

## SECTION 1 – INTRODUCTION

### 1 BACKGROUND

A complaint can generally be described as dissatisfaction with services or products of the City and its contractors, or with the action of employees or Council in the provision of those services or products.

### 2 PURPOSE

The purpose of this policy is to outline the complaints management scope, process and key roles and responsibilities to ensure effective handling of all complaints, investigations and reporting to relevant agencies.

### 3 SCOPE

The following sub-sections define the complaints within this Policy scope.

#### 3.1 What is a complaint under this Policy

A *Complaint received about an employee* is an expression of dissatisfaction or criticism of the conduct or suspected conduct. *Complaints* can be either minor or substantial. Complaints may originate from a council employee, a member of the public, a customer of council or a Councillor.

*Complaints received from employees about other employees* are also referred to as grievances and disputes and dealt with in accordance with the Local Government (State) Award.

#### 3.2 What is not a complaint under this policy

For the purpose of this policy, the following are not regarded as *Complaints*:

- a. a *Complaint* against the Mayor, a Councillor or the City Manager of Council
- b. a complaint about an event, service or business for which Council is not responsible;
- c. disagreement with a Council policy, procedure or practice implemented by a Council employee;
- d. objection to or disagreement with a formal decision of the Council brought into effect by a Council employee;
- e. a request for works or services;
- f. a request for information or explanation of policies, practices or procedures;
- g. reports of damaged or faulty infrastructure;
- h. reports about neighbours, noise, dogs, unauthorised building work or similar matters which are part of Council's regulatory regime (these are regarded as regulatory notifications and dealt with in Fairfield City Council's Complaints and Enforcement Policy;
- i. objection to a notice, order or other legal process commenced by Council through the delegated action by a Council employee;

- j. objection to or disagreement with feedback or arrangements associated with Council's employee performance management system as amended from time to time; and
- k. an expression of dissatisfaction and/or annoyance by a customer about the quality, value or timeliness of a Council service delivered in accordance to service level expectations by a Council employee.

### 3.3 Complaints dealt with under other policies and instruments

*Complaints* against the Mayor, a Councillor or the City Manager of Council are dealt with under Council's Code of Conduct noting:

- a) Complaints about consultants and contractors are dealt with through the procurement and contract management process.
- b) Complaints/grievances initiated by internal staff are dealt with in accordance with the Local Government (State) Award grievance and dispute procedure.

## 4 DEFINITIONS

### 4.1 Minor Complaint

A *Minor Complaint* is a complaint about a Council employee which, if proven or admitted, would not be a substantial complaint under Council's disciplinary process provided that the misconduct:

- a) was an isolated event;
- b) did not involve several acts in preparation and execution;
- c) only resulted in the complainant and any third party being dissatisfied rather than experiencing more substantial hurt or loss; and
- d) was not corrupt conduct or serious and substantial waste as defined by the ICAC Act 1988 and the Public Interest Disclosures Act 1994 (as defined in the Public Interest Disclosures Policy).

### 4.2 Substantial Complaint

A *Substantial* complaint is a complaint about a Council employee which is not a minor misconduct complaint. A *Substantial* complaint would usually involve:

- a) corrupt conduct under the ICAC Act 1988;
- b) serious and substantial waste as defined in the Public Interest Disclosures Act 1994;
- c) fraud or any other criminal offence;
- d) an act or omission contrary to law;
- e) child related matters; and
- f) a breach of, or non-compliance with the provisions of Council's Code of Conduct, that deals with conflicts of interest, personal benefit, relationships between Council officials and access to information and Council resources.

### 4.3 Complaint Assessment & Responsible Officer/s

Appendix 1 to this policy contains examples of complaints, how they are assessed and the officer/s responsible for responding to the complaint in accordance with this policy.

Appendix 2 to this policy contains a Complaints Management Process Flowchart.

Employees can obtain advice about the Complaint Assessment process from the Public Officer or his/her delegate.

For the purpose of this policy, the Public Officer (Director Corporate Governance) has nominated:

- a) Manager Governance and Legal, and
- b) Manager Human Resources

as their delegate.

