

 Central Highlands Regional Council	PROCEDURE Administrative Action Complaints	
PROCEDURE NUMBER: PROC035 EFFECTIVE DATE: 9 October 2018	DEPARTMENT: Corporate Services UNIT: Governance	

1.0 Purpose and Scope

1.1 This complaints procedure is established with the following objectives:

- Satisfy the Local government Act 2009, section 268, requiring Council develop such a procedure.
- Provide a fair, efficient and consistent treatment of complaints about the administrative actions of the Council;
- A complaints procedure that is easy to understand and is readily accessible to all;
- Detection and rectification, where appropriate, of administrative errors and identification of areas for improvement in the council's administrative practices;
- Increase the awareness of the complaints procedure for the council's staff and the community and the building of staff capacity to effectively manage complaints;
- Enhancement of the community's confidence in the complaints procedure and of the reputation of the council as being accountable and transparent.
- Provide a mechanism for continuous improvement through performance reporting and customer feedback

1.2 This procedure applies to the administrative actions of Council.

It does not generally apply to:

- 1) Any complaints about the conduct or decisions of elected officials (refer to Local Government Act 2009 or Code of Conduct for Councillors).
- 2) Official misconduct, which must be reported to the Crime and Misconduct Commission as per The Crime and Misconduct Act 2001.
- 3) Requests for service, e.g. request to repair a pot hole.
- 4) Any matter that is already covered by a separate (statutory) review process, for example, planning issues that can be addressed through Planning Act 2016, or competitive neutrality issues that can be addressed through the Local Government Act 2009.
- 5) Complaints made under the Public Interest Disclosure Act 2010 (Public Interest Disclosure Policy applies).
- 6) Complaints made about the level of service provided by Council as determined in the annual budget e.g. road maintenance allocation.
- 7) Matters relating to anti-discrimination, Equal Employment Opportunity Policy or industrial matters including the Enterprise Bargaining Agreement (refer to provisions of Agreement).
- 8) Complaints relating to the decision made on insurance matters.
- 9) Complaints relating to matters the subject of current legal proceedings (including actions under Local Laws).
- 10) Complaints relating solely to the routine application of policy, for example the impounding of animals.
- 11) Complaints considered trivial, frivolous or vexatious or if it is a matter that has been dealt with or responded to.

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Whilst the matters listed above do not constitute administrative complaints under this Procedure, a failure to address the matters in accordance with adopted Policy, for example the adopted Customer Service Charter, may constitute a complaint under this Procedure.

2 Reference

Local Government Act 2009

Local Government Regulation 2012

Crime and Misconduct Commission Act 2001

Public Interest Disclosure Act 2010

Integrity Act 2009

Employee Code of Conduct (CHRC0026)

Central Highlands Regional Council Local Laws and Subordinate Local Laws

Equal Employment Opportunity and Anti-Discrimination Policy (CHRC0020)

3 Definitions

CEO refers to Chief Executive Officer

The Act shall mean the *Local Government Act 2009* (as amended).

The Regulation shall mean the *Local Government Regulation 2012* (as amended).

Administrative Action means:

- A decision of council where the decision is not in accordance with the policies, processes and procedures set by council or legislation applied to or by the council.
 - Failure to make a decision where that decision is within the jurisdiction of the council.
 - Failure to communicate a decision in writing setting out the reason for a decision.
 - An act of the council.
 - Failure to act by the council.
 - The formulation of a proposal or intention.
 - The making of a recommendation.
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- **Affected person** means a person who is directly affected by the administrative action.
 - **Administrative Action Complaint** means a complaint lodged with council by an affected person in relation to administrative actions.
 - **Administrative Action Complaints Register** means a register that lists all the administrative action complaints received by council, the status of the complaint and the decision about the complaint. The register is used by council to assist completing its annual reporting obligations.

4 Procedure Statement

An administrative action complaint should not be confused with a request for service. A person may state that they are making a 'complaint' but this may not be an administrative action complaint, or the person may not be an affected person.

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Their issue may be a request for service (which is not a complaint unless council fails to provide an appropriate response or action), a request for information, feedback or an expression of opinion.

