

Administrative Action Complaint Management Procedure

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Responsible Officer	Manager Development & Governance	Date Approved:	17/11/2021
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Author:	Senior Compliance Officer	Commencement:	17/11/2021

1. PURPOSE

To provide a procedural framework for investigation and resolve of administrative action complaints received by Council in accordance with requirements under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld). This Procedure should be read in conjunction with Council's Administrative Action Complaint Management Policy.

2. SCOPE

This procedure applies across Council to all complaints received by Council.

3. PROCEDURE STATEMENT

Mareeba Shire Council is committed to managing all complaints quickly and efficiently; the objectives being to:

- Ensure the complaint management process is fair, objective, transparent and consistent;
- Facilitate the use of information obtained from the complaints management process to improve overall service delivery; and
- Ensure that complaints are responded to in a timely manner.

Council will not tolerate abusive or disrespectful behaviour towards Council employees from any person involved in the complaint management process. Similarly, Council will not tolerate unreasonable complainant conduct where such conduct impacts adversely upon Council's ability to effectively and efficiently perform its functions. Unreasonable complainant conduct as defined will be handled under separate policy.¹

All complaints will be lodged in Council's Complaints Management system at the time of receipt and, for complaints received in writing or via email, an acknowledgement will be sent within five (5) working days of receiving the complaint.

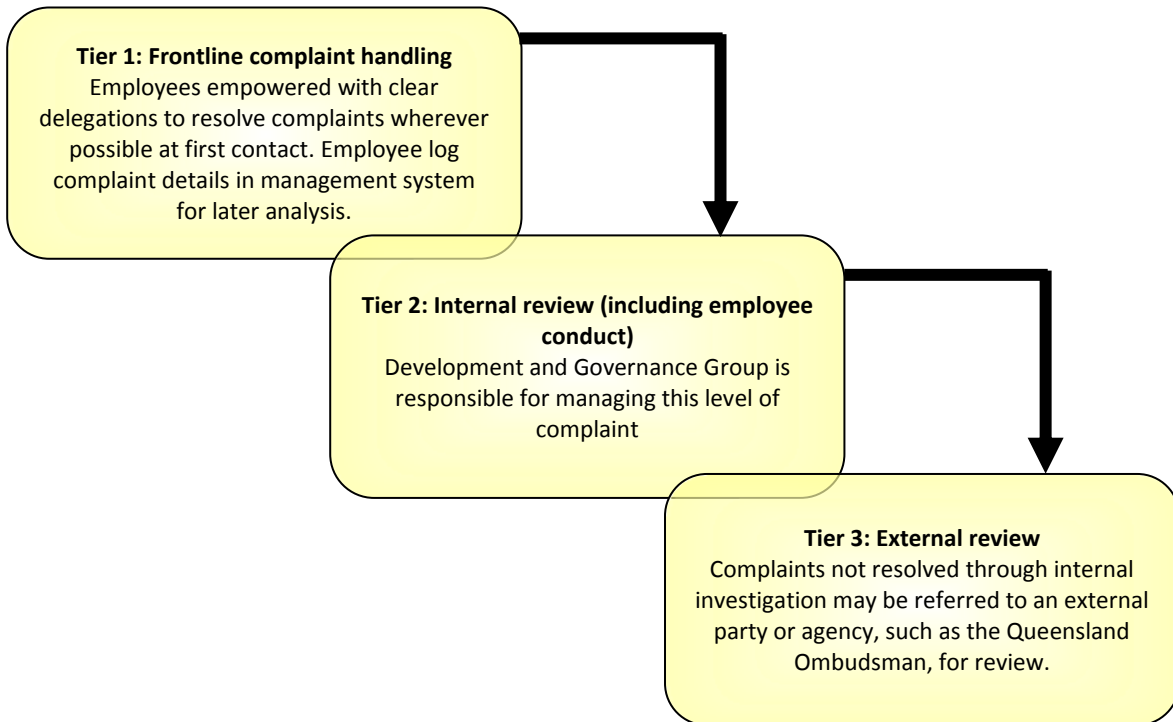
3.1 PROCESSING OF ADMINISTRATIVE ACTION COMPLAINTS

Council has adopted a three tiered approach to complaint management with the majority of complaints being resolved at the first tier.

