



City of
**Kalgoorlie
Boulder**

**ELECTED MEMBER HANDBOOK
FOR A RESPECTFUL WORKPLACE**

**INCLUDING POLICIES AND PROCEDURES FOR HANDLING
GRIEVANCES, CODE OF CONDUCT BREACHES AND OTHER
ILLEGAL, UNETHICAL OR CORRUPT CONDUCT**

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3 INTRODUCTION

As a local government, the City is committed to ensuring all Elected Members conduct themselves professionally, ethically and in accordance with the law. The City is also committed to providing a working environment where every Elected Member and the CEO is treated equally, fairly and without prejudice.

This Handbook sets out:

1. **Respectful Workplace Policy** including the City's commitment to a workplace free of Discrimination, Bullying, Sexual Harassment and Victimisation;
2. **Complaint policy and procedure** for reporting a Grievance committed by an Elected Member or the CEO;
3. **Investigation processes** including the processes that will be followed by the City to investigate a Grievance, Code Breach or Misconduct that is reported to it, where an internal investigation is appropriate;
4. **Code of Conduct Breach policy and procedure** for any complaints about Code Breach by an Elected Member, Committee Member and/or Candidate of their adopted Code of Conduct;
5. **Minor Breach Policy and Procedure** for any complaints about an Elected Member breaching a provision of the *Local Government (Rules of Conduct) Regulations 2007*, which must be dealt with by the Local Government Standards Panel;
6. **Policy for Serious Breach, Misconduct and other illegal conduct** sets out the external mechanisms that must be followed by the City in accordance with the *Local Government Act 1995*, *Public Sector Act 2009* and *Corruption, Crime and Misconduct Act 2003* in respect of Misconduct committed by an Elected Member.

The policies and procedures in this handbook apply to Elected Members and in some instances also to the CEO, Committee Members and/or Candidates.

There are some circumstances where a Grievance will also constitute a Code Breach, Minor Breach, Serious Breach and/or Misconduct, and a Code Breach or Minor Breach may also constitute a Serious Breach or Misconduct. In such circumstances:

1. All relevant policies and procedures will apply, which may result in the City undertaking multiple actions simultaneously; and
2. To the extent of any inconsistency between any policy or procedure, the following order of priority will be applied:
 - a. Policy for handling Serious Breach, Misconduct and other illegal conduct;
 - b. Minor Breach Policy; and
 - c. Policy and procedure for handling Code Breach.

3. Nothing in this Handbook overrides any mandatory reporting requirements imposed on the City, and each policy and procedure in this handbook is subject to the requirements of any authority, legislation or regulation which may be relevant to a Grievance, Code Breach, Minor Breach, Serious Breach or Misconduct.

4 STATUTORY ENVIRONMENT

- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986
- Equal Opportunity Act 1984 (WA)
- Work Health & Safety Act 2020 (WA)
- Work Health & Safety (General) Regulations 2020 (WA)
- Privacy Act 1988 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Local Government Act 1995 (WA)
- Local Government (Administration) Regulations 1996 (WA)
- Racial Discrimination Act 1975 (Cth)
- Public Sector Act 2003
- Corruption, Crime and Misconduct Act 2003
- Local Government (Rules of Conduct) Regulations 2007

5 DEFINITIONS

In this handbook, the following definitions apply:

Bullying has the same definition as set out in Worksafe’s Code of Practice on Workplace Behaviour (which defines workplace bullying as repeated unreasonable behaviour by an individual towards a worker which creates a risk to health and safety). Examples of behaviour, whether intentional or unintentional, that may be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include:

- a. abusive, insulting or offensive language or comments;
- b. aggressive and intimidating conduct;
- c. belittling or humiliating comments;
- d. victimisation;
- e. practical jokes or initiation;
- f. unjustified criticism or complaints;
- g. deliberately excluding someone from work-related activities;
- h. withholding information that is vital for effective work performance;
- i. setting unreasonable timelines or constantly changing deadlines;
- j. setting tasks that are unreasonably below or beyond a person’s skill level;

- k. denying access to information, supervision, consultation or resources to the detriment of the worker;
- l. spreading misinformation or malicious rumours,

but does not include fair and reasonable action taken to investigate an allegation against an Elected Member.

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 *Local Government 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 *Local Government Act*.

City means the City of Kalgoorlie-Boulder.

Code Breach means a breach or suspected breach of Division 3 of the City's Code of Conduct for Councillors, Committee Members and Candidates adopted by Council (including where that occurs during attendances at Council, City or community related events).

Committee Member means a Council Member, employee of the City 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.

Complainant means a person who lodges a complaint regarding a Grievance, Breach or Misconduct.

Complaints Officer means a person authorised in writing by Council resolution in accordance with clause 11(3) of the Code to receive Complaints and withdrawals of Complaints, being the CEO.

Conciliation involves an impartial person experienced in mediation assisting the parties to a Grievance to reach an agreement about how it should be resolved.

Council means the council of the City of Kalgoorlie-Boulder, comprising Elected Members.

Department of Department of Local Government, Sport and Cultural Industries.

Discrimination occurs where a person is given less favourable treatment than someone else based on the number of grounds under which it is unlawful to discriminate against a person. It may be direct or indirect:

- a. Direct discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances (*for example, unlawful sex discrimination may arise if a person is refused a position on a Committee because she is a woman*); and

- b. Indirect discrimination occurs when there is a requirement that adversely impacts on a particular person with an attribute covered by anti-discrimination legislation (*for example, sex, race, marital status, etc*).

There may be no intention to discriminate, but the conduct or decision leads to a discriminatory effect if the conditions imposed are not reasonable (*for example, it may be indirect discrimination if the only way to enter a public building is by a set of stairs as people with disabilities who use wheelchairs are unable to enter the building*). The following is a non-exhaustive list of unlawful grounds of discrimination (whether or not a person has that characteristic or whether it is assumed that they have that characteristic or that they may have that characteristic some time in the future):

- a. disability, disease or injury;
- b. age;
- c. family responsibility or status;
- d. race, colour or ethnic origin;
- e. language;
- f. sex including gender identity, sexual orientation and intersex status;
- g. physical or mental disability;
- h. marital status;
- i. political or religious conviction;
- j. pregnancy;
- k. criminal record;
- l. breastfeeding;
- m. gender history;
- n. impairment;
- o. national extraction or social origin; and
- p. trade union activity.

