



TITLE PANEL			
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Introduction

The Local Government Act 2009 establishes a set of principles (the Local Government Principles) to ensure the system of local government is accountable, effective, efficient and sustainable. To assist in complying with the Local Government Principles, local governments must have an effective and transparent method of responding to complaints regarding its services, administrative actions, competitive neutrality, the conduct and performance of councillors and staff behaviour and misconduct.

This Policy and Procedure outlines how Council will respond to general and administrative action complaints and compliments Council's other, specific complaint investigation processes.



1 Purpose

The purpose of this Policy and Procedure is to formalise council's processes in relation to the receipt, actioning and reporting of general and administration action complaints. It is designed to meet the requirements of the *Local Government Act 2009* (the Act) and *Local Government Regulation 2012* (the Regs), and compliments other specific complaint resolution processes.

2 Application of the Policy

This policy and procedure has been established to provide a clear administrative method of handling and resolving of all complaints made by affected persons, about:

- a) **Administrative actions**, as defined under *section 268(2) of the Act*
- b) **Competitive neutrality** (under section 48 of the Act);

This Policy is not intended to capture all complaints. There are a range of complaints that are regulated by legislation to which separate reporting, investigative and determination processes apply, for example:

- Complaints concerning Councillor conduct are handled under the provisions of the *Local Government Act 2009* or Council's Councillor Investigation Policy.
- Complaints that involve, or may involve, corrupt conduct by the Mayor, Councillors and employees are dealt with under the *Crime and Corruption Act 2001*.
- Complaints concerning the Chief Executive Officer are handled under Council's Policy concerning Complaints about Public Officials.
- Public Interest Disclosures are dealt with under the *Public Interest Disclosure Act 2010 (Qld)*;
- Employee complaints are dealt with under the Local Government Industry Award – State 2017 and Council's Personal Grievance Policy;
- Complaints about development decision(s) are made under the *Planning Act 2016*;
- Complaints concerning contract / contractor performance and resolved according to the dispute resolution processes contained within the contract document;

The Chief Executive Officer, Executive Managers, Managers and Complaints Officer(s) are responsible for ensuring that this policy is understood and adhered to by all Councillors and staff.

3 Definitions

Administrative Action Complaint – is a defined term in the Local Government Act, meaning a complaint about an administrative action of council including the following: -



- a) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;
- b) an act, or a failure to do an act;
- c) the formulation of a proposal or intention;
- d) the making of a recommendation; and
- e) is made by an affected person.

Affected Person – is a defined term in the Local Government Act, and is: -

- a) a person who is apparently directly affected by an administrative action of Council;
- b) is adversely affected by a competitive advantage that the person alleges is enjoyed by the local government;
- c) alleges inappropriate conduct by a Councillor of a local government; or
- d) alleges misconduct of a councillor of a local government.

CEO – The Chief Executive Officer, and includes any person appointed as Acting Chief Executive Officer

CCC – Crime and Corruption Commission established under the *Crime and Corruption Act 2001*

Competitive Neutrality Complaint – is a defined term in the Local Government Act that relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle and is made by any person who:

- a) competes with Council in relation to the business activity; and
- b) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by council; or
- c) wants to compete with council in relation to the business activity; and
- d) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by council.

Competitive Neutrality Principle – may be applied by:

- a) commercialisation of a significant business activity; or
- b) full cost pricing of a significant business activity

Complaint – An expression of dissatisfaction orally or in writing, about the service, decisions or actions of the Council or its staff; or the conduct or performance of a Councillor of a local government. It is not an enquiry or service request, unless the person specifies that they wish to make a complaint.

Complainant – The affected person or organisation making a complaint.

Complaints Officer – A specific role within Council being an appropriately qualified person who is responsible for coordinating and reporting in relation to Council's Complaint Management Process. Generally, the complaints officer shall be the officer directly responsible for Council's Governance function, though the Chief Executive Officer or Executive Manager Governance and Communication (EMGC) may appoint another complaints officer subject to operational requirements, subject matter expertise and workload considerations.

Corrupt Conduct – carries the same meaning as the definition (per s15) of *Crime and Corruption Act 2001*



Council – Mornington Shire Council

Council Officer – A Council staff member including permanent, temporary, casual or contract employees. The definition includes people engaged to relieve vacant positions within Council's organisational structure.

