

Complaints Process – Administrative Action Complaints

Head of Power

Local Government Act 2009
Local Government Regulation 2012

Objective

The objective of this policy is to outline a process to effectively manage all administrative action complaints from their receipt to their resolution.

Definitions/Application

Definitions

“**Administrative Action Complaint**” is a complaint made by an affected person that –

Is about an administrative action of the Council, including the following, for example –

- (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.

“**Affected Person**” is a person who is apparently directly affected by an administrative action of a local government.

“**CEO**” is Council’s Chief Executive Officer

Application

Section 268 of the Local Government Act 2009 requires the Council to adopt a process for resolving administrative action complaints.

Complaints not covered by this policy include:

- (a) complaints about Councillors, including the Mayor;
- (b) a complaint about official misconduct or a criminal matter;
- (c) disputes about legal liability;
- (d) competitive neutrality complaints as described in the Competitive Neutrality Complaints Policy; and
- (e) complaints about a process undertaken under an Act other than the Local Government Act 2009.

Policy Statement

Council will respond to administrative action complaints quickly, efficiently, and in a fair and objective way.

The process for effectively managing all administrative action complaints [complaints] is outlined below:

1. Submitting an Administrative Action Complaint

The affected person completes an Administrative Action Complaint Form available on Council's website or by request. If requested, a Council officer is to assist an affected person in completing this form.

If an affected person requires interpreter services, or has special communication needs to complete an Administrative Action Complaint Form, the affected person must be referred to Executive Services who will provide advice or arrange for assistance where appropriate.

The completed Administrative Action Complaint Form can be submitted on-line, by post, or in person to a Councillor or Council officer.

Council is to acknowledge submission of the Administrative Action Complaint Form (and any attached material) in writing within seven working days indicating the submission date. As part of this acknowledgement, the name and contact details of an appointed Complaints Officer (see Section 2 below) will also be provided to the affected person.

2. Appointment of a Complaints Officer

The CEO will appoint a Complaints Officer to assist with the resolution of a complaint. The Complaints Officer may be a Council officer or a suitably qualified person external to Council. The person appointed as a Complaints Officer for a particular complaint will be appointed on the basis that the person has the appropriate knowledge, qualifications, skill and experience to successfully resolve a complaint.

3. Preliminary Procedure

In the first instance, with the assistance of the Complaints Officer, the relevant Council department should try and resolve a complaint to the satisfaction of the affected person before it is dealt with under this policy.

If a complaint is not resolved by the relevant Council department, it will be dealt with using the following investigation process.

All complaints (including anonymous complaints) will be investigated using the following process if the CEO considers that a reasonable attempt has been made in the first instance by the relevant Council department to resolve the complaint.

4. Investigation of an Administrative Action Complaint

The Complaints Officer will conduct an investigation into the complaint, make findings, formulate recommendations and prepare a report on the outcome of the investigation for consideration by the CEO.

The investigation of a complaint is to be undertaken by the Complaints Officer in an independent, impartial and objective manner.

The Complaints Officer is to adhere to the following principles when conducting an investigation of a complaint:

- Procedural fairness/natural justice is to be followed.
- The establishment and maintenance of a complete document trail is essential as it may be needed to facilitate a subsequent review.
- Where appropriate, the civil standard of proof applies for administrative investigations. This means that for a complaint to be upheld, it must have been determined that it is the more likely outcome in the circumstances.
- Confidentiality about the investigation must be maintained to the extent that it can reasonably be achieved, subject to other legal requirements about the disclosure of information.

Any Complaints Officer appointed to investigate a complaint will not have been involved with the administrative action in question.

Timeframes

In general terms, the Council will endeavour to have the following timeframes met when dealing with a complaint:

- for urgent matters - within seven business days;
- for non-urgent complaints that are not considered to be complex, and the complaint is to be investigated using an internal mechanism, within 25 business days; and
- for complex complaints or where the complaint is to be investigated using an external entity, within (45) business days.

The timeframe for dealing with a complaint is measured from the submission date of a complaint to the date that the affected person is informed of the decision about the complaint.

If the nominated timeframe for dealing with a complaint cannot be met for any reason, the CEO may, once only, extend the time for dealing with the complaint but must notify the affected person in writing of any such extension before the expiry of the initial timeframe.

Any further extensions will only be given with the consent of the affected person. In determining the length of any extension, the CEO is to fix a date that is reasonable but in no case is the revised date to be more than three months after the date that the complaint was initially received by the Council.

If a complaint is resolved to the affected person's satisfaction before the investigation is complete, written notice confirming resolution of the complaint is to be given to the affected person.

Assessment process

The assessment of a complaint has three stages as outlined below

Stage One – Initial Assessment

The Complaints Officer will undertake an initial assessment of the complaint received (and any attached material) to fully understand the nature of the complaint and the outcome sought by the affected person. The officer may seek additional information from the affected person if required.

Once the nature of the complaint and the outcome sought by the affected person is fully understood, the CEO is to determine if the investigation is to proceed to the next stage.

The CEO is to give consideration to the following criteria when assessing whether an investigation is to proceed to the next stage:

- the complaint is trivial; or
- the complaint concerns a frivolous matter or was made vexatiously; or
- both of the following apply:
 - the affected person has a right of appeal, reference or review, or another remedy, that the person has not exhausted; and
 - it would be reasonable in the circumstances to require the affected person to exhaust that right or remedy before the Complaints Officer continues to investigate, the complaint;
- in the circumstances, investigating the complaint is otherwise unnecessary or unjustifiable.