Elected Member means a member of Council, including the Mayor.

Employee means a person employed by the City of Kalgoorlie-Boulder.

Grievance means any type of problem, concern or complaint related to an Elected Member or the CEO, including where the relevant conduct occurs in any circumstances connected with Council (including during attendances at Council, City or community related events) or in the case of the CEO, breach of any provision of the City's Employee Code of Conduct that applies to the CEO. A grievance can be about any act, behaviour, omission, situation or decision impacting on a person that the Complainant thinks is unfair or unjustified including Bullying, Sexual Harassment, Victimisation and/or Discrimination.

Minor Breach means a breach or suspected breach of a rule of conduct contained in the *Local Government (Rules of Conduct) Regulations 2007* or Division 4 of the Code of Conduct for Councillors, Committee Members and Candidates.

Minor Misconduct has the meaning consistent with that given in section 3 of the Corruption, Crime and Misconduct Act 2003, being in the case of the City misconduct of a kind described in paragraph (d) of the definition of “misconduct” that is not conduct engaged in by—

- a. a member of a local government or council of a local government; or
- b. a member of a council of a regional local government;

Misconduct has the meaning given under section 4 of the Corruption, Crime and Misconduct Act 2003, being that misconduct occurs if:

- a. A public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;
- b. A public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or another person, or to cause a detriment to any person;
- c. A public officer while acting or purporting to act in his or her official capacity, commits an offence punishable by two or more years’ imprisonment; or
- d. A public officer engages in conduct that:
 - i. Adversely affects or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
 - ii. Constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
 - iii. Constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer;
 - iv. Involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute:
 - v. a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public sector officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct) (and for the purpose of this definition, “public officer” has the meaning given in section 1 The Criminal Code which includes a member, officer or employee of a local government).

Respondent means a person who is alleged to have committed behaviour the subject of a Grievance complaint, a Code Breach, Minor Breach, Serious Breach or Misconduct.

Serious Misconduct has the meaning given under the Corruption, Crime and Misconduct Act 2003 (being misconduct of the kind referred to in paragraphs (a), (b) and (c) of section 4

of the Corruption, Crime and Misconduct Act 2003 (as set out above under the definition of “Misconduct”).

Serious Breach means a breach of the Local Government Act or any other written law containing an element that they are an Elected Member.

Sexual Harassment means any unwelcome conduct of a sexual nature, including (without limitation):

- a. physical contact (touching, rubbing, patting, embracing, brushing up against, etc.);
- b. gestures of a sexual nature;
- c. leering or staring;
- d. offensive telephone calls, emails, text messages or notes;
- e. sexual suggestive jokes or comments;
- f. sexually explicit posts on social networking sites;
- g. tales of sexual exploits;
- h. repeated requests for a date;
- i. unwelcome comments or questions about a person's sex life, appearance or dress;
and
- j. displaying sexually graphic material (poster, calendars, cartoons, graffiti, messages, emails).

Victimisation is when a person is harassed, treated unfairly or intimidated because they have lodged a complaint about Grievance, Breach or Misconduct, assisted someone else with a complaint about Grievance, Breach or Misconduct or been a witness in a related investigation.

6 RESPECTFUL WORKPLACE POLICY

PURPOSE

The purpose of this policy is to set out the City's commitment to making sure every Elected Member, CEO, Employee and other person, regardless of their background or personal attributes, is treated with respect and dignity. This policy should be read in conjunction with the Code of Conduct for Councillors, Committee Members and Candidates, the Grievance Policy and related procedures set out in this handbook.

SCOPE

This policy applies to all Elected Members and the CEO, and persons having dealings with Elected Members and the CEO including the CEO (in the case of dealings with Elected Members) and Employees.

POLICY STATEMENT

The City is committed to providing a working environment where every Elected Member, Employee and other person is welcomed, safe, supported and treated equally and fairly.

The City acknowledges and celebrates the diversity of backgrounds and experiences in the organisation and does not accept behaviours, language or practices that constitute:

- a. Bullying;
- b. Sexual Harassment;
- c. Victimisation; and/or
- d. Discrimination.

The City takes seriously its legislative obligations under the *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992*, *Age Discrimination Act 2004* and the *Australian Human Rights Commission Act 1986*.

POLICY DETAILS

Discrimination, Bullying, Sexual Harassment and Victimisation are unacceptable at the City and in some circumstances may be unlawful.

The City will:

- a. Take reasonable steps to ensure all Elected Members understand their rights and responsibilities under this policy, the Code of Conduct for Councillors, Committee Members and Candidates and the policies and procedures in this handbook;

- b. Develop and maintain a culture where everyone is treated with dignity, courtesy and respect;
- c. Actively discourage behaviour and actions that do not produce a positive, safe and respectful workplace;
- d. Ensure that Elected Members model appropriate standards of behaviour;
- e. Ensure that there is formal and informal training and education initiatives to ensure all staff understand their rights and responsibilities in relation to this and related policies;
- f. Ensure that recruitment and selection decisions are based on merit and competence at all times;
- g. Ensure that Complainants with Grievances are treated respectfully and with appropriate support with people clear on how and where to make a complaint or report;
- h. Respond to Grievances in accordance with the City's relevant policies and procedures;
- i. Use reasonable endeavours to ensure that Complainants are not Victimised;
- j. Regularly identify and assess risk factors for discrimination, sexual harassment and victimisation, including by seeking direct feedback from staff;
- k. Ensure outcomes and strategies are regularly reviewed and evaluated for continuous improvement; and
- l. Ensure confidentiality and privacy are protected.

Equal Opportunity Employer

The City is an equal opportunity employer and will provide equality in employment for all people employed or seeking employment by providing the same opportunities for hiring, advancement and benefits to everyone, without Discrimination.