¹ See Council's *Unreasonable Complainant Conduct Policy* and associated procedure instruments.

Human Rights Compatibility Statement

The *Human Rights Act 2019* (HR Act) (Qld) came into effect on 1 January 2020 and will mean fairer laws, policies and practices by public entities when dealing with the community on a day-to-day basis. This policy has been drafted in alignment with obligations under s 58 of the HR Act.



Tier 1 - Frontline Complaint Handling occurs where a complaint is received about:

- an expression of dissatisfaction with the quality of the service provided; or
 - that is currently being conducted by Council;
 - has been provided by Council in the past;
 - lack of service provided by Council in regard to an initial customer request.
- an expression of dissatisfaction with Council’s communication.

Tier 2 - Internal Review occurs when a review of a complaint is required to be undertaken by the Development and Governance Group. All complaints regarding the conduct of Council employees or agents are managed by the relevant group from which the complaint is generated, with oversight provided by Development and Governance Group.

Tier 3 - External Review occurs where complaints cannot be resolved by Council or where the complainant is not satisfied with the outcome.

3.2 ASSESSMENT OF COMPLAINTS

The three-tier complaints process is relevant for all administrative action complaints. The following are of particular note in assessing all complaints:

3.2.1 Employee conduct

Complaints regarding employee conduct are classified as tier 2 and will be referred to the appropriate group for investigation and response.

3.2.2 Protecting whistle-blowers

Employees may, in good faith, provide information to their manager or another senior officer concerning possible improper behaviour. Employees involved in investigating a complaint made by a whistle-blower, or any employee concerning possible improper

behaviour, will take care to manage the information and protect the rights of the individual involved.

3.3 TIER 1 – FRONTLINE HANDLING

A complaint received by Council should be referred to the relevant business area for response. The Council officer assigned to handle the complaint should attempt to resolve the matter either during or at the conclusion of their investigation. Types of remedies (more than one may be applied) include:

- admission of fault;
- explanation;
- apology;
- change of decision;
- change to policy or procedure;
- repair / rework / replacement;
- technical assistance.

The Council officer handling the complaint is responsible for capturing and recording the data related to the complaint and responding appropriately to the complainant. If the affected person is satisfied with the response, no further action is required.

No matter how trivial, all complaints must be logged in Council's Complaint Management System to ensure that the information is available for review and assessment at a later date.

The manager of the relevant business area is responsible for ensuring all complaints are resolved appropriately and within the defined timeframe.

3.3.1 Advice to complainant

The complainant is to be provided with an acknowledgement of their complaint within five (5) working days of receipt of the complaint by Council. This will include an expected date for final notice of outcome to the complainant.

A simple complaint lodged verbally (by telephone or at a service counter) may be responded to in the same manner. Appropriate file notes, including reasons for a decision, are required to be recorded on the complaint file. Complaints of a more serious nature will be responded to in writing.

The Council officer investigating a complaint should provide advice of the decision, including reasons for the decision and any remedies, to the complainant as soon as practicable after the completion of the investigation.

The advice will also include the review options available to the complainant. That is, if the complainant is not satisfied that the complaint has been resolved, a request for an internal review may be made in writing to the Development and Governance Group.

3.3.2 Tier 1 Complaint Types and Service Delivery Standards

3.3.2.1. Low Complexity Complaints

Response time - maximum of 10 business days

Low complexity complaints require little investigation and can be readily addressed through the provision of information, or verbally negotiating the desired outcome; a written response may not be required. The relevant business area should manage low complexity complaints.

3.3.2.2. Medium Complexity Complaints

Response time - maximum 30 business days

Medium complexity complaints typically require some research and may require negotiation/facilitated discussion with the complainants or consultation with other areas of Council. They typically include issues that relate to a single incident or decision. Medium complexity complaints may consist of a small number of related issues. A written response is required.

3.3.2.3. High Complexity Complaints

Response time - maximum 45 business days

High-complexity complaints are very complex in nature and may comprise a multitude of related issues or include possibly systemic concerns. These matters will typically involve complainants providing very detailed and lengthy background information that requires time to assess.

