

# Complaints Management Process – Administrative Action and Human Rights Complaints Policy

## CONTROL:

Policy Type:	Administrative
Authorised by:	Council
Head of Power:	Local Government Act 2009 Section 268 Local Government Regulation 2012 Section 306 Queensland Human Rights Act 2019
Responsible Officer:	CEO
Adopted / Approved:	September 21 2020;Minute No. 2020.09.21-OM-13
Last Reviewed:	September 2020
Review:	September 2022
	<p>This Policy is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:</p> <ol style="list-style-type: none"> <li>1) The related documents are amended.</li> <li>2) The related documents are replaced by new documents.</li> <li>3) Amendments which affect the allowable scope and effect of a Policy of this nature are made to the head of power.</li> <li>4) Other circumstances as determined from time to time by a resolution of Council.</li> </ol> <p>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.</p>
Version	4

## 1. INTRODUCTION

### 1.1 PURPOSE:

To comply with the mandatory requirements for dealing with administrative and human rights complaints.

### 1.2 POLICY OBJECTIVES:

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

### 1.3 COMMENCEMENT OF POLICY:

This Policy will commence on adoption. It replaces all other specific Complaints Process – Administrative Action and Human Rights Complaints policies of Council whether written or not).

### 1.4 SCOPE:

This policy applies to all staff and the community as a guide to the effective handling of administrative action and human rights complaints.

#### 1.4.1 Human Rights Complaints

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This policy applies to all councillors, council staff and a public entity to ensure they work in accordance with the *Human Rights Act 2019* and help effectively deal with human rights complaints from start to finish.

The Human Rights Act protects 23 human rights. Council must uphold these rights when they make decisions, create laws, set policies and provide services.

Under the Act, council will:

- act and make decisions in a way that is compatible with human rights
- properly consider human rights when making decisions.

Considering human rights complaints involves three key steps:

1. Identify the human rights relevant to the complaint:

- *Has the individual specifically mentioned human rights in their complaint?*
- *If so, which ones? Are there others that might also be relevant that the complainant hasn't identified?*
- *If not, does the action or decision that the individual has complained about engage a human right?*

2. Consider whether the action or decision limits the human rights relevant to the complaint:

- *Has the right been limited?*

3. Assess whether the limitation is justified and reasonable in the circumstances:

- *What law allows council to limit a human right?*
- *What is the nature of the right—what does it protect?*
- *What is the purpose for limiting the right?*
- *Is there a relationship between the limit on the human right and the purpose of the limit? Does the limitation achieve council's purpose?*
- *Are there any less restrictive ways to achieve the same outcome without limiting the human right (or limiting it to a lesser extent)? Are these options reasonably available?*
- *Does the importance of achieving council's purpose outweigh the harm caused by limiting the human right?*

### 1.4.2 Administrative Action Complaints

The process applies to all administrative action complaints including:

- (a) Complaints about council and committee decisions; and
- (b) Complaints about staff conduct (where not otherwise covered by the Crime and Misconduct Act); and
- (c) Complaints about council actions and operations.

The process does not apply to:

- (a) Any complaint which is not about an administrative action of council;
- (b) A complaint made by a person not deemed to be an "affected person";
- (c) Requests for service or information, or provision of feedback in negative terms;
- (d) A decision made under a Local Law which is reviewable under a local law process;

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- (e) Any complaints about the conduct or decisions of elected officials;
- (f) Corrupt conduct, which must be reported to the Crime and Corruption Commission as per the *Crime and Corruption Act 2001*;
- (g) A complaint under the *Public Interest Disclosure Act 2010*;
- (h) Any matter that is already covered by a separate (statutory) review process, for example, planning issues that can be addressed through the Sustainable Planning Act 2009, or competitive neutrality issues that can be addressed through the Local Government Act 2009;
- (i) A request to review a court decision;
- (j) Social media comments.

Lodging a complaint for council's consideration does not preclude the issue being investigated by another group or agency, such as the Queensland Ombudsman.

