

POL 0092: Complaint Resolution and Investigation

Purpose

To establish the additional complaint resolution and investigation procedures to support the Shire of Esperance's Code of Conduct for Council Members, Committee Members and Candidates.

Scope

This policy applies to council members, committee members and candidates where a complaint has been received by the Shire, or referred to the Shire by the Local Government Inspector, under the Shire's Code of Conduct of Council Members, Committee Members and Candidates.

This policy does not apply to the investigation of complaints involving allegations of serious improper conduct, corruption, fraud, misconduct or other criminal conduct which must be referred to the appropriate authority.

Definitions

Act means the *Local Government Act 1995*.

Approved Investigator means a person appointed as an Investigator under clause 14B of the Code with prior Council endorsement.

Authorised Officer means the CEO and any employee authorised by Council in accordance with clause 11(3) of the Code.

candidate means a candidate for election as a council member.

CEO means the Chief Executive Officer of the Shire.

Code means the Shire's Code of Conduct for Council Members, Committee Members and Candidates.

committee member includes any council member, the CEO, employee or unelected member of the community in any of those cases, who has been appointed by Council to be a member of a committee.

complaint means a complaint made under clause 11(1) of the Code.

complainant means a person complaining of a breach by a council member, committee member or candidate under clause 11(1) of the Code.

Council means the Council of the Shire.

Council member means the Shire's elected President or an elected Councillor.

employee means a person:

- a. employed by the Shire under section 5.36(1) of the Act; or
- b. engaged by the Shire under a contract for services.

Local Government Inspector means the person holding the office of Local Government Inspector established by section 8B.1 of the Act.

Respondent means the person whom the complaint relates to.

Shire means the Shire of Esperance, being a local government established as a body corporate under section 2.5 of the Act.

Practice

In accordance with section 5.104 of the Act every Western Australian local government is to adopt a code of conduct to be observed by council members, committee members and candidates. A local government's code of conduct is to reflect the model code of conduct prescribed by section 5.103(2) of the Act which includes –

- general principles to guide behaviour;
- requirements relating to behaviour; and
- provisions specified to be rules of conduct.

The Shire's Code has been adopted for this purpose and ensures the roles and responsibilities of council members, committee members and candidates are understood and respected. This enables professional relationships to be established and maintained in the interests of providing good governance, overall integrity and good government for the community.

The Code sets out principles and standards of behaviour council members, committee members and candidates must observe, and is intended to promote accountable and ethical decision-making and conduct.

The purpose of this policy is to detail the high-level complaint resolution and investigation considerations in support of the mechanisms for dealing with complaints detailed in the Code. It is intended to –

- contribute to fairness, integrity and good governance; and
- provide guidance on the key matters to be considered in the preparation, and in the course of an investigation in relation to breaches of the Code.

Authorised persons to receive complaints and withdrawals

In accordance with clause 11(3) of the Code –

- a. the CEO is authorised to receive complaints and withdrawal of complaints under the Code; or
- b. where the complainant is the CEO, the Director Corporate & Community Services is authorised to receive complaints and withdrawal of complaints under the Code.

Dismissal of complaint

In accordance with clause 13 of the Code, Council must dismiss a complaint where –

- a. the behaviour occurred at a council or committee meeting, and the behaviour was dealt with at that meeting; and

- b. either –
 - i. the behaviour was dealt with by the person presiding at the meeting;
or
 - ii. the person responsible for the behaviour has taken remedial action in accordance with the Shire's *Standing Orders Local Law 2015*.

Withdrawal of complaint

In accordance with clause 14 of the Code, a complainant may withdraw their complaint any time before it is considered by Council.

The withdrawal of a complaint must be –

- a. in writing; and
- b. given to an Authorised Officer.

Nature of investigation

In accordance with clause 14B of the Code, an investigation into a complaint must be conducted by an external person, engaged under a contract for service, with prior Council endorsement.

