

### Policy Intent

The Shire of Murray (**Shire**) is committed to promoting high standards of integrity, accountability, transparency and respectful conduct by Council Members, Committee Members and Candidates.

This Policy provides the overarching governance framework for the receipt, assessment and determination of behavioural complaints under Division 3 of the Shire's Code of Conduct for Council Members, Committee Members and Candidates (**Code**).

The purpose of this Policy is to ensure complaints are managed lawfully, consistently, impartially and in accordance with the principles of procedural fairness and natural justice.

### Policy Scope

This Policy applies to:

- Council Members, Committee Members, Candidates for local election (**Respondent**) and any person making a complaint (**Complainant**) or a person involved in the complaint management process.
- Behavioural complaints made in accordance with clause 11 of the Code; or
- Behavioural complaints referred to the Shire by the Local Government Inspector under regulation 6 of the *Local Government Inspector (Local Government Inspector Regulations 2025)*.

The following are not within the scope of this Policy:

- Complaints made with the intent of addressing personal grievances or disagreements.
- Complaints made to express dissatisfaction with a Council or Committee Members lawfully made decisions.
- Conduct, Specified and General Breach Complaints required to be administered by the Local Government Inspector.
- Complaints related to Shire's products or services.
- Complaints about Shire employees, contractors or volunteers conduct.

### Policy Statement

This Policy focusses on breaches of Division 3 of the Code and sets the procedure for handling behaviour complaints.

#### 1. Principles

All complaints will be dealt with:

- (a) In a timely and consistent manner;
- (b) Objectively, impartially, and free from bias;
- (c) In accordance with procedural fairness and proper and genuine consideration of the evidence; and

- (d) On their individual merits, while maintaining consistency in decision-making across similar circumstances.

### 1.1. Procedural Fairness

The principles of procedural fairness and natural justice will apply when dealing with a complaint under this Policy, including:

- (a) The Respondent will be afforded a reasonable opportunity to be heard, respond and provide supporting documentation to be used during the assessment and before any findings are made or an action plan implemented;
- (b) Council should be objective and impartial, with an absence of bias or the perception of bias;
- (c) Any findings made will be based on proper and genuine consideration of the evidence; and
- (d) All parties will follow the process and procedures outlined in the Code and this Policy.

### 1.2. Consistency

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

### 1.3. Confidentiality

In accordance with section 8A.36 of the *Local Government Act 1995 (Act)*, all complaints must be dealt with confidentially.

The Act specifies that a person “*must not directly or indirectly, disclose or use information that the complaint has been made or information about any detail of the complaint*”.

A penalty of \$10,000 applies for breaching confidentiality.

Council Members and local government employees who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role in accordance with the confidentiality provisions of section 8A.36.

The Shire will take all reasonable steps to maintain confidentiality when dealing with a complaint in order to protect both the Complainant and Respondent, including:

- (a) The name of the Complainant will be provided to the Respondent.
- (b) Complainant and Respondents contact information (phone, email, address) will not be provided to either party.
- (c) Complainant’s and Respondent’s name and contact information will not be included in the meeting agenda.
- (d) Complainant’s and Respondent’s names will be published in the meeting minutes.
- (e) Determination of the complaint will be stated in the minutes.
- (f) In accordance with regulation 4A(b) of the *Local Government (Administration) Regulations 1996 (Admin Regulations)* the meeting that a complaint is to be discussed will be held behind

closed doors.

- (g) The Complainant and Respondent should be aware that documentation related to the complaint may be subject to a Freedom of Information (FOI) request, noting that they must be consulted before any documents are released, and exemptions may apply.

## 2. Authorised Person

- (a) In accordance with clause 11(3) of the Code the Authorised Person/s to receive and withdraw complaints are:
  - i) The Chief Executive Officer (**CEO**); or
  - ii) Where the Complainant is the CEO, the Director Corporate Services.
- (b) The Authorised Person is responsible for:
  - i) Receiving complaints and actioning complaints in accordance with clause 4 of this Policy;
  - ii) Communicating with the Complainant to advise the complaint has been accepted or rejected in accordance with this Policy and the Code;
  - iii) Engage a suitably qualified and experienced independent person to assess or investigate a behavioural complaint and may include providing a report to Council to assist Council in performing its functions under clauses 12 and 13 of the Code;
  - iv) Facilitating the calling and convening of a council meeting, if required
  - v) Taking necessary steps to terminate the complaint if the complaint is withdrawn in accordance with Part 6 of this Policy
  - vi) Undertaking the functions of the Authorised Person in accordance with this Policy and the Code.