Customer Request – A request for Council to take action to satisfy the needs of a customer or ratepayer. This may be of a physical nature, such as a request to fill a pothole or to collect a stray dog, or a request for information.

Natural Justice – A set of principles to ensure fair and just decision making, including a fair hearing, an absence of bias, decisions based on evidence, and the proper examination of all issues.

Preliminary Assessment – An assessment of a complaint to decide whether the complaint –

- a) is about a frivolous matter or was made vexatiously; or
- b) is about inappropriate conduct, misconduct, official misconduct, corrupt conduct, or against matter including a general complaint against the local government; or
- c) is lacking substance.

Significant Business Activity – A council commercial service or activity that meets the financial thresholds established under s19 of the *Local Government Regulation 2012*.

The Act – *Local Government Act 2009*

The Regulation – *Local Government Regulation 2012*

4 Policy Statement

Council will always endeavour to meet local government and community expectations through being an open and accountable organisation, dealing fairly and reasonably with customers and having well trained and supported staff.

Effective complaints management is fundamental to the provision of quality services that Council aims to provide. Complaints enables a process for obtaining feedback from customers and resolving disputes when services do not meet customer expectations. Council recognises that errors and mistakes can be made, and all reasonable attempts will be made to rectify failures to ensure community confidence is maintained.

Council is committed to effectively handling complaints promptly and professionally and takes seriously all complaints via all methods of delivery, including verbal and anonymous complaints.

All complaints received by Council will be considered on their merits and addressed in an equitable and unbiased manner through an established complaints process and the observation of the principles of the Australian Standards (ISO AS 10002-2018) Customer Satisfaction – Guidelines for complaints handling in organisations.

Complainants will have access to the complaints management system free of charge and will not suffer any reprisal as a result of making a complaint.

Complainants will be able to access support to make a complaint if and where necessary.

Complainants will be treated courteously; and will be kept informed of the progress of the handling of their complaint, the timing of its handling and the outcome of their complaint.

When a complaint is made regarding a pending action or decision, by lodging a complaint, the matter will not automatically be suspended or put on hold.

All complaints will be treated with appropriate respect for the confidentiality and privacy of the complainant and officers involved. Publication of information relating to complaints about Council Officers will be limited to that prescribed by legislation.

For matters which are referred to an external agency for investigation, council will co-operate fully with the referral agency.

Council maintains a commitment to continual improvement its business processes and relationships with customers. Continual improvement will be achieved through effective and accountable recording, reporting and analysis of complaints.

Council staff who undertake roles in resolving or investigating complaints will receive training, the effectiveness of which will be reviewed at least as frequently as this Policy and associated Procedure Guidelines.

The complaints process is to be readily accessible to and able to be understood by all people. Information about the complaints process is to be available at its customer reception area and published on its website.

If there is any conflict between this Policy or associated Procedure, and the requirement of the Act or any other relevant legislation, the legislative requirement will take precedence.

5 Policy Procedure

There are six steps in the management of administrative actions complaints:

1. Receive

Verbal Complaints – these could be received either in person or over the phone.

Written Complaints – All written complaints are to be referred to the Governance Team for recording and preliminary review.

Referral by External Agencies – Complaints referred by external agencies (such as Office of the Independent Assessor (OIA), Queensland Ombudsman and Crime and Corruption Commission (CCC)) are received by either the Mayor or CEO. The referred complaint will be assessed and if a general or

administrative action complaint, will be referred to the Governance Team for recording and investigation, as determined by the CEO or EMGC.

Irrespective of the method of receipt, Council will ensure administrative action complaints are received with sensitivity and will take into account any special needs of the complainant.

Council will accept anonymous complaints, but Council officers will advise the complainant that information such as the complainant's name and contact details will assist Council to investigate and resolve their complaint.

Matters involving suspected official misconduct or corrupt conduct should be referred immediately to the CEO without any further action being taken.

2. Record

Council Officers who receive information that may constitute a complaint will refer the information to the Governance Team. If there is any doubt, then the EMGC should be consulted as to determine whether the information should be recorded as a complaint.

The Governance Team will record the information in a complaint register and then overview the handling of the complaint until the complaint is resolved. It is essential that every action and decision made regarding the complaint is recorded in the complaints register.

Upon recording the complaint, the CEO or EMGC shall appoint a Complaints Officer to investigate the complaint.

