

Title: **Complaints Handling and Review of Decisions**

Policy No: 026

Adopted By: Council

Next Review: 30/06/2018

Responsibility: Chief Executive Officer

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1	20\2501	23/02/2010	Adopted
2	21\2434	29/07/2014	Adopted

## 1 Policy Summary

From time to time the City of Darwin will receive complaints regarding the behaviour of individuals or the performance of Council which, due to their nature, are not seen as "Customer Action Requests" (which relate more specifically to service requests or works issues).

Complaints may come from members of the public, Elected Members or external agencies such as the Ombudsman. They may relate to a range of issues, from minor matters to serious allegations of misconduct.

### 1.1 Reviewable Decisions

In some circumstances a review of an administrative decision made by Council may be sought.

Section 229 of the Local Government Act requires Council to establish an Administrative Review Committee to review 'reviewable decisions' as defined by Section 227 of that Act.

For matters relating to reviews of administrative decisions refer to Policy No. 043 - *'Meetings, Meeting Procedures and Committees'* for the establishment and membership of the Administrative Review Committee.

## 2 Policy Objectives

This policy establishes the framework for handling complaints received about the behaviour of individuals or the performance of Council. A complaint may relate to an Elected Member, a Council employee, volunteer worker or Council contractor.

The policy defines the means by which Council will handle complaints in a responsive way and to use the defined complaint mechanism as an opportunity to improve organisational processes and decision making resulting in improved

administrative practices and enhanced customer satisfaction.

This policy does not derogate from a complainant's entitlement to lodge a complaint under public interest disclosure legislation, to the Ombudsman or the Department of Local Government and Regions.

### **3 Policy Statement**

#### **3.1 Complaints Overview**

Any person may lodge a complaint.

Complaints may be made in person, in writing, by telephone, by facsimile transmission, or by email.

Complaints may be lodged directly to Council; to an Elected Member; or through the Ombudsman, Commissioner for Public Disclosure or other external agency.

Complainants may choose to remain anonymous.

Complainants have a right to make a complaint and expect that they will be afforded a fair and impartial assessment of their complaint

Council will ensure that it :

- applies the principles of natural justice and procedural fairness;
- deals with complaints impartially;
- handles complaints confidentially;
- is open about the process;
- keeps complainants advised of progress; and
- gives complainants the opportunity to respond and to seek internal review.

All complainants will be afforded the entitlements as set out in Appendix A to this Policy.

#### **3.2 Complaint Management Process**

City of Darwin will manage complaints under the following principles:<sup>1</sup>

- A complaint will be acknowledged promptly;
- The complaint will be assessed and assigned priority;
- If investigation is required, it will be planned;
- The investigation will resolve factual issues and consider options for complaint resolution;
- The response to the complainant will be clear and informative;
- If the complainant is not satisfied with the response, internal review of the decision will be offered and information about external review options provided;

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<sup>1</sup> Commonwealth Ombudsman's Better Practise Guide for Complaint Handling

and

- Any systemic issues that arise as a result of the complaint will be considered and acted on.

### **3.3 Unreasonable Complainant Conduct**

Should a complainant refuse to accept decisions relating to their complaints and as a consequence become aggressive or verbally abusive, threaten violence, make unnecessary and excessive phone calls and emails, and excessive demands on time and Council resources, they will be defined as being an 'unreasonable complainant'.

The complainant will be notified of that conclusion and recorded as an "unreasonable complainant" for future reference.

### **3.4 Review of Complaints**

A complainant who feels dissatisfied with by the outcome of an investigation may seek to have the matter reviewed.

Complainants are entitled to one appeal of a decision in relation to their original complaint.

This entitlement exists is in addition to any legislative entitlement in relation to a review of a 'reviewable decision' as defined in the Local Government Act.

The Chief Executive Officer will appoint a panel of officers to conduct the review. Persons appointed to the review panel shall not have been involved in managing the original complaint.

At the conclusion of an investigation the complainant will be advised of the outcome of their appeal by letter signed by the Chief Executive Officer.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman.

### **3.5 Reviewable Decisions**

This Policy does not prescribe processes to manage requests to review 'reviewable decisions'. Reviews will be undertaken in accordance with Section 229 of the Local Government Act and Council Policy 043, 'Meetings, Meeting Procedures and Committees'.

### **3.6 Notification to Council for Discrimination and Industrial Relations**

The Chief Executive Officer shall advise Council as soon as reasonably possible of any complaints from:

- the Anti-Discrimination Commission;
- Commissioner for Public Interest Disclosures (where so authorised);
- Fair Work Australia;

- The Commissioner of Police (where so authorised); and
- The NT Ombudsman.

Notification of complaint and advice of the commencement of investigation will be sufficient for Council's needs in these matters.

### **3.7 Cooperation with External Investigators**

All staff will provide the fullest co-operation to all authorised external investigators during the conduct of investigation into complaints against Council.

### **3.8 Complaints Analysis (Process Improvement)**

The number and nature of complaints received may give a good indication of the extent to which an organisation is performing its role and information arising from complaints may indicate problems with an organisation's services, how it delivers its services or a need to improve how complaints are handled.

Annual reports will be provided to the Chief Officers Group on the number and nature of complaints received.

## **4 Legislation, terminology and references**

Local Government Act

City of Darwin Policy 043 - 'Meetings, Meeting Procedures and Committees'

City of Darwin Policy – 'Privacy & Confidentiality'

City of Darwin Employees Code of Conduct

City of Darwin Members Code of Conduct

Commonwealth Ombudsman – 'Better Practise Guide to Managing Unreasonable Complainant Behaviour'

### **Definitions**

**Act (the):** means the Local Government Act

**Code of Conduct:** means City of Darwin codes of conduct as they apply to staff and elected members

**Complaint:** means feedback received in person, by telephone, in writing, by facsimile transmission, or by email relating to the behaviour of staff or the performance of Council in its administrative duties

**Council:** means the City of Darwin and its employees

**EDRMS:** means Council's electronic document records management system

**ECM:** means "Enterprise Content Management" (Council's approved EDRMS)

**Reviewable decision: (Section 227 of the Local Government Act)** is a decision or

order made by a council, or an officer of a council, that is designated as reviewable by the Act (or a by-law under the Act); or by resolution of the council.