A person appointed as an Approved Investigator must be suitably qualified and experienced to perform the function to review and consider the complaint of a breach made under the Code.

A person appointed as an Approved Investigator of a complaint must be impartial and have no close association with any member of Council or any employee of the Shire.

All investigations must be conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest. Any conflict of interest will deem the external person ineligible to be appointed.

Powers of investigation

The person or persons appointed under clause 11(3) of the Code may be assisted by any employee of the Shire, in relation to the performance of a function, any advice or other assistance (in accordance with clause 14B(5) of the Code), to oversee an investigation process under the Code and in line with this policy and other supporting complaint resolution and investigation internal policies.

Any external person appointed to perform an investigation into a complaint under the Code has the necessary powers to –

- a. inquire with all parties relevant to a complaint to provide any evidence or statements relevant to the matter the subject of the complaint
- b. obtain any information from other parties in relation to policies, procedures and practices including access to relevant records or witness statements.

Evidence

For the purposes of an investigation into a complaint, evidence can take the form of –

- a. oral or written evidence (recollections)
- b. documentary evidence (records)
- c. expert evidence (technical advice)
- d. site inspections.

The person or persons appointed under clause 11(3) of the Code are to maintain a central investigation file detailing any documentary evidence or records obtained, and that file is to be maintained in the Shire's record-keeping system with restricted access to ensure confidentiality.

If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence.

Appropriate standard of proof

In any investigation into a complaint, all allegations must be proved 'on the balance of probabilities' that is it must be more probable than not that the allegations the subject of the complaint are made out.

Procedural fairness

All investigations of a complaint are to observe due process and procedural fairness.

Procedural fairness for an investigation shall include –

- a. ability for a person or persons the subject of a complaint an opportunity to respond
- b. all parties given a reasonable opportunity to put their case, whether in writing, in person, or otherwise
- c. the careful consideration of all evidence obtained during the course of the investigation
- d. reasonable inquiries or an investigation being made before the making of a decision
- e. taking into account all relevant factors and not irrelevant factors
- f. ensuring any conflicts of interest are managed appropriately
- g. acting fairly and without bias
- h. conducting the investigation without undue delay.

Investigation report

At the conclusion of the investigation a confidential report is to be prepared detailing –

- a. an executive summary of the investigation.
- b. details of the complaint and the names of the complainant and the person the subject of the complaint.
- c. action taken to investigate the matter.
- d. information revealed and relevant facts and evidence established, including statements from the complainant, respondent and any witness(es).
- e. any mitigating circumstances revealed.

- f. summary or conclusions as to whether the complaint on the alleged breach is substantiated on the evidence obtained in relation to the complaint.
- g. any other general issues raised by the investigation that might also be addressed, including any recommendations for systems improvements or the introduction or alternation of policies or protocols.
- h. a recommendation on the question whether or not a breach has been determined to have occurred.
- i. a recommendation as to whether any, and if so what, further action is required as detailed in any associated action plan.
- j. if further action is required, a recommendation must be provided to Council on an action plan to address the behaviour of the person to whom the complaint relates.
- k. a declaration that the Approved Investigator has no close association with any member of Council or any employee of the Shire.

Findings

A finding of Council 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.

Based on the Approved Investigator's report, the evidence and any further comments or submissions by the parties, Council may decide to –

- a. dismiss the complaint in accordance with clause 13 of the Code; or
- b. find that the alleged breach has occurred; or
- c. find that the alleged breach has not occurred and take no further action.

If the decision is that a breach has occurred, Council may decide –

- a. that no further action is required; or
- b. that further action is required and consider the adoption of an action plan as recommended by the Approved Investigator with or without modifications.

In accordance with section 5.65 of the Act, the person to whom the complaint relates must disclose the nature of the interest, and as such, in accordance with section 5.67 of the Act must not participate in, or be present during, any discussion or decision making procedure relating to the matter.

