"/> |
| (b)  | must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and  | <input type="checkbox"/> |
| (c)  | must not repeatedly disrupt the meeting; and  | <input type="checkbox"/> |
| (d)  | must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and   | <input type="checkbox"/> |
| (e)  | must comply with any direction given by the person presiding at the meeting; and  | <input type="checkbox"/> |
| (f)  | must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.  | <input type="checkbox"/> |

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|---|
| <b>6. State the full details of the alleged breach.</b> |
|   |

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|--|
| <b>7 List any additional information you have provided as part of this complaint:</b><br><i>Please ensure all information relevant to the alleged breach has been attached. This information will be the basis on which the complaint is considered.</i> |
|  |

|  |                          |  |
|--|--------------------------|--|
| <b>9 Have you made any efforts to resolve the complaint with the Respondent?</b><br><i>Please note, you MUST complete this section</i> |                          |  |
| <b>YES</b>   | <input type="checkbox"/> | <i>If yes, please describe the efforts that you have made.</i>   |
| <b>NO</b>  | <input type="checkbox"/> | <i>If no, please include a brief statement explaining why you have not made any efforts to resolve the issue with the person complained about.</i> |



|   |   |            |                          |
|---|---|------------|--------------------------|
| <b>10</b>   | <p>The City's <a href="#">Code of Conduct Behaviour Complaints Management Policy</a> requires the Complainant and the Respondent be offered the opportunity to participate in an Alternative Dispute Resolution process, if agreed to by BOTH parties, this will be undertaken before the complaint is dealt with.</p> <p>The objective is to support both parties to reach a mutually satisfactory outcome that resolves the issues and restores the relationship between them. An outcome may be that as the Complainant, you will have absolute discretion to withdraw or continue with this Complaint.</p> <p>Please contact the Behaviour Complaints Officer if you would like more information.</p> |            |                          |
| <b>Would you agree to participate in an Alternative Dispute Resolution process?</b> |   | <b>YES</b> | <input type="checkbox"/> |
|   |   | <b>NO</b>  | <input type="checkbox"/> |

|           |   |
|-----------|---|
| <b>11</b> | <p><b>Desired outcome of the Complaint</b></p> <p>Please explain what you would like to happen as a result of lodging this complaint, including the opportunity to participate in Alternative Dispute Resolution.</p> |
|           |   |

|  |  |
|--|--|
| <b>COMPLAINANT</b> <i>please sign and date</i> |  |
| <b>Signature:</b>                              |  |
| <b>Date:</b>                                   |  |

**Please submit completed Behaviour Complaint to:**

The City's Behaviour Complaints Officer:

Mailing Address: [governance@vincent.wa.gov.au](mailto:governance@vincent.wa.gov.au)

In person: City of Vincent Library  
99 Loftus Street,  
Leederville WA

|   |  |
|---|--|
| <b>OFFICE USE ONLY:</b> <i>Received by the Council appointed Behaviour Complaints Officer</i> |  |
| <b>Authorised Officer's Name:</b>   |  |
| <b>Authorised Officer's Signature:</b>  |  |
| <b>Date received:</b>   |  |