For example, a customer may phone and request a road be repaired or for assistance with a barking dog problem. These are requests for service. If a customer was to phone to complain that he/she had requested a road repair and council has a service standard for making those road repairs and nothing had been done or the road repair service standard was not met, then this may constitute an administrative action complaint.

4.1 How an Administrative Action Complaint can be made to Council

Complaints can be made by phone, in person, letter, fax, text message, and email. Written administrative action complaints should be addressed to the Chief Executive Officer, however they will be accepted even if addressed to any other council party.

Affected persons that provide oral administrative action complaints should provide their name, address and contact details to assist council in responding to the complaint. The affected person may also be requested to provide a written submission regarding the matter or verify a written statement on the matter that has been dictated to a council officer.

Anonymous complaints will be received however council will have difficulty communicating with the customer if they remain anonymous. As a complaint can only be made by an affected person council will make all reasonable attempts to contact an affected person in relation to the matter.

Complaints will be accepted from an agent for the affected person where a written authority signed by the affected person has been provided to council by the agent. Council reserves the right to contact the deemed affected person to verify the authorisation before commencing the review process. The term 'affected persons' refers also to the agent of affected persons through the remainder of this policy. Complaints submitted by social media sites will not be accepted or acknowledged by council.

4.2 Acknowledgement of receipt of an Administrative Action Complaint

Council will provide the affected person with an acknowledgement of the receipt of the administrative action complaint within seven (7) days of receiving the complaint. The acknowledgement will be in writing and outline the process that council will follow to review the matter. Where a complaint is referred to an external entity, Council will inform the complainant of this action.

In some cases, Council will invite an affected person to provide further information to assist Council to fully understand the concerns, the issue/s to be investigated (if an investigation is to be undertaken) and the outcome or remedy sought.

Where council is unable to find the contact details for an anonymous customer (after making reasonable attempts) the council will note on the review that no acknowledgement has been made.

On acknowledgement of an administrative action complaint it will be added to the administrative action complaints register. Anonymous administrative action complaints will be added to the administrative action complaints register.

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4.3 Criteria for assessing where to investigate an administrative action complaint

Council will not assess a complaint that:

- is not made by an affected person (or authorised agent) or
- where no decision, policy, recommendation or action or lack of action is identified or
- both of the following apply:
 - (i) the complainant has a right of appeal, reference or review, or another remedy, that the person has not exhausted; and
 - (ii) it would be reasonable in the circumstances to require the complainant to exhaust the right or remedy before the Council investigates, or continues to investigate, the complaint;
- in the circumstances, investigating the complaint is unnecessary or an unjustifiable use of Council resources; or
- where the affected person has been deemed a vexatious customer in relation to the current complaint matter or
- where the complaint is deemed frivolous or vexatious
- the complaint is made anonymously and there is insufficient information provided to investigate the complaint.

The complainant will be advised within 14 days if council decides that it will not assess the complaint under these criteria.

4.4 How an Administrative Action Complaint will be processed by Council

4.4.1 The investigation of a complaint will be undertaken by Council in an impartial, objective and as far as possible, confidential manner. The investigation of a complaint will typically involve the following stages:

- information gathering, including discussions and interviews with the complainant, Council staff, Councillors and third parties (where relevant);
- analysis of all relevant information obtained;
- preparation of a report on the results of the investigation (if it was not resolved, or withdrawn by the complainant during the complaints process);
- Recording in a dedicated database and reporting to Executive management on a regular basis
- formulation of findings, report and making recommendations for the General Manager's, Chief Executive Officer and/or for Council's consideration; and
- inclusion of statistics in the statutory reporting requirements for Council's annual report.

4.4.2 Administrative Action Complaints where the decision was made by a council officer under council policy, council delegation or legislation where council is delegated through a council officer to make decision under that statute.

The matter will be referred to another officer to review the decision. That officer will take into account all information and any new information provided by the affected person in the review of the original decision.

The following table provides options for reviewing such matters.