In accordance with section 5.65 of the Act, if the complainant is a council member, they must disclose the nature of the interest, and as such, in accordance with section 5.67 of the Act must not participate in, or be present during, any discussion or decision making procedure relating to the matter.

If the complainant is an employee who is required to attend the Council meeting as part of their normal work responsibilities, they cannot attend the part of the Council meeting where the report is being considered.

Management of actions

All findings made in contravention of the Code, and any associated actions, will be monitored and managed by persons authorised under clause 11(3) of the Code.

Reporting

The Shire will maintain a register of substantiated complaints lodged with those persons authorised to receive complaints and withdrawals, or referred to the Shire by the Local Government Inspector, and dealt with under the Code. The register will be available on the Shire’s website for public inspection.

The number of substantiated complaints received during a financial year, and a reference to the register on the Shire’s website are to be reported annually in the Shire’s Annual Report.

Confidentiality of complaints

Under section 8A.36 of the Act, individuals involved in a complaint process must not disclose or use any information about the existence or details of a complaint unless authorised.

This includes –

- complainants.
- the person who is the subject of a complaint.
- anyone dealing with a complaint.
- a person who, as a result of necessary process, becomes aware of any relevant details of a complaint.

Exceptions apply where disclosure is –

- required by law.
- necessary for legal advice or proceedings.
- directed by the Local Government Inspector in the public interest.
- related to a sanction or outcome already made public.
- statistical or anonymised information that cannot identify individuals.

These provisions are designed to protect the integrity of investigations and the privacy of all parties involved. Complainants are expected to maintain confidentiality until the complaint is dealt with.

.....End.....

Document Information

Responsible Position	Director Corporate & Community Services
Risk Rating	Medium

Referencing Documents

- *Local Government Act 1995*
- *Local Government (Model Code of Conduct) Regulations 2021*

- *Shire of Esperance Code of Conduct for Council Members, Committee Members and Candidates*

Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
May 2026	1	D26/14101	New policy	O0526-101	May 2028

Code of Conduct Behavioural Complaint

How to make a complaint about an alleged breach of the Shire of Esperance's Code of Conduct for Council Members, Committee Members and Candidates.

Behavioural Complaint

Please read the Shire of Esperance's Complaint Resolution and Investigation Policy on our website www.esperance.wa.gov.au before submitting a complaint. This Policy details –

- How the Shire of Esperance will process and determine a Behavioural Complaint; and
- How confidentiality of the complaint will be handled.

To make a valid *Behavioural Complaint* –

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

Rules of Conduct complaint

A *Conduct Complaint* refers to a breach of the Rules of Conduct outlined in *Division 4* of the Shire of Esperance'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 Inspector, administered through the Department of Local Government. Further information about Rules of Conduct Complaints may be obtained from –

- Department of Local Government: (08) 6552 7300 or <https://www.dlgsc.wa.gov.au/local-government> or
- The Shire of Esperance's Complaints Officer: (08) 9071 0621 or complaints.officer@esperance.wa.gov.au

Need Advice?

If you require advice in making a Behavioural Complaint, please contact the Shire of Esperance's Complaints Officer.

Shire of Esperance Code of Conduct for Council Members, Committee Members and Candidates

Reviewed: June 2026

Code of Conduct Behavioural Complaint

FORM 0122

Complainant Details

Full Name	<input type="text"/>
Contact Number	<input type="text"/>
Residential Address	<input type="text"/>
Postal Address	<input type="text"/>
Email	<input type="text"/>

Complaint Details

Name (person in breach)	<input type="text"/>
Date Breach Occurred	<input type="text"/>
Location of Breach	<input type="text"/>

Position that the person was fulfilling at the time of the breach

- Council Member Committee Member Candidate for Election

Which of the behaviours prescribed in Division 3 of the Shire of Esperance's Code of Conduct do you allege this person has breached?