## 5 LEGISLATIVE CONTEXT

Name	Location
<b>Access to information</b> Government Information (Public Access) Act 2009 (GIPA Act)	
<b>Complainant Rights</b> Public Interest Disclosures Act 1994 Civil Liability Act (2002)	
<b>Corruption Matters</b> Independent Commission against Corruption Act 1988 Ombudsman Act 1974 (Part 3A)	
<b>Employee Conduct</b> Local Government Act 1993 Industrial Relations Act 1996 Local Government (State) Award	
<b>Matters concerning Children</b> Children and Young Persons (Care and Protection) Act 1998 Child Protection (Working with Children) Act 2012 Children's Guardian Act 2019 National Disability Insurance Scheme Act 2013	
NSW Government <i>"Policy Statement on the Application of National Competition Policy to Local</i>	

*Government*

NSW Ombudsman and Department of Local Government, Practice No 9 Complaints Management in Councils (2009)

NSW Ombudsman's Publication – Managing Unreasonable Complainant Conduct Practice Manual

NSW Ombudsman's Publication – Investigating Complaints – A Manual for Investigators

ICAC Fact Finder – A Guide to Conducting Internal Investigations

**SECTION 2 – POLICY****6 OBJECTIVE AND GOALS**

The objectives of this policy is to:

- a) advise employees in relation to complaint handling procedures and practices
- b) informing customers of their rights when making or considering making a complaint. ensure all stakeholders can reference information on how complaints will be dealt with by Council;
- c) establish process to ensure all complaints are responded to in a fair and timely manner, without bias or fear of retribution;
- d) meets the requirements of relevant legislation, policies and Awards including:
  - a. Local Government Act 1993
  - b. Government Information (Public Access) Act 2009
  - c. Office of Local Government Model Code of Conduct and Procedures 2020
  - d. Local Government (State) Award 2020

**7 POLICY STATEMENT**

This policy relates to all complaints with the exception of complaints dealt with under other policies and instruments that are outlined in point 3.3.

**8 APPLICATION & IMPLEMENTATION****LODGING COMPLAINTS****8.1 Complaints from Members of the Public**

Members of the public may lodge written complaints:

- a) in person via the Customer Service Centre, Ground Floor of the Administration Centre, Avoca Road Wakeley;
- b) Online via Council's website.
- c) by letter to The Public Officer, Fairfield City Council, PO Box 21, Fairfield NSW 1860;
- d) by email to [mail@fairfieldcity.nsw.gov.au](mailto:mail@fairfieldcity.nsw.gov.au);

Council will assist any person who wishes to make a complaint. Should an interpreter be required, Council will provide a language aide (employee) or arrange for an interpreter through the Telephone Interpreter Service (TIS).

## 8.2 Complaints from employees

Council employees may lodge complaints with:

- a) the Business Unit Manager, or
- b) Human Resources, or
- c) Public Officer, or
- d) by submitting a grievance resolution form QMF-HR-035

## 9 RESPONSIBILITY FOR MANAGING COMPLAINTS

Managers and employees are required to seek advice from the Public Officer including his/her alternate delegates if unsure of the Council Officer accountable for management of the complaint.

### 9.1 Managing Minor Complaints

Managing *Minor Complaints* is the responsibility of the Business Unit Manager (the decision-maker) to whom the employee complained about ultimately reports.

### 9.2 Managing Substantial Complaints

Managing a *Substantial Complaint* is the responsibility of the Public Officer or his/her delegate.

The Public Officer or delegate is responsible for advising the City Manager of the complaint and for assessing it to determine the appropriate course of action.

The course of action to be considered by the Public Officer or his/her delegate in consultation with the City Manager or Executive Leadership Team member include whether the matter should:

- a) be investigated by Council;
- b) subjected to some initial enquires to determine the seriousness and scope of the matter;
- c) be investigated by Council and reported to an external agency including but not limited to ICAC, Office of the Children's Guardian, NDIS Commission or NSW Police, for review, monitoring and potentially investigated separately by that agency;
- d) re-determined as a minor complaint; or
- e) not be subject to further action.