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Original Decision Making	Reviewer
Mayor (excludes a decision in relation to a complaint about a Councillor)	Council. The council may authorise that a suitable person undertakes a review and make recommendations to council on the matter.
Chief Executive Officer	Council or an independent reviewer appointed by council
Departmental General Managers	CEO, another departmental General Manager or an independent reviewer appointed by the Chief Executive Officer.
Departmental Staff	Another council employee at a level equal to or higher than the original staff member or an independent reviewer determined by the departmental General Manager.

The reviewer should complete the review within 21 days and advise the affected person of the decision within 7 days of that decision. That advice must include the reason for making the review decision and any other information that would assist the affected person understand the decision.

Timelines are a target rather than a benchmark and will depend upon the complexity of the matter and the level of information available. However, if timelines cannot be satisfied council will advise the affected person and seek an extension. Affected persons will be advised of their right of external review.

4.4.3 Administrative Action Complaints where the decision was made by Council resolution

On receipt of an administrative action complaint relating to a decision made by council the Chief Executive Officer will:

- Where appropriate provide a further report to council seeking a repeal or amendment of the decision where council has indicated that it has made an error in policy application or in the original policy statement. Council may seek the appointment of an independent expert reviewer to assist the Chief Executive Officer in developing the council report
- Once the council has reviewed the matter, the Chief Executive Officer will advise the affected person in writing within 14 days of the Council's decision being made. That advice must include the reason for making the review decision and any other information that would assist the affected person to understand the decision.
- All attempts will be made to complete the review within a period of 60 days. This is subject to all information being available and is a target rather than a benchmark.
- There shall be no further internal review by Council, but advice shall be provided on any external review rights a person may have. Should the affected party feel that the matter has not been resolved at this point they should contact the State Ombudsman for advice on how to further pursue the matter or seek legal advice on alternate actions.

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4.5 Rectification

Where an administrative action complaint has been substantiated council should immediately undertake action to amend processes, policies, procedures and advise the affected person of such action. Where possible such rectification should be undertaken within a period of 30 days. This is subject to the ability to undertake such changes and consideration of any financial and operational constraints.

In some cases, council may need to undertake additional actions as part of the rectification process. This may include but is not limited to:

- providing financial rectification via a refund or waiver
- make an admission of fault
- provide an apology
- reverse, change or amend a decision

4.6 Confidentiality

Council is committed to the privacy principles of the Information Privacy Act 2009. In protecting confidentiality, Council will endeavour to ensure that the details of the complaint, the investigation and related decisions will be kept confidential

There may be instances where disclosure of details of the complaint may be legally required or

- in undertaking a review of an administrative action complaint, the process identifies the affected person due to the nature of the matter;
- in rectifying an administrative action complaint information on the affected person becomes public; or
- it is required to undertake reporting and that reporting identifies a decision which may then identify the affected person.

4.7 Analysing and Reporting Complaints

4.7.1 It is recognized that by effectively analysing complaints, steps can be taken to:

- Redesign products and services.
- Improve business procedures and policies.
- Increase efficiency and effectiveness.
- Re-assess training priorities.
- Re-assess customer information needs such as newsletters, pamphlets, website content.
- Increase community confidence in Council decision making.
- Promote transparency and accountability

4.7.2 Council's annual report will reflect Council's commitment to dealing with administrative actions complaints and include statistical details regarding administrative action complaints.

Information reported will include the number of:

- i) administrative action complaints made to the Council
- ii) administrative action complaints resolved by Council
- iii) administrative action complaints not resolved by Council under this process.

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The Manager Governance will also review the numbers and types of administrative action complaints on a bi-annual basis to ensure that there are no trends that would identify a need to review process risks.

Record Keeping

Records of Administrative Action Complaints and records developed through the review process will be managed under the council's archives register.

5 Procedure Review

This procedure will be reviewed when any of the following occur:

1. As required by Legislation
2. The related documents are amended or replaced.
3. Other circumstances as determined from time to time by a resolution of Council
4. Other circumstances as determined from time to time by the Chief Executive

Notwithstanding the above, this procedure is to be reviewed at intervals of no more than four (4) years.

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