## 3. Independent Complaint Assessor

The Independent Complaints Assessor is an impartial third party, specialising in complaints management, required to undertake the functions in accordance with this Policy and must ensure that the principles of procedural fairness and natural justice are upheld and maintained throughout the process. Unless determined by the Authorised Person or Council that an Independent Complaint Assessor is necessary for appointment, the Authorised Person will carry out the complaint process and ensure all complaints are conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest.

### 3.1. Appointment of an Independent Complaint Assessor

Where it is considered necessary, by the Authorised Person, to appoint an Independent Complaint Assessor to assess and investigate a complaint, it does not transfer Council's statutory decision-making functions. The Independent Complaint Assessor will only be appointed for the purpose of assessing, investigating, providing advice and reporting to Council to assist Council in performing the functions under Clause 12 and 13 of the Code.

The Authorised Person may appoint an Independent Complaint Assessor where:

- (a) The complaint is sufficiently serious or complex to warrant independent investigation;
- (b) The complaint concerns multiple Council Members arising from the same or related circumstances;
- (c) The Authorised Person has an actual, potential or reasonably perceived conflict of interest;
- (d) The Authorised Person is materially involved in the circumstances giving rise to the complaint;
- (e) The complaint raises significant governance, public interest or reputational considerations;
- (f) The circumstances are such that the independence or impartiality of an internally conducted assessment could reasonably be questioned; or
- (g) The Authorised Person otherwise considers that independent assessment is appropriate having regard to the nature and circumstances of the complaint.

Unless Council, by absolute majority, has authorised an Independent Complaint Assessor under clause 14B of the Code, Council remains responsible for determining the complaint.

## 4. Behavioural Breach Complaint Procedure

### 4.1. 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 the behavioural requirements of Division 3 of the Code.
- (b) A complaint must be:
  - i) Made within one month of the alleged breach occurring.
  - ii) Made in writing, by completing the approved Behaviour Complaint Form (available on the Shire website)
    - All supporting available documentation and evidence should be provided with the complaint.
  - iii) Be submitted to the Authorised Person.
- (c) A complaint in relation to a Respondent who has, on at least two previous occasions (after 1 January 2026) been found to have committed a behavioural breach under the Code must be referred to the Local Government Inspector by the Authorised Person.
- (d) If a complaint is made about a Candidate for election, no action will be taken to consider the complaint until the election is declared by the Returning Officer. If the Candidate is elected, then the complaint will be dealt with in accordance with this Policy.
- (e) Complaints will normally be dealt with in the order they are received. If more than one complaint is received that relates to the same alleged behaviour, the Authorised Person may decide to progress the complaints concurrently.

#### 4.1.1. Complaints that will not be actioned

A complaint will not be actioned under this Policy if one of the following applies:

- (a) The complaint is not made using the approved Behaviour Complaint Form including identification of the alleged section breached in the Code;
- (b) The complaint is withdrawn by the Complainant;
- (c) The complaint is made anonymously, unless the information discloses matters of significant public interest or serious governance concern that warrant further consideration;
- (d) The complaint is a duplication of a complaint made by the same person for the same matter;
- (e) It is a breach that must be made to the Local Government Inspector.

### 4.2. Receipt and Acknowledgement to the Complainant

- (a) Upon receipt of a complaint that meets the requirements of a behavioural complaint for the purpose of this Policy, the Authorised Person shall:
  - i) Acknowledge receipt of the complaint within five (5) business days of being accepted as a complaint, providing written notice containing:
    - o Details of the process that will be followed and possible outcomes;
    - o An explanation of the confidentiality requirements related to the complaint;
    - o A copy of this Policy; and
    - o Any requests for clarification or additional information if necessary.
  - (b) The Complainant must respond to any requests for clarification or additional information within five (5) business days. All reasonable attempts will be made to contact the Complainant.
  - (c) If the Complainant indicates on the Behaviour Complaint Form that they are willing to participate in alternative dispute resolution, the Authorised Person will advise the Complainant of the processes in accordance with clause 5 of this Policy.
  - (d) If the complaint is referred to the Local Government Inspector or the complaint does not meet the requirements of a complaint, the Authorised Person will notify the Complainant with the reasons.

### 4.3. Notification of a Complaint to the Respondent

- (a) Within five (5) business days of accepting a complaint, the Authorised Person will provide notice to the Respondent with:
  - i) Advice of the receipt of the complaint;
  - ii) A copy of the submitted Behaviour Breach Complaint Form (with the confidentiality requirements of the Policy and Act being applied);
  - iii) A copy of this Policy;
  - iv) Details of the process that will be followed and the opportunities that will be afforded to the Respondent to be heard and the possible outcomes; and
  - v) If applicable, advise that further information or clarification has been requested from the Complainant.