If a decision is made to investigate the matter, an independent investigator will undertake the investigation. Managers, team leaders or supervisors who are in the same chain of command as the employee who is the subject of the *Substantial Complaint* are not permitted to participate in the investigation or any preliminary enquiries other than providing information directly to the investigator.

In some limited circumstances, Council's Internal Auditor may be tasked to undertake initial enquiries to assist the decision-maker to determine the seriousness and scope of the complaint. In this scenario, the Internal Auditor must not be involved in the complaint under investigation.

Depending on the nature and seriousness of the complaint, the Director/s in consultation with the City Manager may delegate his/her role in determining a specific *Substantial Complaint* to a member of the Executive Leadership Team. This means that for *Substantial Complaints*, the Director/s in consultation with the City Manager is the decision-maker.

Where Council decides not to take further action on the complaint:

- a) the complainant will be advised in writing of the reasons for the decision, and
- b) the employee will be advised in writing of the outcome and the reasons

In deciding whether or not to recommend to the City Manager or his/her delegate the investigation of a matter, the Public Officer or delegate will consider whether the complaint:

- a) is frivolous, vexatious or not made in good faith or concerns a trivial matter;
- b) involves a matter where an adequate remedy or right of appeal exists, whether or not the complainant uses the remedy or right of appeal;
- c) is subject to an existing mediation process;
- d) relates to matters already under investigation by the Minister for Local Government, the ICAC, the NSW Ombudsman's Office, a Minister of the Crown or Government Department or the NSW Police Force;
- e) relates to a matter before a court or tribunal;
- f) involves a matter where the complainant declines, refuses to provide or does not provide further information deemed necessary for action to be taken;
- g) whether there is sufficient information to enable an investigation, especially if the complaint was made anonymously;
- h) involves threats made against Council, any of its employees or Councillors;
- i) relates to a matter which is more than 12 months old;
- j) is against Council's legal responsibilities as an employer;
- k) is an unreasonable invasion of a person's privacy, according to the Privacy and Personal Information Protection Act 1998;
- l) is, in the view of the City Manager, excessively wasteful of Council's resources; and/or
- m) encourages or enables unethical behaviour.

## 10 CONFIDENTIALITY

All complaints will be managed confidentially, subject to the following considerations:

- a) any requirements under law to protect or disclose the identity of the complainant or other persons involved in the matter;
- b) Council's public interest obligation to cooperate with external agencies in their investigation of crime, corruption or maladministration;
- c) the need to accord procedural fairness to those involved in any investigation;
- d) the need for Council employees to know identity information in order to effectively deal with the complaint; and/or
- e) the need to ensure there is no victimisation of the complainant for making the complaint.

## 11 GENERAL PROVISIONS

When managing complaints, the following general provisions need to be applied:

- a) A complainant must have their complaint acknowledged within two business days and advised of a contact person and timeframe for investigation with a target of four weeks for minor complaints, and 12 weeks for serious complaints;
- b) Members of the public who wish to make a complaint must be informed of their right to assistance and the process to be followed in resolving the matter;
- c) Anonymous *complaints* with detailed evidence submitted will still be assessed but if their anonymity prevents effective follow-up investigation, they can be discontinued on this basis by the relevant decision-maker;
- d) Where a Council Officer has complaint management responsibilities under this policy and is him/herself the subject of a *Complaint* or has some other conflict of interest in relation to managing the complaint, complaint management decisions must be transferred to a more senior officer. With the approval of the Manager Human Resources in the case of a *Minor Complaint*, responsibility can also be transferred laterally to another Business Unit Manager or member of the Executive Leadership Team; and
- e) Where a *Complaint* is made against an employee by a Councillor the matter will be referred to the Public Officer or his/her delegate/s.

## 12 SPECIAL PROVISIONS AND ADVICE

Managing complaints can be a complex process depending on the nature and seriousness of the matter. Special legislative provisions apply to many situations involving complaints including the following:

- a) complaints concerning child protection;
- b) complaints involving protected disclosures under the Public Interest Disclosures Act 1994;
- c) complaints about criminal activity;
- d) managing private and health related personal information;
- e) complaints about Competitive Neutrality, and;



- f) complaints which have industrial implications or are an offence under the Industrial Relations Act 1996.