Every person will be given a fair and equitable chance to compete for appointment, promotion or transfer, and to pursue their career as effectively as others. Employment decisions relating to appointment, promotion and career development will be determined according to individual merit and competence.

The same principles apply in relation to the selection of members to Council Committees, Working Groups or other groups.

7 ELECTED MEMBER AND CEO GRIEVANCE POLICY

PURPOSE

This policy sets out the expectations of Elected Members and the process undertaken by the City to ensure that Grievances against Elected Members and the CEO are dealt with fairly, objectively and in an effective and timely manner by adopting processes which reflect the principals of participation, co-responsibility and subsidiarity. This Grievance Policy has been established to provide a transparent process for Council, Elected Members, the CEO, the City and the community to follow to resolve Grievances in accordance with the law.

SCOPE

This policy applies to all Elected Members, the CEO, Complainants and persons tasked with investigation of Grievances.

POLICY STATEMENT

The City is committed to providing a working environment where every person is treated equally, fairly and without Discrimination, Bullying, Sexual Harassment and Victimisation.

This policy has been established to provide a transparent process for the City to follow to resolve Grievances against Elected Members and/or the CEO in accordance with the law. This policy will ensure the City:

- a. Provides Complainants and Respondents with their legal rights and responsibilities;
- b. Encourages people to come forward with Grievances about Elected Members and the CEO;
- c. Deals with Grievances in a supportive way, without Victimisation or intimidation of any person connected with the Grievance;
- d. Encourages the resolution of grievances promptly and as close as possible to the source of the Grievance;
- e. Focuses on preventing and resolving Grievances;
- f. Provides a Grievance resolution process which complies with the law, including by establishing a process which provides for:
 - i. Mental and physical health and well-being of Complainants and Respondents;
 - ii. Privacy and confidentiality;
 - iii. Fairness and impartiality;
 - iv. Freedom from Victimisation;
 - v. Timeliness;
 - vi. Ease of use and trustworthiness; and
 - vii. Seriousness and sensitivity.

POLICY DETAILS

This policy and the Grievance Handling Procedure is based on the following principles:

1. *Compliance with Industrial Relations Law*

Industrial Relations Act 1979, Equal Opportunity Act 1984, Work Health & Safety Act 2020, Local Government Industry Award 2020 and Privacy Act 1988 demand specific due process for dealing with a Grievance.

2. *Privacy and confidentiality*

Privacy and confidentiality must be strictly observed at all times during the Grievance process. Information relating to the Grievance must only be passed on when in accordance with the *Privacy Act 1988* and where necessary to fairly and effectively deal with the Grievance.

Requirements of privacy and confidentiality apply to everyone involved in each Grievance, including the parties involved, witnesses, support people and the employees handling the Grievance. A breach of privacy or confidentiality will result in disciplinary action. All records relating to the Grievance will be kept confidentially, in accordance with the City's record keeping requirements.

3. *Fairness and impartiality*

All Grievances will be handled fairly and impartially. This means that:

- a. A lawful investigation, in accord with the Investigation Process;
- b. The Respondent is entitled to full details about the alleged Grievance, including the time, date and specifics of the alleged offence unless the Complainant specifically requests that their identity remain confidential (in which case the identity of the Complainant will not be provided to the Respondent);
- c. The Respondent must be given the lawful right of response to the Grievance;
- d. All parties to a Grievance must have the lawful right of response to allegations and statements made by the other parties and by witnesses;
- e. If anyone involved in handling a Grievance has a bias or conflict of interest that may affect their ability to be fair and impartial, they must declare this to the parties and to the investigator handling the Grievance. One or both of the parties may also perceive a bias or conflict of interest even if the investigator handling the Grievance does not. In these cases, the Grievance will be handled by another investigator.

4. *Freedom from Victimisation*

Council will take all reasonable steps to prevent the Victimisation of anyone connected with a Grievance. Victimisation constitutes a breach of this policy and will result in disciplinary action.

5. *Timeliness*

Council will take all reasonable steps to ensure that Grievances are handled as quickly as possible whilst following due process. This will ensure the best outcome for all parties involved.

6. *Ease of use and trustworthiness*

This policy as well as the Complaint Handling Procedure and Investigation Procedure will be accessible to all Complainants and Respondents and implemented appropriately. All reasonable steps will be taken to ensure that the contents of this handbook are understood by all Elected Members and Employees.

7. *Seriousness and sensitivity*

All Grievances will be taken seriously and handled with sensitivity, taking into account the individual background and values of each party and any differences between them.

8. *Internal and external support.*

Both parties to a Grievance have the right to have a support person of their choice at meetings relating to the Grievance. The parties to the Grievance can contact an external agency for information, advice or help at any time during the Grievance process.

9. *Malicious complaints*

Council encourages people to raise all genuine concerns. People should not be put off from raising concerns because, for example, they are afraid of punitive action by the Respondent, Council or the City, or are concerned their claims won't be substantiated.

However, making allegations that are not true, or making a complaint solely to cause trouble for others may be considered to be Serious Misconduct. Employees making malicious and vexatious complaints will be subject to disciplinary action and Elected Members will be referred to external authorities. If it is alleged during the Grievance process that the Grievance is malicious or vexatious, this will be investigated at the same time as the original Grievance.

8 GRIEVANCE HANDLING PROCEDURE

8.1 EMPLOYEE LODGING GRIEVANCE AGAINST CEO

Step 1: Attempt to resolve

In the first instance, it is preferable that the Complainant approach the CEO directly. The Complainant should identify the conduct, explain the impact of the conduct and request that it stops.

Step 2: Lodge formal complaint

If the Complainant is not comfortable to approach the CEO directly, or an attempt to follow Step 1 has not resolved the matter, the Complainant must lodge the Grievance directly with Council, in writing addressed to the Mayor.

The Complainant also has the option of lodging a complaint the Grievance directly with a relevant authority able to receive the complaint (for example, the Department, Local Government Standards Panel, Crime and Corruption Commission, Public Sector Commission, Work Safe, Industrial Relations Commission) however a Complainant is encouraged to exhaust the provisions of this Grievance Policy and related procedures before doing so.