A formal investigation may be required and may involve interviews or discussions with employees and other relevant persons, including external consultation.

3.4 TIER 2 – INTERNAL REVIEW (INCLUDING ALL EMPLOYEE CONDUCT)

If the complaint cannot be resolved through frontline handling, it will be escalated for internal review or investigation. In this case, the complaint will be allocated to the Development and Governance Group, who will manage the investigation.

Employee conduct complaints are sensitive in nature and will be escalated directly to Tier 2.

The assigned investigating Council officer must be more senior in position than any employee that may fall within the ambit of the complaint and not be subject to any actual or perceived conflict of interest in relation to the matter being investigated.

If a complaint is escalated to Tier 2, then the relevant Director will be informed unless doing so will compromise the investigation.

The investigating Council officer will ensure that the complainant is provided with a confirmation of the acknowledgement of receipt of their complaint within five (5) working days of receiving it. This will include, where possible, an indication of the approximate time it will take to respond to the complaint. Notwithstanding this requirement, the exact timeframe for completing a Tier 2 review is dependent on the particular circumstances, including the seriousness, urgency and complexity of the matters to be investigated. The investigating Council officer will keep the complainant informed of the progress of the investigation.

Upon completion of the Tier 2 review, the investigating Council officer will consider all available evidence, make a decision or recommendation and provide a report of the outcome to the Relevant Director. Depending on the assessed severity of the matter, a report may also be provided to the CEO.

3.4.1 Investigating a complaint

The investigation of a complaint will be undertaken by the investigating Council officer in an independent, impartial and objective manner. The officer may, if considered appropriate in the circumstances, undertake mediation between the parties with a view to resolving a complaint. The officer will not act as an advocate for the complainant, for Council, for any Council officer or for any councillor that is the subject of the complaint.

The investigation of a Tier 2 complaint will typically involve the following stages:

- deciding on the most appropriate course of action for conducting the investigation;
- information gathering, including discussions and interviews with the complainant, Council personnel and third parties (when relevant) and examining relevant laws and Council policies and procedures;
- analysis of all relevant information obtained;
- formulation of findings and any recommendations for consideration;
- preparation of a report on the results of the investigation, or the outcome of the review if it was resolved during the complaints process or was withdrawn by the complainant.

The investigating Council officer will adhere to the principles of procedural fairness and natural justice when conducting an investigation and will ensure that confidentiality of the investigation is maintained to the extent that it can be reasonably achieved, subject to overarching legal requirements regarding the disclosure of information.

3.4.2 Advice to complainant

The complainant will be advised of the final decision and provided with a Notice of Outcome (a statement of reasons) that describes:

- the relevant Council policies, local laws and other statutory provisions, such as sections of legislation or regulations;
- correspondence and other communications relating to the complaint;
- evidence and other material available to Council;
- findings of fact;
- any decisions made by Council in regard to the complaint; and
- the reasons for Council's decisions.

Specifically, for employee conduct complaints where the complaint is substantiated, the complainant will be informed Council will take appropriate action but not the specific action taken.

If the complaint is sustained, the complainant will also be advised of:

- any remedy to be made available to them;
- if applicable, the circumstances and timeframe within which the remedy will be made available; and/or
- whether the investigation has identified the need to revise any of Council's policies, procedures or practices to prevent similar complaints arising, including details of the proposed revision and the timeframe for implementation.

If the complainant is satisfied with the Notice of Outcome , no further action is required.

3.4.3 Allegations of inappropriate conduct or misconduct

Where an investigation into an allegation of inappropriate conduct or misconduct determines that the complaint is sustained, the relevant manager will address the issue with the Employee. For more serious allegations, the complaint will be reviewed with consideration of Council's *Employee Code of Conduct* and any breaches will be referred to Council's Organisational Development section.

3.4.4 Official misconduct

An allegation of official misconduct will be referred to Council's Organisational Development section and where appropriate to the Crime and Corruption Commission Queensland.