When managers are dealing with *Minor Complaints* and are not sure about any aspect of the process, they are encouraged to obtain advice from the Public Officer or his/her delegate/s to ensure compliance with these requirements.

### 13 UNREASONABLE AND VEXATIOUS COMPLAINANTS

This section of the policy is intended to apply to complainants and whose complaints are found to be both without foundation and whose motivation a reasonable person would deem to be vexatious. If not appropriately managed, the complaint has the potential to pose significant ongoing resource management and equity issues for Council.

Complainants who are deemed to be unreasonable or possibly being vexatious should be reported to the Public Officer who will provide advice on the process to deal with an unreasonable or vexatious complainant. In general, terms the process will be that recommended by the NSW Ombudsman and which accords with good administrative practice.

## SECTION 3 – GOVERNANCE

### 14 RELATED POLICIES, PROCEDURES & GUIDELINES

0-001	Fairfield City Council's Code of Conduct and Procedures
0-066	Fairfield City Council's Compliance and Enforcement Policy Fairstart
QMPOL-FS-04	Feedback and Complaints Policy
HR071.1	Grievance Resolution Requirements Guide
HR006	Performance Management and Disciplinary Policy
HR006.1	Performance Management and Disciplinary Guidelines
0-016	Privacy Management Plan Policy
0-015	Public Interest Disclosures Policy
0-071	Procurement Policy
0-025	Statement of Business Ethics Policy

### 15 RESPONSIBILITY

Policy Owner	Manager Human Resources
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### 16 RISK

Council not realising benefit from investment in employee training if employment terminates prior to on the job application of learning outcomes.



**17 REVIEW DATE**

This policy will be reviewed every five (5) years or in the event of workplace change and will be done in accordance with Council's established consultation processes.

**18 AUTHORISATION**

This policy was approved by the Executive Leadership Team on 3 June 2021.

### Appendix 1 – Examples of Complaints, How They Would be Assessed and Responsible Officer

EXAMPLE	ASSESSMENT	RESPONSIBLE OFFICER/S
<b>Member of the public complains that an employee member was rude when issuing a parking infringement.</b>	Minor Conduct Complaint in relation to the rudeness.	Business Unit manager in consultation with Human Resources Division.
<b>Resident objects to a neighbour receiving development consent from Council to build an extension because of loss of privacy.</b>	Not a complaint under the policy.	Decision explained to resident by relevant employee member.
<b>Employee member reports a colleague whom he suspects of using Council resources to run a private business.</b>	Substantial Conduct Complaint as it is about misuse of Council resources under the Code of Conduct.	Reported as soon as possible to the Public Officer or delegate.
<b>Solicitor complains of undue delay in providing a section 603 certificate required for property settlement purposes.</b>	Not a complaint under the policy.	Response By Business Unit Manager.
<b>Resident complains about a barking dog in his street.</b>	Not a complaint under this Policy. Dealt with as a regulatory notification and FCCs Complaints and Enforcement Policy.	Appropriate regulatory response by relevant staff member.
<b>Small business owner complains about Council's outdoor dining policy being too restrictive and negatively impacting his business.</b>	Not a complaint under this Policy.	Relevant area explains Council's policy. Complaints about outdoor dining policy reviewed periodically to determine whether change is warranted.
<b>Member of the public anonymously reports a Council employee observed double-parking a Council vehicle while buying a coffee.</b>	Minor Conduct Complaint	By Business Unit Manager and in consultation with Human Resources Division.
<b>An employee makes a complaint that a co-worker</b>	Substantial Conduct Complaint	Reported as soon as possible to the Public

is operating plant and equipment whilst being under the influence of alcohol.		Officer or delegate.
A Councillor makes a complaint about the conduct of an employee.	Minor or Substantial Conduct Complaint	Reported as soon as possible to the Public Officer or delegate.
A resident alleges that Council has provided their contact details and residential address to someone that is threatening their safety.	Special Legislative Provisions	Reported as soon as possible to the Manager Governance & Legal for assessment.

## Appendix 2 – Complaints Management Process Flowchart

