

SHIRE OF NUNGARIN

GOVERNANCE

COMPLAINT ABOUT ALLEGED BREACH OF CODE OF CONDUCT

1. Procedure

1.1 Definitions

The Model Code defines key terms to aid understanding and compliance. Where a term is not defined in either the *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations) or the *Local Government Act 1995* (the Act), then the generally accepted meaning of the term applies. Some additional guidance is provided as follows:

Candidate: an individual is considered a candidate when their nomination for election is accepted by a Returning Officer under section 4.49 of the Act. The Model Code applies to the individual from that point. Any alleged breach of the Model Code may only be addressed if and when the individual is elected as a council member.

Council member: references to 'council member' in the Regulations mean an individual who has been elected as a council member under the Act. The requirements of the Regulations also apply to a council member who is a committee member on a council committee.

Committee member: under the Regulations, a 'committee member' includes any council member, local government employee or unelected member of the community who has been engaged by the council to participate in a council committee.

Evidence: references to 'evidence' in the Regulations means the available facts or information indicating whether an allegation is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as other relevant information, to decide whether an alleged breach of the Model Code has occurred.

Local government(s): per the approach in the Act, references to 'local government' in the Regulations mean the body corporate that is the local governing body made up of the council, Chief Executive Officer (CEO) and administrative staff appointed and managed by the CEO.

Valid: means a complaint that has been completed in full and lodged with the complaint officer.

1.2 Procedure

A complaint received about an alleged breach of the Model Code of Conduct or a Code of Conduct adopted pursuant section 5.104 of the Act shall on receipt be recorded in the Shire's record keeping system in a container that has the appropriate level of restricted access.

1. The Complaint Officer is to acknowledge receipt of written valid complaint lodged on the prescribed form within 5 working days.
2. If a complaint is not deemed valid (such as incorrect form, outside of the statutory one-month period from the alleged breach or not specific in nature about the alleged breach which includes the relevant section/subsection of the alleged breach) the complaint officer is to advise the person making the complaint in writing that it cannot be accepted and the reasons are to be outlined.
3. Nothing in clause (2) prevents the complainant relodging a complaint about a specific breach, other than the statutory time frame of one month from the alleged breach being exceeded.
4. Following the receipt of a valid complaint and sending an acknowledgement an in-person interview is to be arranged with the complainant.
5. Concurrently a copy of the complaint lodged shall be provided to the council member, committee member and/or candidate (if elected) that alleged breach relates to.

Note: The complaint officer may choose to engage a suitably qualified and experienced independent external consultant to assist with the interview process and the preparation of any necessary reports to Council to consider an alleged breach, make findings, and determine actions or the dismissal of a complaint.

1.3 Guidance Notes (DLGSCI)

Clause 12(2) of the Regulations require that the person to whom the complaint relates is given a reasonable opportunity to be heard. This should include providing a copy of the complaint to that person in a timely manner and allowing them an opportunity to respond to the allegations in writing. The information provided by that person will assist the local government in forming a view as to whether a breach has occurred.

Making a finding Clause 12(1) requires the council to consider whether the alleged matter which is the subject of a complaint, did occur and make a finding on whether the matter constituted a breach of the Code of Conduct.

The council should use the same approach as the Standards Panel in their deliberations and decision-making; that is, based on the complaint and other evidence received by the council, the council must be satisfied that, on the balance of probabilities, it is more likely than not that a breach occurred.

Information provided by the complainant and information provided by the person to who the complaint relates will assist the council to make a finding.

Action Plans, clause 12(4) provide that if the local council makes a finding that a breach of the Code of Conduct did occur, the council may determine that no further action is required; or that an action plan must be prepared and implemented.

An action plan should be designed to provide the member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives.

The action plan does not need to be complex. The plan should outline: •

- the behaviour(s) of concern;
- the actions to be taken to address the behaviour(s);
- who is responsible for the actions; and
- an agreed timeframe for the actions to be completed.

An action plan should not include measures that are intended to be a punishment, and instead should focus on mechanisms to encourage positive behaviour and prevent negative behaviour from occurring again in future.

The Code requires that in preparing the action plan, consultation must be undertaken with the elected member to whom the plan relates. This is designed to provide the member with the opportunity to be involved in matters such as the timing of meetings or training.

Note: some members may not be willing to engage with the opportunity to participate in the process. The council or a delegated person should monitor the actions and timeframes set out in the action plan. This is important because if the member does not comply with the 10 action/s within the agreed timeframe, then under the Regulations it is considered a contravention of a rule of conduct.

1.4 Dismissal of complaints

While local governments are required to consider all complaints, they can be dismissed if:

- the behaviour occurred at a council or committee meeting and the behaviour was dealt with at that meeting (clause 13), or
- the complaint is withdrawn (clause 14).

Clause 13 allows a complaint to be dismissed if the behaviour occurred at a council or committee meeting, and that behaviour was addressed at the time. This could have been by the presiding member, or remedial action was taken in accordance with the local government's standing orders or local law.

1.5 Where agreement cannot be reached

Circumstances may arise when a local council cannot agree on the resolution of a complaint or whether the complaint can be dismissed under clause 13. In these situations, the local government may decide to engage an independent person to review the complaint and make recommendations on appropriate actions.

1.6 Withdrawal of a complaint

Clause 14 provides the option for a complaint to be withdrawn before it is considered by the council. Local governments may elect to include in their complaints policy the option for mediation between the complainant and the member. Mediation may resolve any specific issues before the council is required to make a finding and may lead to the complainant withdrawing the complaint.

- Clause 14 requires a withdrawal to be made in writing and provided to the person(s) authorised to receive complaints.