- (b) If the Complainant agreed to Alternative Dispute Resolution, the Respondent will be asked if they are willing to participate in accordance with this Policy.
- (c) The Respondent has ten (10) business days from notification of the complaint to make written submission addressing the complaint.
- (d) If no response is provided by the Respondent, the complaint will progress to an assessment in accordance with this Policy.

#### 4.4. Assessment and Investigation

An appointed Independent Complaint Assessor or the Authorised Person is given the necessary powers and authority to undertake an investigation in accordance with the Code and this Policy.

The assessment of a complaint will be conducted purely on the basis of all documents provided; the complaint documents, any local government records identified by the Authorised Person and the response documents. Where necessary the Authorised Person or Independent Complaint Assessor may:

- (a) Inquire with all parties to provide any evidence or statements relevant to the complaint;
- (b) Obtain any information from other parties in relation to policies, procedures and practices including access to relevant records or witness statements; and
- (c) Seek advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.

Once the assessment and investigation is finalised all records must be retained by the Shire in accordance with the Shire's record-keeping system with restricted access to ensure confidentiality.

#### 4.5. Report to Council

The complaints process must ensure that the Respondent is provided with a reasonable opportunity to respond before forming any opinions, or drafting a report to Council, or preparing the proposed Action Plan or make any recommendations. This includes the evidence to Council which must be of a sufficient quality and relevance to lead to a conclusion on the conduct alleged, on the balance of probabilities that it likely occurred.

The Authorised Person or Independent Complaint Assessor will prepare a report for Council that will include:

- (a) The substance of the complaint;
- (b) The nature and extent of the investigation into the complaint;
- (c) The evidence obtained during the investigation into the complaint, including the complaint documents, the Respondent documents and any relevant attachments;
- (d) Outline of the process followed, including how the Respondent was provided with an opportunity to be heard;
- (e) A statement of reasons as to why the matter was one that could not or should not be resolved by alternative means;
- (f) A description of any attempts made to resolve the matter by using alternative means

(alternative dispute resolution);

- (g) Include recommendations on each decision that may be made by council;
- (h) Include reasons for each recommendation; and
- (i) Any recommended Action Plan prepared to address the behaviour of the person to whom the complaint relates.

The Authorised Person will be responsible for the preparation of a confidential report which will include the complaint report and if necessary, a proposed Action Plan. Prior to the complaint report being presented to Council, the Authorised Person will contact the Complainant and Respondent, providing a summary of the Report.

#### **4.6. Determination of Complaint by Council**

A complaint is not to be discussed at any Councillor briefing session.

In accordance with section 5.105(4) and (5) of the Act, neither the Complainant nor the Respondent may:

- (a) preside at any part of a council or committee meeting relating to the complaint; or
- (b) participate in, or be present during, any discussion or decision-making procedure of a council or committee relating to the complaint.

Council will consider the complaint documents, response documents and Complaint Report and give due regard to the recommendations. Where appointed, the Independent Complaint Assessor may attend the meeting to answer questions from Council.

If Council deviate from the Complaint Report recommendation, it must provide reasons for the difference and reasons for its Findings.

##### **4.6.1. Options for determination**

##### **Dismissing a complaint**

The Council must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code if it is satisfied that:

- (a) The behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (b) Either:
  - i) The behaviour was dealt with by the person presiding at the meeting; or
  - ii) The Respondent has taken remedial action in accordance with the Shire's Meeting Procedures Local Law.

If the Council dismisses a Complaint, the Authorised Person 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 of this complaint.

##### **Make a finding**

When making a finding, the Council may consider:

- (a) The nature and seriousness of the breach(es);
- (b) The Respondent's submission in relation to the contravention;
- (c) The Respondent and Complainant's willingness to participate in the complaint;
- (d) Whether the Respondent has breached the Code knowingly or carelessly;
- (e) Whether the Respondent has remedied or rectified their conduct;
- (f) The degree of reckless intention or negligence of the Respondent;
- (g) The harm or potential harm to the reputation of the council or the Shire arising from the conduct;
- (h) Likelihood or not of the Respondent committing further breaches of the code;
- (i) Personal circumstances at the time of conduct; and
- (j) Any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

### Finding that a breach **did not** occur

If Council finds that the alleged breach did not occur, the Authorised Person must give the Complainant and the Respondent written notice of the finding and the reasons for the Finding.

This concludes the process of this complaint.

