



POLICY

TITLE:	COMPLAINTS AGAINST ELECTED MEMBERS AND THE CHIEF EXECUTIVE OFFICER	CODE:	EM.01
PURPOSE or OBJECTIVE:	To guide the management of complaints against an elected member or the Chief Executive Officer (CEO) in matters relating to breaches of the City's <i>Code of Conduct</i> and <i>Standing Orders Local Law</i> .		
REFERENCE DOCUMENTS:	<i>Local Government Act 1995</i> <i>City of Canning Code of Conduct</i> <i>City of Canning Standing Orders Local Law</i> <i>Corruption and Crime Commission Act 2003</i> <i>Vexatious Proceedings Restriction Act 2002</i> <i>Local Government (Rules of Conduct) Regulations 2007</i>		

POLICY STATEMENT

The City of Canning is committed to observing the highest standards of ethics and integrity in engagements between the elected members, the City's employees and all persons with whom the City has official dealings. Engagements will be frank and honest and the City at all times will act, and be seen to act, in good faith and in an impartial, accountable and proper manner.

This policy sets out the procedure for handling complaints against an elected member or the CEO to ensure that concerns are treated in a fair and prompt manner.

The provisions of this policy outline the minimum procedural requirements for investigating a complaint. Any additional provisions must be consistent with this policy.

1. Scope

- (1) This policy is limited to complaints about breaches of the City's *Code of Conduct* and the *Standing Orders Local Law* by elected members and the CEO. It does not deal with complaints about services delivered by the City or complaints against any other employee of the City.
- (2) The CEO has a responsibility to notify the CCC of suspected misconduct under Section 28 of the *Corruption and Crime Commission Act 2003*. This policy does not remove or override that obligation.

2. Definitions

<i>Assessment Officer</i>	a person appointed or authorised by the CEO (or the Mayor in the case of a complaint against the CEO) to provide investigative services under the provisions of this policy
CCC	the Corruption and Crime Commission
<i>Code of Conduct</i>	the City of Canning <i>Code of Conduct</i>
<i>complaint</i>	an allegation about a breach, or breaches, of the City's <i>Code of Conduct</i> and/or <i>Standing Orders Local Law</i> by an elected member, or members, or the CEO
<i>Council</i>	the body of elected members convened in an ordinary or special council meeting
DLGC	the Department of Local Government and Communities
<i>elected member</i>	means a person elected and holding valid office under the <i>Local Government Act 1995</i> as a member of the council of the City of Canning
<i>Standing Orders</i>	The City of Canning <i>Standing Orders Local Law</i>

3. Who Can Make a Complaint and Who will Investigate

- (1) Any person may make a complaint alleging a breach of the *Code of Conduct* or the *Standing Orders*.
- (2) The process outlined in this policy does not prevent a complainant from making a complaint directly to the Local Government Standards Panel or DLGC. However, a complainant is encouraged to resort to the provisions of this policy before escalating a complaint to the Standards Panel or the DLGC.
- (3) Complaints about the conduct of elected members must be submitted in writing to the CEO.
- (4) Complaints concerning the CEO must be addressed to the Mayor.
- (5) A complaint under this policy will be investigated by the Assessment Officer unless it appears, in the opinion of the CEO or the Mayor, that it is trivial, frivolous or vexatious.
- (6) An Assessment Officer who has a close personal relationship with either the complainant or the person the subject of the complaint must disclose this to the CEO and is disqualified from participating in the investigation.
- (7) The Assessment Officer may only commence and follow through with an investigation referred by the CEO, Mayor or another elected member.