The Complainant may withdraw their complaint at any time.

Step 3: Mayor to advise Council

Immediately (within 24 hours) upon a lodgment of a Grievance with the Mayor, or notification to the Mayor that a Grievance has been lodged with an external authority, the Mayor must advise Council.

Step 4: Investigation

Upon notification to Council of a Grievance being lodged against the CEO, Council must engage an independent consultant to investigate the Grievance in accordance with the Investigation Procedure.

Step 5: Determination of investigation

Each party to a Grievance will be duly advised of the outcome of the investigation in accordance with the Investigation Procedure.

A Complainant is not entitled to be advised of any disciplinary action that may be taken against a Respondent if the relevant complaint is substantiated.

8.2 EMPLOYEE LODGING GRIEVANCE AGAINST COUNCIL OR AN ELECTED MEMBER

Step 1: Attempt to resolve

In the first instance, it is preferable that the Complainant approach the CEO to attempt to have the issue resolved amiably through mediation.

Step 2: Lodge formal complaint

If the Complainant is not comfortable to approach the CEO directly, or an attempt to follow Step 1 has not resolved the matter, the Complainant must lodge the Grievance directly in writing to the Mayor.

The Complainant also has the option of lodging a complaint the Grievance directly with a relevant authority able to receive the complaint (for example, the Department, Local Government Standards Panel, Crime and Corruption Commission or Public Sector Commission) however a Complainant is encouraged to exhaust the provisions of the Grievance Policy and this procedure before doing so.

The Complainant may withdraw their complaint at any time.

Step 3: Notify Council of complaint

Immediately (within 24 hours) upon a lodgment of a Grievance with the Mayor, or notification to the Mayor that a Grievance has been lodged with an external authority, the Mayor must advise Council.

Step 4: Investigate

If resolution cannot achieved through mediation (due to the Complainant not being comfortable with that approach, or due to the parties attending mediation without resolution), an external specialist consultant will need to be engaged to conduct an investigation. If so required, the CEO will advise Council of this, and the intention of the CEO and the Mayor (if the Mayor is not the person to whom the complaint regards) to engage a consultant. Council will consult with the CEO on the intent to engage an independent consultant to investigate the Grievance in accordance with the Investigation Procedure.

Step 5: Determination of investigation

Each party to a grievance will be duly advised of the outcome of the investigation in accordance with the Investigation Procedure.

A Complainant is not entitled to be advised of any disciplinary action that may be taken against a Respondent if the relevant complaint is substantiated.

8.3 PERSON LODGING GRIEVANCE COMPLAINT AGAINST COUNCIL OR A COUNCIL MEMBER

Step 1: Attempt to resolve

In the first instance, it is preferable that the Complainant approach the CEO to attempt to have the issue resolved amiably through mediation.

Step 2: Lodge formal complaint

If the Complainant is not comfortable to engage in a mediation process referred to in Step 1, or an attempt to follow Step 1 has not resolved the matter, the CEO will advise Council of this fact and the intention of the CEO and the Mayor (if the Mayor is not the person to whom the complaint regards) to engage an external specialist consultant to enact an investigation.

The Complainant also has the option of lodging the Grievance directly with Council, in writing addressed to the Mayor.

The Complainant also has the option of lodging a complaint the Grievance directly with a relevant authority able to receive the complaint (for example, the Department, Local Government Standards Panel, Crime and Corruption Commission or Public Sector Commission) however a Complainant is encouraged to exhaust the provisions of the Grievance Policy and this procedure before doing so.

The Complainant may withdraw their complaint at any time.

Step 3: Notify Council of complaint

Immediately (within 24 hours) upon a lodgment of a Grievance with the Mayor, or notification to the Mayor that a Grievance has been lodged with an external authority, the Mayor must advise Council.

Step 4: Investigate

Council will consult with the CEO on the intent to engage an independent consultant to investigate the Grievance in accordance with the Investigation Procedure.

Step 5: Determination of investigation

Each party to a grievance will be duly advised of the outcome of the investigation in accordance with the Investigation Procedure.

A Complainant is not entitled to be advised of any disciplinary action that may be taken against a Respondent if the relevant complaint is substantiated.

8.4 ELECTED MEMBER LODGING GRIEVANCE COMPLAINT AGAINST ANOTHER ELECTED MEMBER

Step 1: Attempt to resolve

If an Elected Member has a Grievance against another Elected Member, in the first instance, it is preferable the Elected Member approach the Mayor so that an independent mediator can be engaged to negotiate a resolution to the issue.

Step 2: Lodge formal complaint

If the mediation process fails or the Elected Member doesn't feel comfortable approaching the Mayor, the Elected Member can approach the Chief Executive Officer.

9 INVESTIGATION PROCEDURE

SCOPE OF THIS PROCEDURE

This procedure applies to the investigation by the City of complaints about Grievances.

In some cases, an allegation must be reported to external authorities in which case this Investigation Procedure will only apply to the extent required by the relevant authority (and investigation may be conducted by an external authority in accordance with its own policies and procedures).

MINIMUM REQUIREMENTS FOR A CITY-RUN INVESTIGATION

All City-run investigations will include as a minimum:

- a. An appropriate officer or external consultant as appointed by the CEO and/or the Mayor/Council to conduct the investigation;
- b. A written acknowledgment to the Elected Member or CEO of the Grievance complaint and the name and contact details of the person conducting the investigation;
- c. A meeting held with the Complainant to obtain further information and to discuss the Grievance and the preferred outcome. The parties will use best endeavours to ensure this meeting occurs within two working days of the original notification; and
- d. A separate meeting held with each party to the Grievance to commence the investigation process.

All parties to an investigation conducted by the City will:

- a. not assume guilt;
- b. receive written notice of the due process to be used; and
- c. be afforded the opportunity to bring a support person to meetings; and
- d. will be afforded every reasonable right of response.