3. Assess

The initial (or preliminary) assessment is to be completed within three (3) business days from receipt of the complaint. The Complaints Officer will coordinate the collection of sufficient information about a complaint so that an assessment of the matter may be made. This should normally occur in consultation with the Manager of the relevant area unless there is a specific reason why such consultation cannot occur (such as when the complaint may involve that person).

Once sufficient information has been obtained, the Complaints Officer, with the assistance of the relevant Manager (and any other person deemed necessary), should assess whether the matter is a complaint and if it is, then determine an appropriate action.

The following assessment criteria may assist Council Officers to determine the type of complaint and the best process to use to resolve the matter:

- The matter is not a complaint if it relates to:
 - A request for information about Council services, policies or procedures
 - A request for service or action to be taken in relation to a service or product provided by Council, such as branches trimmed on a footpath tree or a rubbish bin fixed
 - A report of damaged or faulty infrastructure or hazards, such as potholes or fallen branches
 - A suggestion for a proposed service or product improvement, such as additional kerbside clean up events



- An enquiry or request for clarification or more information, such as a question about the environment levy on a rates bill
- A follow up or further request for service that has not been completed by Council but is still within the timeframe advised to the customer, such as the customer was told their rubbish bin would be collected within three days and the customer contacted Council again within one day.
- A petition to Council about a particular matter
- A matter that is outside of Council's jurisdiction (e.g. it is a State or Commonwealth Government issue)
- Is the person an affected person?
- Determine whether the person is sufficiently directly affected by the matter, rather than having only an intellectual or emotional interest in the subject.

Even if a complainant is not deemed to be an affected person, consideration should be given to factors that may still warrant the matter being treated as a complaint, such as the impact of the issue on the Community and/or council.

What type of complaint is being made?

The following outlines some complaint types and suggested action for resolution. Some complaints may not need to be referred on for resolution but may be dealt with immediately by the relevant council business unit, with the assistance of the Complaints Officer. Some types of complaints will be referred to other areas of Council for resolution, depending on the nature of the complaint.

Complaint Type	Suggested Action
Administrative Action	Refer to the Complaints Officer in the first instance. It will then be referred to the relevant Director and/or Manager for a response
Competitive Neutrality	These complaints will be referred to the Chief Executive Officer for review in accordance with the <i>Local Government Act 2009</i> .
Officer Conduct (not official Misconduct) including Code of Conduct and Grievance Matters	These will be referred to Chief Executive Officer and will be dealt with under the relevant Council Policies
Corrupt Conduct/Official Misconduct	These complaints will be directed to the Chief Executive Officer for initial review and where appropriate, referred on to the Crime and Corruption Commission (CCC).
Public Interest Disclosure	Complaints made under the <i>Public Interest Disclosure Act 2010</i> will initially be referred to the CEO
Privacy/Right to information	These complaints will be directed to the EMGC to be dealt with in accordance with the <i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i> .
Councillor Conduct	These will be referred to the Chief Executive Officer to be dealt with in accordance with the <i>Local Government Act 2009</i> .

Any matters that are assessed as not being complaints (such as service requests) should be referred back to the relevant department to be dealt with as per Council's usual process for dealing with such issues, ensuring that the target time frames for responding to a service request can still be met.



4. Respond and Resolve

Council aims to investigate and resolve complaints within 25 business days from the receipt of the complaint. Extensions to this timeframe may only be granted by the Chief Executive Officer. Request for extensions must be in writing and the reasons for the request must be stated.

The information gained during the assessment process should be used to determine an appropriate response to a complaint and the Complainant should be advised accordingly. Appropriate responses include, but not limited to:

No Action

Council may decide to take no action if the issue has been resolved or the situation complained about no longer exists.

For example, a person might make a complaint that Council overcharged for a service, but the error has been identified and fixed and they made the complaint before they received the notification of the error. In that case it is a valid complaint (that they were overcharged) but no further action is necessary.

In some instances, it may be determined (following a thorough assessment) that an administrative action complaint should not be acted upon or action discontinued if:

- The circumstances clearly show that a complaint is made frivolously, without grounds lacking in substance, or with the intent to harass;
- The complainant seeks to revisit a previously concluded complaint when no new evidence or material is provided;
- The complainant displays aggressive or abusive behaviour, or threatens or uses physical violence against themselves, a council employee, or property.

In certain situations, it may be clear that despite the dissatisfaction expressed by the Complainant, the issue complained about is the result of a routine Council process and the Complainant has not identified any departure from Council policies, procedures or relevant legislation.