4. Responsibilities of the CEO, Mayor and Council

- (1) Within one week of receiving a complaint, or such other time directed by the Council, the CEO must refer it to the Assessment Officer.
- (2) If the Assessment Officer declares a conflict outlined in clause 3(6) the CEO, or the Mayor, must appoint an alternative Assessment Officer.
- (3) The CEO is authorised to determine whether a complaint falls within the scope of this policy and refer it to the Assessment Officer. This does not prevent the Mayor or Council from referring a complaint to the Assessment Officer.
- (4) An anonymous complaint may be referred to the Assessment Officer if there is sufficient evidence and/or specific detail of the alleged behaviour or action that warrants an investigation.
- (5) Reports from the Assessment Officer will be considered by Council in open session unless the Council resolves otherwise and the decision to consider the matter behind closed doors complies with the provisions of section 5.23(2) of the *Local Government Act 1995*.
- (6) In deciding the appropriateness of any sanctions recommended by the Assessment Officer the Council must not conduct a re-hearing of evidence already considered by the assessment Officer. In deliberating on alternative sanctions Council must consider the options listed in clause 8(2).
- (7) An Assessment Officer recommendation and Council's decision on the recommendation must be included in the minutes of the meeting. Should Council not adopt a recommendation it must provide a reason, or reasons, for doing so and submit these to the DLG for review before adopting an alternative decision.
- (8) An elected member who is the subject of a complaint must disclose an impartiality interest when the matter comes before Council.
- (9) The CEO must report monthly to Council on complaints covered by this policy. The report will include, as a minimum, a summary of the -
 - (a) number of complaints received, and
 - (b) nature of the issues raised by complainants, and
 - (c) outcomes of complaints, and
 - (d) estimated cost of dealing with complaints

5. Assessment Officer - Jurisdiction

- (1) The complaint handling function of the Assessment Officer is limited to consideration of, making enquiries into, and reporting on, complaints alleging breaches of the *Code of Conduct* or *Standing Orders Local Law*, made about elected members or the CEO. It does not include other employees of the City of Canning.
- (2) An allegation leading to a complaint that the Assessment Officer himself or herself has breached the *Code of Conduct* during the course of an investigation should be referred to the DLGC for appropriate action.
- (3) Complaints regarding non-disclosure of interests as defined by 5.60 of the *Local Government Act 1995* cannot be dealt with by the Assessment Officer but reported direct to the DLGC and CCC.
- (4) The Assessment Officer cannot deal with complaints that occurred prior to the date of appointment as Assessment Officer.

6. Assessment Officer - Duties

- (1) The primary duty of the Assessment Officer is to establish the facts of an allegation, make findings of fact and make a recommendation to Council on any action considered appropriate to the circumstances

- (2) The Assessment Officer must action the investigation of a complaint without delay.
- (3) The Assessment Officer will, in writing, inform a person who is the subject of a complaint about the process being undertaken to deal with the matter.
- (4) The Assessment Officer must ensure proper records of investigations are kept.
- (5) The Assessment Officer will report directly to council including -
 - (a) attending meetings of the Council in an advisory capacity; and
 - (b) when requested, provide advice on complaints and investigative processes; and
 - (c) where, at the conclusion of an investigation he or she makes a finding that the conduct constituted a breach, make a recommendation on the sanction, or other action, that should follow.
- (6) Any report concluding that a breach has occurred should be in the form of a summary of the enquiries undertaken and include sufficient information for the Council to be satisfied the elected member or CEO has breached the *Code of Conduct* or *Standing Orders Local Law*.
As a minimum the report will contain:
 - (a) The nature of the complaint and the standard of conduct that is alleged to have been breached.
 - (b) The process undertaken by the Assessment Officer in assessing and enquiring into the complaint.
 - (c) Reference to any submission(s) received.
 - (d) The facts of the matter.
 - (e) Any findings and the reasons for those findings.
 - (f) Any recommendations to Council.