ELEMENTS THAT CITY-RUN INVESTIGATION MAY INCLUDE

A City-run investigation may include the following processes, at the reasonable discretion of the relevant investigator:

- a. interviewing the Complainant;
- b. interviewing the Respondent;
- c. interviewing any other person who may be of assistance;
- d. obtaining documents or other records that may be relevant; and
- e. anything else that the investigator in its discretion considers will assist the investigation and determination of the allegations.

INVOLVEMENT OF IT AND ICT DEPARTMENTS IN INVESTIGATION

In some cases, the IT Manager may be involved in an investigation (such as if the Grievance, Breach or Misconduct complaint relates to the use of data, access of City records or an incident for which CCTV footage is sought). In such circumstances, the IT Manager:

- a. must first be given written direction from the CEO to access and provide requested data to the relevant investigator;
- b. be provided only such information relating to the matter as they need to know in order to assist in the investigation through the access to and provision of IT records relating to the complaint;
- c. will be subject to strict confidentiality in accordance with relevant policies and procedures.

RECORD KEEPING

Detailed records will be kept by the City's investigator or its delegate of all aspects of the investigation including:

- a. the Complainant's formal complaint/report on the alleged Grievance;
- b. records of any interviews conducted;
- c. explanation of the process followed in investigating the alleged Grievance; and
- d. documents or other records obtained in the course of the investigation.

OPTIONS TO RESOLVE GRIEVANCES

Dependent on the outcome of the investigation, options to resolve a Grievance may include (*note in some cases, reporting to external agencies may be mandatory):

- a. Informal discussion between the parties, where agreement can be reached on actions to resolve the Grievance. This verbal agreement should be formalised in writing;
- b. Conciliation to reach an agreement between the parties using mediation or counselling. Conciliation may be used in the following instances:
 - i. When there is some basis for agreement (e.g. the parties may agree about what happened but have different interpretations);
 - ii. The parties show some willingness to cooperate; and/or
 - iii. Both parties have equal bargaining power;
- c. Disciplinary action up to and including termination of employment;
- d. Reporting the grievance to the Western Australian Police Force or Corruption and Crime Commission in the instance of suspected criminal activity*;
- e. Self-reporting the Grievance to relevant external authorities*;
- f. Dismissal of the Grievance if there is limited proof and/or information to enable an appropriate or meaningful decision. In this instance, the outcome will be explained to all parties to the grievance and no disciplinary action will be taken; and/or

- g. Withdrawal of the Grievance if this is lawfully acceptable. If a Grievance is withdrawn it cannot be raised again, unless there is repeated behaviour or new facts come to fruition.

INTERNAL APPEALS FOR GRIEVANCES

Any party to the Grievance may appeal the outcome of the Grievance or the proposed resolution. All appeals should be directed to:

1. To the CEO;
2. If the Grievance is lodged against the CEO, the Mayor; or
3. If the Grievance is lodged against the Mayor, Council.

This internal review may be conducted by:

- The CEO;
- The Mayor/Council; or
- An external agency or consultant appointed by the CEO, Mayor or Council in their place.

The person performing the review may confirm the original decision or make a different decision. The ultimate decision on any internal appeal will rest with the Mayor, unless the Grievance is against the Mayor, in which instance the ultimate decision will rest with Council.

10 POLICY AND PROCEDURE FOR HANDLING COMPLAINTS ABOUT CODE BREACH

PURPOSE

The purpose of this Policy is to establish a policy and procedure for dealing with Complaints about alleged Code Breaches of the behaviour requirements included in Division 3 of the Code. In accordance with the *Local Government (Model Code of Conduct) Regulations*, a complaint about an Elected Member breaching the code of conduct must be lodged with the City.

SCOPE

This Policy applies to Complaints made in accordance with Clause 11 of the Code. This Policy applies to Council Members, Committee Members, Candidates and any person who submits a Complaint in accordance with this Policy.

DEFINITIONS

For the purpose of this policy, the following definitions apply:

Act means the *Local Government Act 1995*.

Alleged Breach Form means the form approved under clause 11(2)(a) of the Code by Council resolution.

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 Code Breach by a Candidate. Candidate Complaints are dealt with in Part 3.2 of this Policy.

CEO means the CEO of the City.

City means the City of Kalgoorlie-Boulder.

Code means the City of Kalgoorlie-Boulder's Code of Conduct for Council Members, Committee Members and Candidates.

Code Breach means a breach of Division 3 of the Code.

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 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.

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

Complaint means a complaint submitted under clause 11 of the Code.

Complaint Assessor means the employee or independent external assessor who will assess the Complaint under this Policy.

Complaint Documents means the Alleged Breach Form and any supporting information, Evidence, or attachments provided by the Complainant.

Complaints Officer means a person authorised in writing by Council resolution in accordance with clause 11(3) of the Code to receive Complaints and withdrawals of Complaints, being the CEO.

Complaint Report means the report prepared by the Complaint Assessor as dealt with in this Policy.

Council means the Council of the City.

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.

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.

Evidence means the available facts or information which indicate whether the allegation of a Breach is true or valid whether provided by the Complainant, Respondent or otherwise.

Finding means a finding made in accordance with clause 12(1) of the Code as to whether the alleged Code Breach has occurred.

Respondent means a person about whom a Complaint has been submitted in accordance with this Policy.

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

Other terms used in this policy that are also used in the Act have the same meanings as they have in the Act.

POLICY STATEMENT

The City is committed to a transparent, fair and consistent approach in the handling of complaints of Breach of the Code of Conduct for Councillors, Committee Members and Candidates.

POLICY DETAILS

Principles

This policy is based on the following principles:

1. *Compliance with applicable law*

The City will comply with all applicable law including:

- *Local Government Act 1995;*
- *Public Sector Act 2009;* and
- *Corruption, Crime and Misconduct Act 2003*

some of which demand specific due process for dealing with some Code Breaches and Complaints which must be followed by the City.

2. *Privacy and confidentiality*

Subject to requirements set out in the *Local Government Act 1995, Public Sector Act 2009* and *Corruption, Crime and Misconduct Act 2003* (and any other applicable legislation), privacy and confidentiality must be strictly observed at all times during the Code Breach handling process.