Management Action

If there is sufficient information, Council may respond to a complaint by changing a decision, providing a service or information, correcting a record, waiving a penalty or taking any other action within its power to take in order to resolve the complaint.

For example, a person may complain that despite several requests, their contact details have not been changed in Council records. A check reveals that a technical error has occurred and once corrected the complainant's details are changed successfully. In this case the complaint is valid, but the situation can be rectified immediately.

Investigation

If there is insufficient information or the matter is complex / serious or there is no agreement on the circumstances, Council may have the complaint investigated. This may be done internally, or when a complaint is more complex, serious or sensitive, then the Chief Executive Officer may choose to appoint an external investigator.



Investigations will be conducted in a fair, objective and timely manner in accordance with the principles of natural justice and procedural fairness.

The following process will be used for investigations:

- Gather and analyse information
- Formulate decisions and recommendations
- Write a report detailing the above
- Submit to an authorised officer for approval.

Investigations can consider oral evidence (from the complainant and relevant witnesses), documentary evidence, technical/professional advice, site inspections, equipment or any other necessary source or relevant information.

The outcome of the investigation will determine an appropriate response from one of the other response categories in this section.

If during an investigation it becomes clear that the complaint is not an administrative action complaint or is another complaint type, the investigation should be discontinued and the complaint referred to the appropriate external agency or otherwise dealt with appropriately.

Alternate Dispute Resolution Processes (Mediation)

In situations where the relationship between the complainant and Council or the officer the subject of the complaint has broken down then Council may seek to enter mediation or a conflict resolution process. Options will be discussed with the complainant, and Council initiate the agreed alternate dispute resolution process.

5. Communication with the Complainant

An acknowledgement of the complaint will be sent to the complainant within ten (10) business days of receiving the complaint. This will normally be done by the Complaints Officer.

The Complaints Officer should regularly update the Complainant and advise of any change to or delay in the process. Such updates can be done by phone, email or letter as appropriate. All updates are to be recorded in the complaints file.

At the end of the investigation, the Complainant should be advised in writing of:

- The process followed by Council to respond to the complaint;
- The outcome and the reasons for it; and
- Their options to have the matter internally reviewed (see review process) or referred to an external agency for independent review if the Complainant does not agree with the outcome.

If the Complainant is dissatisfied with the outcome of the complaint process or the process itself, they can request an internal review by the Chief Executive Officer. The complainant must request the review within 14 days of receipt of correspondence advising the outcome. The decision to conduct a review, the resources to be applied and whether a review will be conducted internally or externally will be at the discretion of the Chief Executive Officer. The Complainant should be advised of the outcome of the review in a similar format to Section 7.



6. Report

A complaint should be formally finalised and closed at the end of the process, with the complaint file saved into Council's records system, and noted in the Complaints Register. The EMGC will provide regular reports to Council and the Executive Managers on administrative action complaints to allow any trends or systemic issues to be identified that may inform improvements to Council services.

Council's EMGC will conduct a regular review of the effectiveness of the Complaints Management Policy and Procedural.

The review will evaluate the performance of the Procedure and may consider the follow aspects:

- Accessibility – whether the administrative action complaints process is readily available to members of the community
- Trends – whether any complaints trends have been identified and if so, what are the proposed action to address the underlying cause(s); and
- Effectiveness – whether timelines for responding to complaints have been met and, if not, remedial action proposed.

6 Related Legislation, Procedure, Forms, Documents

Legislation

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Crime and Corruption Act 2001*
- *Public Interests Disclosure Act 2010*
- *Right to Information Act 2009*
- *Information Privacy Act 2009*
- *Sustainable Planning Act 2009*

Documents

- *Complaint Form*
- *Complaint Register*
- *Complaint Involving Public Officials Policy*
- *Councillor Investigation Policy*
- *Public Interest Disclosure Policy & Procedure*

7 Variations

This policy is deemed to be the current policy until altered, changed or replaced by an updated or amended version made by a resolution of Council.



8 Approval

This Policy was adopted at Council's Meeting held 17 February 2021 - Resolution Number 2021-02/24.



Workplace Participant Acknowledgement

I acknowledge:

- Receiving a copy of the Complaints Management Policy & Procedure;
- That I am required to comply with the policy; and
- That there may be disciplinary consequences if I fail to comply, which may result in the termination of my employment.

Your name:

_____.

Signed:

_____.

Date

_____.