7. Assessment Criteria and Actions

- (1) The Assessment Officer in assessing a complaint will have regard to the following grounds -
 - (a) whether there is any prima facie evidence of a breach of the *Code of Conduct* or *Standing Orders Local Law* by an elected member or the CEO; and
 - (b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties; and
 - (c) whether the conduct the subject of the complaint could reasonably constitute a breach of the *Code of Conduct* or *Standing Orders Local Law*; and
 - (d) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the DLGC, the Corruption and Crime Commission or the WA Police; and
 - (e) whether there is an alternative and satisfactory means of redress; and
 - (f) how much time has elapsed since the events, the subject of the complaint, took place. (Any incidence that occurred prior to the appointment of the Assessment Officer may not be considered); and
 - (g) how serious the complaint is and the significance it has for Council; and
 - (h) whether the complaint is one of a series indicating a pattern of conduct.
- (2) Before commencing an enquiry into a complaint the Assessment Officer must initially decide whether to -
 - (a) resolve the complaint without investigation by making a recommendation to the Council for a resolution such as, but not limited to, mediation, informal agreement or negotiated settlement and give the complainant advice on the resolution in writing; or
 - (b) conduct an investigation and arrive at a finding on whether or not a breach has occurred; or
 - (c) not commence an enquiry - or discontinue making an enquiry - where it subsequently becomes evident that the matter should be referred to another body or person; and refer the matter to that body or person as well as advising the Council and complainant in writing. Referral to another body or person will constitute finalisation of a matter and no further action is required by the City; or
 - (d) dismiss a complaint because it is, in the opinion of the Assessment Officer, trivial, frivolous and/or vexatious. The definition of '*vexatious proceedings*' in section 3 of the *Vexatious Proceedings Restriction Act 2002* is to be used as a guide to determine whether a complaint is vexatious. The Assessment Officer must not dismiss a complaint if he or she is uncertain or has any doubt whether the complaint is trivial, frivolous or vexatious.
- (3) In determining what action to recommend the Assessment Officer may decide either to –
 - (a) take no further action and give the complainant the reason/s in writing, and those reasons may include, but are not limited to, the complaint being outside the jurisdiction of the Assessment Officer, or
 - (b) resolve the complaint by use of alternative and appropriate strategies including, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - (c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
 - (d) deal with the matter by conducting an investigation and reporting the outcome to Council.

- (4) Any report concluding that a breach has occurred should be in the form of a summary of the enquiries undertaken and include sufficient information for the Council to be satisfied the elected member or CEO has breached the *Code of Conduct* or *Standing Orders Local Law*. As a minimum the report should contain:
 - (g) the nature of the complaint and the standard of conduct that is alleged to have been breached.
 - (h) the process undertaken by the Assessment Officer in assessing and enquiring into the complaint.
 - (i) reference to any submission(s) received
 - (j) the facts of the matter.
 - (k) any findings and the reasons for those findings.
 - (l) any recommendations to Council.
- (5) In conducting enquiries, the Assessment Officer must follow the rules of procedural fairness and will -
 - (a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation; and
 - (b) provide the person the subject of the complaint with an opportunity to place before the Assessment Officer or other person undertaking the enquiry any information the person considers relevant to the enquiry; and
 - (c) act fairly and without prejudice or bias; and
 - (d) ensure that no person decides a case in which they have a conflict of interest; and
 - (e) conduct the enquiries without undue delay.
- (6) Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Assessment Officer should proceed to finalise the matter taking into consideration all available information that has been received.

8. Assessment Officer – Recommendations for Breaches

- (1) Where in the opinion of the Assessment Officer a breach has occurred the Assessment Officer may recommend any of the following actions against the person who committed the breach -
 - (a) dismiss the complaint and recommending no further action;
 - (b) censure the elected member for misbehaviour;
 - (c) require the elected member or CEO to apologise to any person adversely affected by the breach;
 - (d) require training;
 - (e) require mediation;
 - (f) counsel the elected member or CEO;
 - (g) revise any of council's policies, procedures and/or the Code of Conduct.
- (2) Before making a recommendation under clause 8(1), the Assessment Officer will have regard to the following:
 - (a) the seriousness of the breach;
 - (b) whether the breach can be easily remedied or rectified;
 - (c) whether the subject person has remedied or rectified their conduct;
 - (d) whether the subject person has expressed contrition;
 - (e) whether the breach is technical or trivial only;
 - (f) whether the breach represents repeated conduct;
 - (g) the degree of reckless intention or negligence of the subject person;
 - (h) the extent to which the breach has affected other parties or the council as a whole;
 - (i) the harm or potential harm to the reputation of local government and of the council arising from the conduct;
 - (j) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;
 - (k) whether an educative approach rather than a punitive response would be more appropriate;
 - (l) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action;
 - (m) what action or remedy would be in the public interest.
- (3) Where the Assessment Officer considers it appropriate he/she may make a recommendation to Council, without making a finding on whether or not the breach alleged in the complaint occurred.
- (4) Where the Assessment Officer makes findings, the findings and the reasons for those findings will be submitted in writing to the Council, the complainant and the person who is the subject of the complaint.