Information relating to the Code Breach must only be passed on when required by the *Local Government Act, Public Sector Act 2009* and/or *Corruption, Crime and Misconduct Act 2003* and where necessary to fairly and effectively deal with the Breach. The Privacy Act also applies.

Requirements of privacy and confidentiality apply to everyone involved in each report of Code Breach, including the parties involved, witnesses, support people and the employees handling the report and investigation.

A breach of privacy or confidentiality is a breach of this policy and will result in disciplinary action.

3. *Fairness and impartiality*

All complaints of a Code Breach will be handled fairly and impartially. This means that:

- a. A lawful investigation, in accordance with the procedure set out below and the Investigation Procedure;
- b. The Respondent is entitled to full details about the Code Breach allegation, including the time, date and specifics of the alleged offence;

- c. The Respondent must be given the lawful right of response to the Code Breach allegation;
- d. All parties to a Code Breach Complaint must have the lawful right of response to allegations and statements made by the other parties and by witnesses;
- e. If anyone involved in handling a Code Breach Complaint has a bias or conflict of interest that may affect their ability to be fair and impartial, they must declare this to the parties and to the investigator handling the investigation. One or both of the parties may also perceive a bias or conflict of interest even if the investigator handling the investigation does not. In these cases, the investigation of the Breach will be handled by another investigator.

4. *Freedom from Victimisation*

The City will take all reasonable steps to prevent the Victimisation of anyone connected with a Code Breach complaint. Victimisation constitutes a breach of this policy and will result in disciplinary action.

5. *Timeliness*

The City will take all reasonable steps to ensure that Complaints about Code Breach are handled as quickly as possible whilst following due process. This will ensure the best outcome for all parties involved.

6. *Ease of use and trustworthiness*

This policy as well as relevant procedures will be accessible to all Elected Members and implemented appropriately. All reasonable steps will be taken to ensure that the contents of this handbook are understood by all Elected Members.

7. *Seriousness and sensitivity*

All Complaints of Code Breach will be taken seriously and handled with sensitivity, taking into account the individual background and values of each party and any differences between them.

8. *Internal and external support*

Both parties to a Code Breach Complaint have the right to have a support person of their choice at meetings relating to the complaint. The parties to the Code Breach Complaint can contact an external agency for information, advice or help at any time during the investigation process.

9. *Malicious complaints*

Council encourages people to raise all genuine concerns. People should not be put off from raising concerns because they are afraid that they may be wrong or they won't be able to prove their claims. However, making allegations that are not true, or making a complaint solely to cause trouble for others may be considered to be Serious Misconduct. Employees

making malicious and vexatious complaints will be subject to disciplinary action and Elected Members may be reported to external authorities. If it is alleged during the investigation process that the allegation of Code Breach is malicious or vexatious, this will be investigated at the same time as the original allegation.

PROCEDURE

Complaint to Local Government Standards Panel or the Department

If the conduct complained of is both a Code Breach and a Minor Breach a complaint may be required to be made to the Local Government Standards Panel in accordance with the Minor Breach Policy. In such circumstances, the conduct will be handled at its highest level (meaning it will be referred to the Local Government Standards Panel as a Minor Breach rather than handled internally as a Code Breach).

If the conduct complained of is both a Code Breach and a Serious Breach a complaint may be required to be made to the Department in accordance with the Policy for Serious Breach, Misconduct and other illegal conduct. In such circumstances, the conduct will be handled at its highest level as a Serious Breach (rather than handled internally as a Code Breach).

Roles of Complaints Officer

1. The Complaints Officer is authorised in accordance with clause 11(3) of the Code to accept Complaints and withdrawal of Complaints. By resolution dated 23 January 2023, Council appointed the CEO or then acting CEO to be the Complaints Officer.
2. The Complaints Officer is not an advocate for the Complainant or the Respondent. The Complaints Officer provides procedural information and assistance to both Complainant and Respondent.
3. The Complaints Officer will provide the Complaint Assessment under paragraph 7 of this policy or may appoint an independent assessor to do so.
4. In undertaking their functions, the Complaints Officer will apply the principles of this policy.
5. The Complaints Officer has authority to make a finding as to whether an alleged Code Breach the subject of a complaint has occurred in accordance with this policy.
6. Where a finding is made that a breach has occurred, the Complaints Officer has authority to:
 - a. Take no further action; or
 - b. Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
7. The Complaints Officer has authority to dismiss a complaint. If the complaint is dismissed, the Complaints Officer must determine reasons for the dismissal.

Procedure

1. Making a Complaint

- a. 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 Code.
- b. A Complaint must be made within one month after the alleged Code Breach.
- c. A Complaint must be made by completing the Alleged Breach Form in full and providing the completed forms to the Complaints Officer.
- d. The Complainant must lodge the Complaint with the Complaints Officer. Complaints lodged by a third party will not be accepted.
- e. A Complaint must be made in accordance with the Alleged Breach Form and specify which requirement(s) of the Code is or are alleged to have been breached.
- f. A Complaint is required to include the name and contact details of the Complainant (therefore anonymous Complaints cannot be accepted).
- g. Where an Alleged Breach Form omits required details, the Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed. If the information is not provided within 14 days of this request, the Complaint will not be accepted.
- h. Where a Complaint is made more than 1 month after the alleged Code Breach, the Complaints Officer will give the Complainant written notice that the Complaint cannot be accepted.
- i. The Complaints Officer may choose not to accept the complaint if an alternative means of redress is available that is satisfactory to all parties.
- j. The Complaints Officer may choose not to accept the complaint if it is trivial, frivolous or vexatious.

2. Candidate Complaints

- a. A Complaint in relation to a Candidate must be made in accordance paragraph 1 above, but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.
- b. Within 7 days after receiving a Candidate Complaint, the Complaints Officer will provide written notice:
 - i. To the Complainant confirming receipt, and advising of the procedure for Candidate Complaints; and
 - ii. To the Respondent, including a summary of the Complaint, and advising of the procedure for Candidate Complaints.
- c. 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.