**Unreasonable complainant:** means a person who displays unreasonable conduct

**Unreasonable conduct:** means is any behaviour by a current or former complainant which, because of its nature or frequency, raises health, safety, resource or equity issues for Council and includes:

- unreasonable persistence with the complaint;
- making unreasonable demands;
- failing to provide reasonable cooperation;
- presenting unreasonable arguments; and
- displaying unreasonable behaviours.

**Unreasonable persistence:** means an unwillingness or inability to accept reasonable and logical explanations; pursuing and exhausting all available review options when not warranted; demanding a review simply because it is available

**Unreasonable demands:** means insisting on outcomes that are not possible or appropriate in the circumstances; issuing instructions and making demands about how their complain should have been handled

**Unreasonable lack of cooperation:** means providing little or no detail to support a complaint; withholding information or presenting information in an adhoc manner; withholding information, acting dishonestly, misquoting others

**Unreasonable arguments:** means arguments that are false, inflammatory or defamatory; fail to follow a logical sequence; not supported by evidence or based on theories

**Unreasonable behaviours:** means undertaking harassment, acts of aggression, verbal abuse, derogatory, racist, defamatory remarks, rude, confronting and threatening correspondence

## 5 Implementation and Delegation

The Chief Executive Officer is responsible for the adoption, implementation and administration of this policy.

## 6 Evaluation and Review

This policy will be reviewed every four years.

## APPENDIX A

### **Individual Rights and Mutual Responsibilities of the Parties to a Complaint**

In order for Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that duty of care obligations and safety standards are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to a complaint process.

#### **1. Individual Entitlements**

##### **1.1 Complainants have the right:**

- to make a complaint and to express their opinions in ways that are reasonable, lawful and consistent with this policy;
- to a reasonable explanation of Council's complaints procedure, including details of the confidentiality and privacy rights that apply;
- to a fair and impartial assessment and, where deemed appropriate in accordance with this policy, an investigation of their complaint based on the merits of the case presented;
- to a fair hearing;
- to a timely response;
- to be informed in at least general terms about the actions taken and outcome of their complaint;
- to be given reasons that explain decisions affecting them;
- to at least one right of review of the decision on the complaint;
- to be treated with courtesy and respect; and
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.

##### **1.2 The Chief Executive Officer has the right:**

- to determine whether, and how, a complaint will be dealt with;
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances;
- to expect honesty, cooperation and reasonable assistance from complainants;
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint;
- to be treated with courtesy and respect; and
- to modify, cease or decline service (in accordance with policy) in response to unreasonable behaviour by a complainant.

## **1.3 Subjects of a complaint are entitled to :**

- a fair and impartial assessment and, where appropriate, investigation of the allegations made against them;
- be treated with courtesy and respect by staff of Council;
- be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated;
- be informed about the substance of any proposed adverse comment or decision;
- be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made;
- be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them; and
- be protected from harassment by disgruntled complainants acting unreasonably.

## **2. Mutual Responsibilities**

### **2.1 Complainants are responsible for:**

- treating staff of Council with courtesy and respect;
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Council to assist them in doing so;
- providing to the best of their ability all the relevant information available to them at the time of making the complaint;
- being honest in all communications with Council;
- informing the Council of any other action they have taken in relation to their complaint; and
- co-operating with staff who are assigned to deal with their complaint.

If complainants do not meet their responsibilities, Council may determine (in accordance with policy) the complainant to be an 'unreasonable complainant', which will result in limitations or conditions being placed upon a complainant's ability to communicate with staff or access certain services.

Council adopts a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff.

Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.

Any conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

## **2.2 Staff are responsible for:**

- providing reasonable assistance to complainants who need help to make a complaint;
- providing reasonable assistance to complainants during the complaint process;
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially;
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant;
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made;
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address;
- keeping complainants informed of the actions taken and the outcome of their complaints;
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them;
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances;
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint; and
- giving adequate warning of the consequences of unacceptable behaviour.

If Council or its staff fails to comply with these responsibilities, complainants may escalate their complaint to the NT Ombudsman.

## **2.2 Subjects of a complaint are expected to :**

- cooperate with the staff of City of Darwin who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction;
- provide all relevant information in their possession to the City of Darwin or its authorised staff when required to do so by a properly authorised direction or notice;
- be honest in all communications with Council and its staff
- treat the staff of Council with courtesy and respect at all times and in all circumstances; and
- refrain from taking any detrimental action against the complainant in reprisal for them making the complaint.



If subjects of a complaint fail to comply with these expectations, action may be taken under relevant laws and/or codes of conduct.

## **2.3 City of Darwin is responsible for:**

- Ensuring an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints;
- Making firm decisions about how complaints will be managed;
- ensuring that all complaints are dealt with professionally, fairly and impartially;
- ensuring that staff treat all parties to a complaint with courtesy and respect;
- ensuring that the assessment and investigation of a complaint is based on sound reasoning and logically probative information and evidence;
- finalising complaints on the basis of outcomes that Council considers to be satisfactory in the circumstances;
- implementing reasonable and appropriate policies and procedures to ensure that complainants are not subjected to any detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints; and
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Council fails to comply with these responsibilities, complainants may refer the matter to the Northern Territory Ombudsman.