9. Local Government Standards Panel

1. The Local Government Standards Panel has jurisdiction over elected members only. Allegations concerning breaches of this Code by non-elected members of committees and the CEO cannot be referred to the Local Government Standards Panel.
2. If the Local Government receives a complaint intended to be made to the Standards Panel, the Local Government should ensure it is referred to the Standards Panel and not dealt with by the Assessment Officer or Council. However, if the complainant is agreeable and has not yet formally submitted the complaint to the Local Government Complaints Officer (as defined by s. 5.120 of the *Local Government Act 1995*), it may be dealt with by referring it to the Assessment Officer for investigation and report to Council.
3. Matters that can be dealt with by the Standards Panel are minor breaches under Part 2 of the *Local Government (Rules of Conduct) Regulations 2007*, and these include:
 - Contravention of certain local laws (Regulation 4)
 - Improper use of Information (Regulation 6)
 - Securing personal advantage or disadvantaging others (Regulation 7)
 - Misuse of local government resources (Regulation 8)
 - Prohibition against involvement in administration (Regulation 9)
 - Directions given to or attempts to influence a local government employee (Regulation 10)
 - Improper statements or use of improper expression about a local government employee (Regulation 10)
 - Non-disclosure of interest adverse to impartiality (Regulation 11)
 - Acceptance of a prohibited gift (Regulation 12)
 - Failure to notify CEO of a notifiable gift within 10 days of acceptance of the gift (Regulation 12)

10. Corruption and Crime Commission (CCC)

- (1) The Assessment Officer must not investigate, or be requested to investigate, cases or allegations of serious misconduct. The Assessment Officer will deal only with matters that involve minor behavioural breaches identified in the *Code of Conduct*.
- (2) The CCC is to be informed of allegations concerning minor breaches of the *Code* and be advised that –
 - (a) the matter is being dealt with by the Assessment Officer; and
 - (b) the outcome will be provided for the CCC's review in accordance with the *Corruption and Crime Commission Act 2003*.

GOVERNANCE REFERENCES

Statutory Compliance	Local Government Act 1995 - s.5.23, 5.60, 5.120 Local Government (Rules of Conduct) Regulations 2007 – Part 2 (r.4, r.6-12) Corruption and Crime Commission Act 2003 – s.28 Vexatious Proceedings Restriction Act 2002 – s.3
Process Links	General Criteria For Determining Conduct That Is In Breach Of An Acceptable Standard Of Behaviour (Annexure 1)

POLICY ADMINISTRATION

Directorate	Officer Title	Authority to Approve
Corporate Services	Director Corporate Services	Council
Version	Decision Reference	Synopsis
1	OCM 17/6/2014 (CR-036-14)	Original policy adopted
2	March 2015	Policy reformatted in new template

ANNEXURE 1

General Criteria For Determining Conduct That Is In Breach Of An Acceptable Standard Of Behaviour

For the purposes for determining whether there has been a breach of an acceptable standard of behaviour the Assessment Officer may rely on a number of tests.

These are:

- (a) the test of 'impropriety' is objective, that is, it does not depend on consciousness of impropriety on the part of the person under consideration;
- (b) impropriety in a particular case is determined by reference to the particular circumstances in which it is said to have occurred;
- (c) the issue is whether the conduct impugned is inconsistent with the proper discharge of the duties of the office in question:
- (d) impropriety consists of a breach of the standards of conduct that would be expected of a person in the position of the person under consideration, by reasonable persons with know/edge of the duties powers and authority of the position in the particular circumstance:
- (e) in most cases of improper conduct the conduct will be accompanied by an awareness that it is not right, or less than proper, or not the appropriate action in the circumstances, or otherwise open to criticism:
- (f) where conduct is improper by reason of the purpose for which it is undertaken, the pursuit of that purpose will ordinarily, but not necessarily, be accompanied by a consciousness of its impropriety:
- (g) however, a course of conduct may be undertaken in good faith for what are believed to be desirable ends but, on objective analysis, be found to have been so misconceived as to render the conduct improper; and
- h) another example of improper conduct where there may be no awareness of impropriety arises is when a person thoughtlessly places himself or herself in a conflict of interest situation by failing to have due regard for the circumstances.