Clause 8 Personal Integrity

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
- (b) must only publish material that is factually correct

A Council member or committee member –

- (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
- (b) must comply with all policies, procedures and resolutions of the local government.

Clause 9 Relationship with Others

A Council member, committee member or candidate –

- (a) must not bully or harass another person in any way; and
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and
- (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
- (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.

Clause 10 council or Committee Meetings

A Council member, committee member or candidate –

- (a) must not act in an abusive or threatening manner towards another person; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and
- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirement of a local law of the local government relating to the procedures and conduct of council or committee meetings; and
- (e) must immediately comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

State the full details of the alleged breach

List any additional information *(Please ensure all information relevant to the alleged breach has been attached. This information will be the basis on which the complaint is considered.)*

Have you made any efforts to resolve the complaint with the respondent? (you MUST complete this section)

Yes No

If yes, please describe the efforts you have made

If no, please include a brief statement explaining why you have not made any efforts to resolve the issue with the respondent.

The Shire of Esperance has a policy that the Complainant and the Respondent be offered the opportunity to participate in an Alternative Dispute Resolution process, that if agreed to by both parties, will be undertaken before the complaint is dealt with.

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.

Please contact the Complaints Officer if you would like more information.

Would you agree to participate in an Alternative Dispute Resolution process?

Yes No

Desired outcome of the complaint *Please explain what you would like to happen as a result of lodging this complaint, including the opportunity to participate in Alternative Dispute Resolution).*

Signature Complainant

Date

Please submit the completed Behavioural Complaint Form to the Shire of Esperance's Complaints Officer:

Mail – PO Box 507, Esperance WA 6450

In Person – 77 Windich Street, Esperance WA 6450

Email – shire@esperance.wa.gov.au

Complaint Details

Entered into CM

Date Received

Received By

Signature Complaints Officer

Date

**Schedule 2 — Authorised witnesses for statutory
declarations**

[s. 12(6)(a)]

Item	Formal description	Informal description
1.	A member of the academic staff of an institution established under any of the following Acts — <ul style="list-style-type: none">• <i>Curtin University Act 1966</i>;• <i>Edith Cowan University Act 1984</i>;• <i>Murdoch University Act 1973</i>;• <i>University of Notre Dame Australia Act 1989</i>;• <i>University of Western Australia Act 1911</i>;• <i>Vocational Education and Training Act 1996</i>.	Academic (post-secondary institution)
2.	A member of any of the following bodies — <ul style="list-style-type: none">• Association of Taxation and Management Accountants (ACN 002 876 208);• CPA Australia (ACN 008 392 452);• The Institute of Chartered Accountants in Australia (ARBN 084 642 571);• Institute of Public Accountants (ACN 004 130 643);• National Tax & Accountants' Association Limited (ACN 057 551 854).	Accountant
3.	A person who is registered under the <i>Architects Act 2004</i> .	Architect
4.	An Australian Consular Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Consular Officer
5.	An Australian Diplomatic Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.	Australian Diplomatic Officer
6.	A bailiff appointed under the <i>Civil Judgments Enforcement Act 2004</i> .	Bailiff

Item	Formal description	Informal description
7.	A person appointed to be in charge of the head office or any branch office of an authorised deposit-taking institution carrying on business in the State under the <i>Banking Act 1959</i> of the Commonwealth.	Bank manager
8.	A member of Governance Institute of Australia Ltd (ACN 008 615 950).	Chartered secretary, governance adviser or risk manager
9.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the pharmacy profession.	Chemist
10.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the chiropractic profession.	Chiropractor
11.	A person registered as an auditor or a liquidator under the <i>Corporations Act 2001</i> of the Commonwealth.	Company auditor or liquidator
12.	A judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court of the State or the Commonwealth.	Court officer
13.	A member of the Australian Defence Force who is — <ul style="list-style-type: none"> • an officer within the meaning of the <i>Defence Force Discipline Act 1982</i> of the Commonwealth; or • a non-commissioned officer within the meaning of that Act with 5 or more years of continuous service; or • a warrant officer within the meaning of that Act. 	Defence force officer
14.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law.	Dentist