## 2. POLICY

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### 2.1 POLICY STATEMENT:

Council will respond to administrative action and human rights complaints quickly, efficiently, and in a fair and objective way. The process for effectively managing all administrative action and human rights complaints (complaints) is outlined below:

## 3. STANDARDS AND PROCEDURES

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### 3.1 SPECIFIC AND STANDARD

#### 3.1.1 Submitting a Complaint

- The affected person completes a 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 a Complaint Form, the affected person must be referred to the CEO who will provide advice or arrange for assistance where appropriate.
- The completed Complaint Form can be submitted by email, by post, or in person to a Councillor or Council officer.
- Council will acknowledge submission of the 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 3.1.2 below) will also be provided to the affected person.

#### 3.1.2 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.

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### 3.1.3 Preliminary Procedure

- In the first instance, with the assistance of the Complaints Officer, the relevant Council department should try to 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.

### 3.1.4 Investigation of a 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.

### 3.1.5 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.

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### 3.1.6 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 is considered to be a vexatious complaint; or
  - both of the following apply:
    - (a) the affected person has a right of appeal, reference or review, or another remedy, that the person has not exhausted; and
    - (b) 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 an unjustifiable use of resources.
- 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 or a decision incompatible with human rights has been made 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 or a decision incompatible with human rights has been made 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.

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- 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:
  - The Council if the administrative action in question was taken by:
    - (a) the Council, at a meeting;
    - (b) the Mayor acting under statutory or delegated authority;
    - (c) the CEO; or
  - The direct supervisor of the officer against whom the complaint is made if the above 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 administrative 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;
  - counselling
  - disciplinary action
  - provision of training
  - 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.

#### **3.1.7 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.

#### **3.1.8 Implementation of remedial action**

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

#### **3.1.9 Recording and Reporting of Complaints**

- The Council maintains a record of all complaints in a register.

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- This policy, which incorporates the Council's complaints management process, is to be available for public inspection at Council's public office (Bedourie Administration Building) and on Council's website.
- The Council's CEO and Executive Management Team will be provided with an annual report on Complaints received. 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.

### 3.1.10 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:
    - (a) complaints made to the Council;
    - (b) complaints resolved by the Council under the complaints management process;
    - (c) complaints not resolved by the Council under the complaints management process (i.e. A complaint was resolved at the departmental level or did not progress past the initial assessment phase); and
    - (d) complaints not resolved by the Council under the complaints management process that were made in the previous financial year.

### 3.1.11 Public Interest Disclosures (PID)

- Complaints about wrongdoing are often anonymous due to concern over possible reprisals. A complainant may be afforded some protections under the Public Interest Disclosure Act 2010 including protection against reprisals. Complaints that attract protection under the Public Interest Disclosure Act 2010 are not always immediately apparent as protected disclosures. Care should be taken in receiving and allocating complaints of this type. If in doubt, you should seek the advice of the PID Coordinator or the Complaints Administrator.
- Any complaint that raises a suspicion of corrupt conduct relating to a council staff member should be immediately referred to the CEO. The Crime and Corruption Act 2001 imposes a duty on the CEO to report any suspicion of corrupt conduct. The Crime and Corruption Commission (CCC) has primary responsibility for reviewing complaints about, or matters involving, corrupt conduct. The CCC may refer a matter back to council for investigation, assume a monitoring role, or investigate a matter themselves.
- All CCC matters will be considered and dealt with in accordance with the requirements set out by the CCC. As noted above the requirements of the Administrative Action Complaints Management Process do not apply to CCC matters.