3.5 TIER 3 – EXTERNAL REVIEW

Suppose the complainant is not satisfied that a complaint has been satisfactorily resolved. In that case, the complainant will be informed of any further available review mechanisms and given details of any statutory right of review. In some instances, complaints lodged with an external complaint handling entity such as the Queensland Ombudsman may be referred back to Council to investigate in line with Council's *Administrative Action Complaints Management Policy* and associated processes.

4. REPORTING

No additional reporting is required.²

5. DEFINITIONS

Administrative action complaint is a complaint that:

- (a) is about an administrative action of a local government, including the following,
 - i. a decision, or a failure to make a decision, including a failure to provide a written Notice of Outcome containing reasons for a decision;
 - ii. an act, or a failure to do an act;
 - iii. the formulation of a proposal or intention;
 - iv. the making of a recommendation; and
- (b) is made by an affected person.

Affected person is a person who is apparently directly affected by an administrative action of Council.³

Competitive neutrality complaint is a complaint that:

- (a) relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle; and
- (b) is made by an affected person.⁴

² See Council's *Administrative Action Complaint Management Policy* s 4.

³ See *Local Government Act 2009* (Qld) ss 268(1)-(3).

⁴ See *Local Government Act 2009* (Qld) s 48. See also Council's *Competitive Neutrality Complaint Management Policy*.

Complaint is an expression of dissatisfaction, orally or in writing, by a person who is directly affected by an administrative action of Council or its employees (including contractors and volunteers), including a failure to take action.

Enquiry is a request for clarification, advice, information or further information about Council services, policies or procedures. Enquiries can usually be resolved in a one-off communication.

Frivolous complaint shall mean a complaint which is considered to be either minor, lacking in substance or without merit and therefore not worthy of any further action.

Inappropriate conduct is conduct that is not appropriate for a representative of a local government but is not misconduct. Types of conduct that comprise inappropriate conduct include:

- failing to comply with Council's *Employee Code of Conduct*;
- not following procedures and/or behaving in an offensive or disorderly manner.

Misconduct is conduct that affects the performance of a person's duties. It represents a breach of trust, misuse of information or a failure to comply with the principles of the *Local Government Act 2009* (Qld).

Misconduct is the conduct of a person that meets any of the following criteria:

1. adversely affects the honest and impartial performance of the individual's responsibilities;
2. is a breach of the trust placed in the person;
3. is a misuse of information or material acquired by the individual whether for personal benefit or the benefit of someone else;
4. is a repeat case of inappropriate conduct;
5. in the case of a councillor, involves a failure by the councillor to notify Council of alleged misconduct, material personal interest or conflict of interest of another councillor.

Official misconduct is conduct that could, if proved, be:

1. a criminal offence; or
2. serious enough to justify dismissal of the person from their position.

Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires that a fair and proper procedure be used when making a decision. A decision-maker who follows a fair procedure is more likely to reach a fair and correct decision.

The rules of procedural fairness require:

- (a) a hearing appropriate to the circumstances;
- (b) lack of bias;
- (c) evidence to support a decision; and
- (d) inquiry into matters in dispute.

Queensland Ombudsman is an independent complaints investigation agency.

Regional Conduct Review Panel is a body, created under the *Local Government Act 2009* (Qld), that is responsible for hearing and deciding a complaint of misconduct by a councillor.

Vexatious complaint shall mean a complaint, which is considered to be made maliciously, regardless of its merits, primarily to embarrass, annoy or place an unreasonable burden on a respondent, and therefore not worthy of any further action.

6. RELATED DOCUMENTS AND REFERENCES

- *Administrative Action Complaint Management Policy* (MSC)
- *Competitive Neutrality Complaint Management Policy* (MSC)
- *Councillor Code of Conduct* (MSC)
- *Crime and Corruption Act 2001* (Qld)
- *Employee Code of Conduct* (MSC)
- *Local Government Act 2009* (Qld)
- *Local Government Regulation 2012* (Qld)
- *Public Interest Disclosure Act 2010* (Qld)
- *Public Sector Ethics Act 1994* (Qld)
- *Unreasonable Complainant Conduct Policy* (MSC)
- *Unreasonable Complainant Conduct Procedure* (MSC)

7. REVIEW

It is the responsibility of the Manager Development & Governance to monitor the adequacy of this policy and implement and approve appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.