Should the CEO determine that an investigation should not proceed to the next stage; the affected person is to be notified in writing. This notification is to include the reason/s for this determination.

Stage Two – Comprehensive Assessment

The Complaints Officer will undertake a comprehensive assessment of the complaint to determine if the complaint (or part thereof) is to be upheld.

A complaint (or part thereof) is said to be upheld if the Complaints Officer determines that an administration error has occurred and remedial action is required by the Council.

If the Complaints Officer determines that a complaint (or part thereof) is not upheld, no administration error has occurred and remedial action is not required by the Council.

In undertaking this comprehensive assessment, the Complaints Officer is to collect and analyse all information relevant to the complaint including legislation and Council policies and procedures. This process may also involve discussions and interviews with the affected person, Council officers and third parties where appropriate.

At the conclusion of this stage, the Complaints Officer is required to prepare a report for the CEO. The report is typically to address the following matters to the extent that each matter is relevant to the complaint in question:

- The complaint issue/s identified through a concise summary of the material facts and circumstances of the matter.
- Any relevant legislation.
- Any relevant Council policy or other similar document.
- Persons interviewed and/or consulted and relevant information obtained during any interviews and consultations.
- Results of any relevant research undertaken.
- Analysis of complaint issues to the extent necessary.
- Findings on material questions of fact and law.
- Whether the complaint (or part thereof) is upheld or not, and reasons for that finding.
- If the complaint is upheld, any recommendation/s for remedial action, whether by way of benefit to the affected person and/or systemic improvements to the Council's administrative practice with a view to preventing similar complaints in the future.

The CEO may then forward this report to the following entities, as appropriate, for consideration:

- (a) The Council if the administrative action in question was taken by:
- (i) the Council, or a Committee of the Council, at a meeting;
 - (ii) the Mayor or the Chairperson of a Standing Committee acting under statutory or delegated authority;
 - (iii) the CEO; or
- (b) The direct supervisor of the officer against whom the complaint is made if (a) does not apply.

The CEO has the authority to provide any lawful remedy irrespective of whether the remedy has been recommended by the Complaints Officer.

Stage Three – Resolving a complaint

If it has been determined that a complaint (or part thereof) is not upheld, the affected person is to be notified in writing. This notification is to include the reason/s for this determination and an explanation of the administration action that was taken.

If it has been determined that a complaint (or part thereof) is upheld, the affected person is to be notified in writing. This notification is to include the reason/s for this determination and an explanation of the remedial action that will be taken by the Council.

Remedial action may include, but is not limited to:

- an explanation for the action in question;
- an admission of fault;
- an apology;
- revocation or amendment of the decision;
- rectification, including repairing or replacing the matter in dispute;
- revision of relevant policy, procedure or practice;
- provision of technical assistance;
- reimbursement of costs incurred as a result of the action in question;
- financial compensation, including an ex gratia payment; and/or
- waiver of debt.

More than one remedy may be applied in the particular case if the circumstances justify that course of action.

5. External review of complaints

The affected person will be notified at the time of the decision in regard to a complaint of their external review rights through the Queensland Ombudsman's Office.

6. Implementation of remedial action

The CEO will take action in a timely manner to implement the remedial action.

7. Recording and Reporting of Administrative Action Complaints

The Council maintains a record of all administrative action complaints in a register.

This policy, which incorporates the Council's complaints management process, is to be available for public inspection at Council's public office (Strathpine Administration Building) and on Council's website.

The Council's CEO and Directors will be provided with an annual report on Administrative Action Complaints annually. This report is to include a review of complaints trends and the effectiveness of the complaints management process by monitoring the time taken to resolve complaints. The report will also include an evaluation of the outcomes and processes relating to this policy and other relevant matters.

8. Information about Administrative Action Complaints in Council's Annual Report

Council's annual report will contain the following information about Administrative Action Complaints:

- A statement about the Council's commitment to dealing fairly with Administrative Action Complaints.
- A statement about how the Council has implemented its complaints management process, including an assessment of the local government's performance in resolving complaints under the process (percentage of complaints resolved with the relevant timeframes).
- The number of the following during the financial year:
 - (i) complaints made to the Council;
 - (ii) complaints resolved by the Council under the complaints management process;
 - (iii) complaints not resolved by the Council under the complaints management process (ie. a complaint was resolved at the departmental level or did not progress past the initial assessment phase); and
 - (iv) complaints not resolved by the Council under the complaints management process that were made in the previous financial year.

Review Triggers

This Policy is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:

- (1) The related documents are amended.
- (2) The related documents are replaced by new documents.
- (3) Amendments which affect the allowable scope and effect of a Policy of this nature are made to the head of power.
- (4) Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this Policy is to be reviewed at least once every two years for relevance and to ensure that its effectiveness is maintained.

Responsibility

This Policy is to be:

- (1) implemented by all Councillors and Officers in a manner which:
 - (a) encourages excellence in work practices;
 - (b) complies with the Complaint Handling Framework outlined in Appendix A;
 - (c) fosters an environment where complaints management is the responsibility of all Councillors and Officers;
 - (d) ensures all training needed to ensure the effective implementation of this Policy is provided; and
 - (e) attempts to resolve a complaint before it is referred for attention under the general complaints process.
- (2) reviewed and amended by the Co-ordinator Executive Services in accordance with the "Review Triggers".

Version Control

Council Resolution number	11/564	Date	5 April 2011
	13/126-128		12 February 2013

Related Links:

Information Privacy Plan