- d. If the Respondent is not elected, the Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with.
3. **Withdrawing a Complaint**
 - a. A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint.
 - b. A Complainant may withdraw a Complaint by advising the Complaints Officer in writing that they wish to do so.
 - c. After receiving a written withdrawal of the Complaint, the Complaints Officer will take all necessary steps to terminate the process commenced under this policy and procedure.
 4. **Notice to Complainant**

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

 - a. confirms receipt of the Complaint;
 - b. outlines the process that will be followed and possible outcomes;
 - c. explains the application of confidentiality to the Complaint;
 - d. includes a copy of this policy and procedure; and
 - e. if necessary, seeks clarifications or additional information.
 5. **Notice to Respondent**

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

 - a. advises that a Complaint has been made in accordance with the Code and this policy and procedure;
 - b. includes a copy of the Complaint Documents;
 - c. outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
 - d. includes a copy of this policy and procedure; and
 - e. if applicable, advises that further information has been requested from the Complainant and will be provided in due course.
 6. **Order of Complaints**
 - a. Complaints will normally be dealt with in the order in which they are received.
 - b. If more than one Complaint is received that relates to the same alleged behaviour, the Complaints Officer may decide to progress those Complaints concurrently.
 7. **Assessment of the Complaint**

- a. An assessment of the complaint may be conducted by the Complaints Officer or a person appointed by the Complaints Officer (which may include an external assessor) to be the Complaints Assessor, depending on:
 - i. The nature of the complaint;
 - ii. The resources needed to conduct an investigation;
 - iii. The nature of the possible outcome.
- b. The Complaint Assessor may seek legal advice on any aspect of the complaint.
- c. The Complaint Assessor will undertake an assessment of the Complaint in accordance with the Investigation Procedure and the process outlined in the Notices given under paragraphs 4 and 5 this Policy.
- d. The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to provide a response before forming any opinions, or drafting the Complaint Report or recommendations.
- e. The Complaint will be assessed based on the evidence available including information provided by the Complainant in the Complaint Documents and by the Respondent in the Response Documents.

8. Complaint Report

- a. The Complaint Assessor will prepare a Complaint Report that will:
 - i. outline the process followed, including how the Respondent was provided with an opportunity to provide a response;
 - ii. include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
 - iii. include recommendations on each decision that may be made by the Complaints Officer; and
 - iv. include reasons for each recommendation, with reference to this Policy.
- b. If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 12(4)(b) of the Code and this Policy, the Complaint Report must include a Proposed Plan.
- c. The Complaint Report will be provided to the CEO or Council to make a finding.

9. Making a Finding

- a. The CEO or Council will consider the Complaint Report and attachments and give due regard to the recommendations.
- b. The CEO may not make findings on Complaints for which the CEO is the Complainant. Findings on these complaints must be determined by Council.
- c. If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the CEO or Council will determine whether or not to dismiss the Complaint in accordance with Clause 13 of the Code and this Policy.

- d. If the CEO or Council dismisses a Complaint, the 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 Code. This concludes the process for this Complaint.
 - e. If the Complaint is not dismissed, the CEO or Council will consider the Complaint and make a Finding as to whether the alleged Code Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 12 of the Code and this Policy.
 - f. If the CEO or Council finds that the alleged Code Breach did not occur, the 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 Code. This concludes the process for this Complaint.
 - g. If the CEO or Council finds that the alleged Code Breach did occur, the CEO or Council will decide whether to take no further action in accordance with clause 12(4)(a) of the Code or prepare a plan to address the behaviour in accordance with clause 12(4)(b) of the Code and this policy.
 - h. If the CEO or Council decides to take no further action, the 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 Code. This concludes the process for this Complaint.
 - i. If the CEO or Council decides to prepare a Plan, the CEO or Council will first consult with the Respondent in accordance with clause 12(5) of the Code. The CEO or Council will consider any submissions made by the Respondent before preparing and implementing a Plan.
10. Compliance with Plan Requirement
- a. The Complaints Officer will monitor the actions in timeframes set out in a Plan.
 - b. 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 Code.
 - c. The Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

DECISION MAKING

1. Objectives and Principles

All decisions made under this policy and procedure will reflect the principles set out in the policy.

2. Dismissal

The Complaints Officer or Council if there is no appointed Complaints Officer must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code if 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's *Standing Orders Local Law 2013*.

3. Finding

- a. A Finding that the alleged Code Breach has occurred must be based on Evidence from which it may be concluded that it is more likely that the Code CBreach occurred than that it did not occur [clause 12(3) of the Code].
- b. This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a Code Breach of a requirement of Division 3 of the Code.

4. Action

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

- a. the nature and seriousness of the Code Breach(es);
- b. the Respondent's submission in relation to the contravention;
- c. whether the Respondent has breached Division 3 of the Code knowingly or carelessly;
- d. whether the Respondent has breached Division 3 of the Code on previous occasions;
- e. likelihood or not of the Respondent committing further breaches of Division 3 of the Code;
- f. personal circumstances at the time of conduct;
- g. need to protect the public through general deterrence and maintain public confidence in local government; and
- h. any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

5. Plan Requirements

- a. The Proposed Plan may include requirements for the Respondent to do one or more of the following:
 - i. engage in mediation;
 - ii. undertake counselling;
 - iii. undertake training;
 - iv. take other action considered appropriate (such as an apology or removal of a social media post).
- b. 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 Code.

- c. The Proposed Plan may also outline:
 - i. the actions to be taken to address the behaviour(s);
 - ii. who is responsible for the actions;
 - iii. any assistance the City will provide to assist achieve the intent of the Plan; and
 - iv. a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.
6. Reporting
- a. The City will maintain a register of complaints for which a breach of the City's Code is found to have occurred.
 - b. The register will be available on the City's website for public inspection.
 - c. The register will include the name of the Complainant.

11 MINOR BREACH POLICY AND PROCEDURE

PURPOSE

The purpose of this policy is to establish a policy and procedure for dealing with Complaints about alleged Minor Breaches. In accordance with the *Local Government Act 1995*, a Minor Breach is a breach of a provision of the *Local Government (Rules of Conduct) Regulations 2007* and a complaint must be lodged with the Local Government Standards Panel.