Item	Formal description	Informal description
15.	A person who is registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the medical profession.	Doctor
15A.	A person appointed under the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i> section 4(1)(b)(i) or (2)(b)(i)	Electorate officer of a member of State Parliament
16.	A member of the Institution of Engineers, Australia, other than at the grade of student.	Engineer
17.	The secretary of an organisation of employees or employers that is registered under one of the following Acts — <ul style="list-style-type: none"> • <i>Industrial Relations Act 1979</i>; • <i>Workplace Relations Act 1996</i> of the Commonwealth. 	Industrial organisation secretary
18.	A member of the National Insurance Brokers Association of Australia (ACN 006 093 849).	Insurance broker
19.	A Justice of the Peace.	Justice of the Peace
19A.	A person who is a member of the Authority's staff within the meaning given to that term by the <i>Land Information Authority Act 2006</i> section 3.	Landgate officer
20.	A lawyer.	Lawyer
21.	The chief executive officer or deputy chief executive officer of a local government.	Local government CEO or deputy CEO
22.	A member of the council of a local government within the meaning of the <i>Local Government Act 1995</i> .	Local government councillor
23.	A member of the Australasian Institute of Chartered Loss Adjusters (ACN 074 804 167).	Loss adjuster
24.	An authorised celebrant within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth.	Marriage celebrant
25.	A member of either House of Parliament of the State or of the Commonwealth.	Member of Parliament
25A.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the midwifery profession.	Midwife

Item	Formal description	Informal description
26.	A minister of religion registered under Part IV Division 1 of the <i>Marriage Act 1961</i> of the Commonwealth.	Minister of religion
27.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the nursing profession.	Nurse
28.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the optometry profession.	Optometrist
28A.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the paramedicine profession.	Paramedic
29.	A registered patent attorney under the <i>Patents Act 1990</i> of the Commonwealth.	Patent attorney
30.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the physiotherapy profession.	Physiotherapist
31.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the podiatry profession.	Podiatrist
32.	A police officer.	Police officer
33.	The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <i>Australian Postal Corporation Act 1989</i> of the Commonwealth.	Post office manager
34.	A person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the psychology profession.	Psychologist
35.	A public notary within the meaning of the <i>Public Notaries Act 1979</i> .	Public notary
36.	An officer of the Commonwealth public service.	Public servant (Commonwealth)
37.	A person who is employed under the <i>Public Sector Management Act 1994</i> Part 3.	Public servant (State)

Item	Formal description	Informal description
38.	The holder of a licence under the <i>Real Estate and Business Agents Act 1978</i> .	Real estate agent
39.	The holder of a licence under the <i>Settlement Agents Act 1981</i> .	Settlement agent
40.	The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.	Sheriff or deputy sheriff
41.	A licensed surveyor within the meaning of the <i>Licensed Surveyors Act 1909</i> .	Surveyor
42.	A person registered under the <i>Teacher Registration Act 2012</i> .	Registered teacher
43.	A member, registrar or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.	Tribunal officer
44.	A veterinarian as defined in the <i>Veterinary Practice Act 2021</i> section 3.	Veterinarian

[Schedule 2 amended: Gazette 9 Jun 2006 p. 2030; 21 Dec 2007 p. 6328; 9 Dec 2011 p. 5235; 17 Apr 2014 p. 1076; amended: No. 21 of 2008 s. 684(5); No. 22 of 2008 Sch. 3 cl. 39; No. 35 of 2010 s. 120; No. 16 of 2012 s. 165; No. 32 of 2016 s. 188; No. 4 of 2018 s. 115; No. 19 of 2021 s. 233(2); No. 9 of 2022 s. 424.]