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## 4. REFERENCE AND SUPPORTING INFORMATION

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### 4.1 DEFINITIONS:

To assist in interpretation, the following definitions shall apply:

## Complaints Management Process – Administrative Action and Human Rights Complaints Policy

Word / Term	Definition
Council	Means Diamantina Shire Council.
Administrative Action	An administrative action complaint is defined in s268(2) of the Local Government Act 2009, that is made by an affected person about: <ul style="list-style-type: none"> <li>• An administrative action of a local government, including the following examples: <ul style="list-style-type: none"> <li>○ A decision, or failure to make a decision, including a failure to provide a written statement of reasons for a decision;</li> <li>○ An act, or failure to do an act;</li> <li>○ The formulation of a proposal or intention;</li> <li>○ The making of a recommendation.</li> </ul> </li> </ul>
Affected Person	An affected person for Administrative Action complaints is a person who is apparently directly affected by an administrative action of a local government.
Employee	An employee includes: <ul style="list-style-type: none"> <li>• a person employed by Diamantina Shire Council (DSC) or its controlled entities</li> <li>• a person who provides services to the Council under contract</li> <li>• a volunteer of the DSC</li> </ul>
External Investigator	An external investigator is a person who may be appointed to investigate a complaint or undertaking an internal review.
Frivolous Matter	A frivolous matter is one which is viewed as trivial, lacking in substance, or unworthy of serious attention. Considerations include whether: <ul style="list-style-type: none"> <li>• the complainant has a history of making false or unsubstantiated complaints.</li> <li>• there is no information to support the allegation in any way.</li> <li>• the allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being bona fide.</li> <li>• the allegation is without any foundation and appears to be designed to harass, annoy or embarrass the subject officer.</li> <li>• the allegation is inherently improbable and there is no information that in any way supports it.</li> </ul>
Complaints Officer	The officer appointed to investigate the complaint and may be a supervisor, manager or an external investigator.
Natural Justice	Natural justice is the process used to ensure just and fair processes are used in proceedings, including; <ul style="list-style-type: none"> <li>• The right to be heard;</li> <li>• The right to be made aware of any allegations that are made against a person;</li> <li>• The opportunity to respond to any allegations; and</li> <li>• The rule against bias.</li> </ul>
Public Interest	The public interest refers to the 'common wellbeing' or 'general welfare' of the community and government affairs.
Public Interest Disclosure (PID)	A PID is a disclosure made to a proper authority about a public interest matter including: corrupt conduct; Maladministration that adversely affects a person's interests in a substantial and specific way; or a substantial misuse of public resources. <ul style="list-style-type: none"> <li>• Note: the public interest refers to the 'common wellbeing' or 'general welfare' of the community and government affairs</li> <li>• Note: the proper authority for all disclosures relating to the Diamantina Shire</li> </ul>

## Complaints Management Process – Administrative Action and Human Rights Complaints Policy

Word / Term	Definition
	Council and it controlled entities is the Council
Regulatory Agency	The Regulatory Agency is the statutory body with the authority to investigate matters within its jurisdiction and includes the CMC, Policy, Ombudsman and Australia Human Rights Commission.
Unjustifiable use of resources	Action may be an unjustifiable use of resources if: <ul style="list-style-type: none"> <li>the law or policy alleged to have been breached is no longer in force;</li> <li>the lapse of time between the action and the making of the complaint reduces the likelihood of the productive investigation through inability to obtain relevant evidence.</li> <li>the complaint is repetitious — repeating, without any additional grounds and with no fresh allegations or evidence, the substance of a previous complaint that has been dealt with; or</li> <li>the complaint cannot be substantiated because there could not be any evidence capable of proving the allegations.</li> </ul>
Vexatious Complaint	A vexatious complaint is one which is intended to, or perceived to intend to cause distress, embarrassment, or to harass the subject of the complaint (may also relate to Frivolous complaints).

### 4.2 RELATED POLICIES, LEGISLATION AND DOCUMENTS:

Links to supporting documentation
<p>Local Government Act 2009</p> <p>Local Government Regulation 2012</p> <p><i>Crime and Corruption Act 2001</i></p> <p><i>Public Interest Disclosure Act 2010</i></p> <p><i>Human Rights Act 2019</i></p> <p><i>Sustainable Planning Act 2009</i></p>

### 4.3 VERSION CONTROL:

Previous Version Number	Adopted/Approved Date
Version 1 (Original)	January 20 2015; Minute No. 2015.01.20-OM-14
2	September 18 2017, Minute No. 2017.09.18-OM-5
3	Minute No. 2019.08.19-OM-20