### Finding that a breach **did** occur

A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur (refer clause 12(3) of the Code of Conduct). This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of Division 3 of the Code of Conduct.

If Council finds that the alleged breach did occur, the Council will decide whether to:

- (a) Take no further action in accordance with clause 12(4)(a) of the Code: or
  - If the Council decides to take no further action, the Authorised Person 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 of this complaint.
- (b) Adopt the proposed Action Plan or prepare an alternate Action Plan to address the behaviour in accordance with clause 12(4)(b) of the Code.
  - Council may decide to adopt the proposed Action Plan or an alternate Action Plan.
  - If Council decides to adopt an alternate Action Plan, Council must consult with the Respondent in accordance with clause 12(5) of the Code.
  - Council will consider any submissions made by the Respondent before adopting and implementing an alternate action.

### 4.7. Action Plans

A proposed Action Plan may include requirements for the Respondent to do one or more of the following:

- (a) Engage in mediation;
- (b) Undertake counselling;
- (c) Undertake training;
- (d) Take other action that Council considers appropriate (e.g. an apology).

The proposed Action 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.

The proposed Action Plan may also outline:

- (a) The actions to be taken to address the behaviour(s);
- (b) Who is responsible for the actions;
- (c) Any assistance the Shire will provide to assist the Respondent to achieve the intent of the Action Plan; and
- (d) A reasonable timeframe for the Action Plan action(s) to be addressed by the Respondent.

If the Respondent has been consulted on the proposed Action Plan in the Complaint Report and Council makes no additions then a Notice of Council Determination can be provided.

### 4.8. Notice of Council Determination

When Council makes a Finding in relation to a complaint, written notice will be provided which includes:

- (a) Its Finding and the reasons for its Finding; and
- (b) If its Finding is that the alleged breach has occurred.

The Authorised Person must notify the Complainant and Respondent of Council's decision.

A Register of Complaints where a breach has been found by Council and an Action Plan imposed shall be maintained by the Authorised Person. The Register shall record the date of the complaint, the name of the Council Member or Committee Member found in breach, and the Action Plan as resolved by Council. This Register will be published on the Shire's website in accordance with section 5.96C of the Act.

### 4.9. Compliance with Action Plan Requirements

The Authorised Person will monitor the actions as determined in the adopted Action Plan to ensure the Respondent adheres to the agreed actions within the listed timeframes (if applicable).

Failure to comply with a requirement included in the adopted Action Plan is a Conduct breach under clause 23 of the Code and can be reported to the Local Government Inspector by any person.

### 5. Alternative Dispute Resolution

Alternative dispute resolution (**ADR**) may support both parties to reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint. ADR requires the consent of both parties to the complaint and may not be appropriate in all circumstances.

The objective of ADR is to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the complaint.

If both parties agree to participate in ADR, the Authorised Person will appoint an appropriately qualified Independent Mediator to facilitate the process as required and provide written notice of the appointment to the Complainant and the Respondent. The formal complaint process will be paused until the ADR process reaches an outcome.

During the ADR process:

- (a) The Complainant or Respondent may decline to proceed at any time. The process may also be terminated on advice by the Independent Mediator.
- (b) The Complainant or Respondent may have a support person present during the ADR process (excluding current Council Members or identified witnesses to the complaint)
- (c) If ADR is terminated or does not result in the withdrawal of the complaint, the Authorised Person will resume the assessment of the complaint as required under this Policy.

### 6. Withdrawal of a Complaint

A Complainant may withdraw a complaint at any time before a finding on the Complaint is made by Council. The withdrawal must be in writing and given to the Authorised Person.

### 7. Support

Council and Committee Members have access to the Employee Assistance Program. The program provides a safe space to discuss role related issues with trained and qualified professionals.

## Legislation

*Local Government Act 1995*

*Local Government (Administration) Regulations 1996*

*Local Government (Election) Regulations 1996*

*Local Government (Local Government Inspector) Regulations 2025*

*Local Government (Model Code of Conduct) Regulations 2021*

Code of Conduct – Council Members, Committee Members and Candidates

## Related Documents

Behaviour Complaint Form

| Policy Detail                 |                         |                             |
|-------------------------------|-------------------------|-----------------------------|
| Responsible Directorate       | Office of the CEO       |                             |
| Responsible Department        | Chief Executive Officer |                             |
| Responsible Officer           | Chief Executive Officer |                             |
| Next Policy Review / Schedule | 2029 (3-yearly)         |                             |
| Council Adoption              | Date / Resolution       | 22 October 2026 (OCM26/126) |
| Amendment Record              | Date / Resolution       |                             |
|                               |                         |                             |