SCOPE

This policy applies to complaints of Minor Breach by an Elected Member and applies to all Elected Members and all City Employees, including the CEO, involved in the complaint.

POLICY STATEMENT

The City is committed to legislative compliance and to principles of transparency and accountability. This policy has been established by the City to support the functions of the Department including the Local Government Standards Panel.

This policy is subject to the Local Government Act and requirements of the Department and Local Government Standards Panel.

POLICY DETAILS

A Minor Breach occurs when an Elected Member breaches or is suspected of breaching a provision of the *Local Government (Rules of Conduct) Regulations 2007* ("Rules of Conduct") or the rules of conduct set out in Division 4 of the City's Code of Conduct for Councillors, Committee Members and Candidates. This includes:

1. Breach of the City's Standing Orders Local Law 2013 relating to conduct at meetings;
2. Improper disclosure of information;
3. Securing personal advantage or disadvantaging others;
4. Misuse of the City's resources;
5. Prohibition of involvement in administration;
6. Relations with the City's Employees (including directing or inducing action by an Employee);
7. Inappropriate comments about Employees;
8. Non-disclosure of interest adverse to impartiality; and
9. Failure to comply with a plan developed as a result of a Code Breach, pursuant to the

Policy and Procedure for Handling Complaints about Code Breach.

Where an Elected Member engaged in conduct that is believed to contravene the Rules of Conduct, a complaint must be made via the City's Complaints Officer to the Local Government Standards Panel, in accordance with the procedure set out below, rather than to the Local Government Standards Panel directly.

The Local Government Standards Panel will make a finding about whether the conduct was or was not a Minor Breach. If found to be a Minor Breach, it may order a sanction against the Elected Member.

If an Elected Member is found by the Local Government Standards Panel to have committed two Minor Breaches, a third complaint of a Minor Breach becomes a recurrent breach and may be dealt with by the Department under ss 5.111-113 of the *Local Government Act 1995*.

The City will support the Local Government Standards Panel as may be required by it.

PROCEDURE

1. The Complainant must complete a Complaint of Minor Breach Form as published on the Department's website, in accordance with the requirements set out on the website regarding the content and evidence to support the complaint.
2. The Minor Breach complaint form must be submitted to the City's Complaints Officer.
3. The City's Complaints Officer must, within 14 days,
 - a. contact the Complainant to acknowledge that the complaint has been received;
 - b. provide the Elected Member who is the subject of the complaint with a copy of the complaint; and
 - c. sends the complaint to the Local Government Standards Panel.
4. If the City's Complaints Officer believes that a complaint discloses a Serious Breach (rather than a Minor Breach), they are required to refer it to the Department.
5. Once the complaint has been referred to the Local Government Standards Panel, it will be dealt with in accordance with the *Local Government Act* and the procedures of the Local Government Standards Panel.
6. Once the Local Government Standard Panel has completed its process, it will notify the City's Complaints Officer of any sanctions as well as the Complainant and Elected Member.
7. The City's Complaints Officer must update the City's complaints register of a sanction decision and publish the same on the City's website.
8. Unless the Local Government Standards Panel has delivered a sanction decision, it is an offence under the Local Government Act for a person to disclose that a complaint has been made and/or any details of a complaint.

12 POLICY FOR SERIOUS BREACH, MISCONDUCT AND OTHER ILLEGAL CONDUCT

PURPOSE

The City is committed to a legal, fair and effective process for the resolution of reports of Serious Breach and Misconduct in accordance with the requirements of the relevant legislation or regulations and authority.

SCOPE

This policy applies to all Elected Members and all persons who receive reports of Serious Breach and/or Misconduct.

POLICY STATEMENT

This policy has been established to provide a transparent process for the City's resolution of reports of Serious Breach and Misconduct in accordance with the law.

This policy is subject the *Local Government Act 1995, Corruption, Crime and Misconduct Act 2003* and any requirements of the Department, Public Sector Commission, Crime and Corruption Commission or other relevant legislation, regulations or external authority.

POLICY DETAILS

1. The City will do all things required by a legislation, regulations or a relevant external authority in respect of a complaint of Serious Breach and/or Misconduct by an Elected Member.
2. If the City's Complaints Officer receives a complaint of Minor Breach that it believes is a Serious Breach, it must refer it to the Department.
3. If an Elected Member commits or is suspected of committing a Serious Breach, the complaint must be dealt with by the Department in accordance with ss 5.114-117 of the *Local Government Act*, generally within two years of the conduct taking place. A "Serious Breach" includes:
 - a. Failure to declare an interest;
 - b. Failure to submit an annual return;
 - c. Failure to declare a gift;
 - d. Failure to vote; and
 - e. Breach of complaint confidentiality.

4. The CEO (or any other person) must report any reasonable suspicion of Minor Misconduct by an Elected Member to the Public Sector Commission (pursuant to 45H Corruption, Crime and Misconduct Act 2003).
5. The CEO (or any other person) must report any reasonable suspicion of Serious Misconduct by an Elected Member to the Corruption and Crime Commission (pursuant to section 28 Corruption, Crime and Misconduct Act 2003).
6. The City will report to the Western Australian Police or Federal Police any suspected criminal conduct of an Elected Member including theft of City property and assault against any person.
7. The City will support the processes of any external authority by doing all things reasonably required in connection with a complaint of Serious Breach, Misconduct or other illegal conduct.

PROCEDURE

1. A Complainant can make a complaint of Serious Breach directly with the Department by completing the approved form in the manner and with the evidence, required by the Department.
2. The processes set out in the *Local Government Act* and determined by the Department will apply once the Serious Breach complaint has been lodged.
3. Once received by the Department, the Director-General of the Department will decide whether or to take the allegation of Serious Breach to the State Administrative Tribunal.
4. Confidentiality requirements take effect once a complaint of Serious Breach has been lodged and it is an offence to disclose information that the complaint of Serious Breach has been made, or details about the complaint, until it has been dealt with and an order made by the State Administrative Tribunal.