

Administrative Action Complaints Process Policy and Procedures (Combined)

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Murweh Shire Council

Administrative Action Complaints Process

1. Title and Authorisation

This is the Administrative Action Complaints Process (the complaints process) of the Murweh Shire Council (the council).

The complaints process is made under the *Local Government Act 2009* (the Act).

2. Effective Date

The complaints process applies from the date of the council resolution of adoption.

3. Amendment of the Complaints Process

Any Amendment of the complaints process must be approved by resolution of the council.

4. Scope of the Complaints Process

The complaints process has been established for resolving complaints by affected persons about administrative action of the council. However, the complaints process does not apply to a complaint –

- That could be made under Chapter 3 of the Act about competitive neutrality issues;
- About official misconduct that should be directed to the Crime and Misconduct Commission;
- Made under the *Whistleblowers Protection Act 1994*; or
- About an alleged minor breach, meeting breach, a repeat breach or a statutory breach under the *Code of Conduct for Councillors*.

5. Objectives

The complaints process is established with the following objectives:

- The Fair, efficient and consistent treatment of complaints about decisions and other administrative actions of the council.
- A complaints process that is easy to understand and is readily available to all.

- Detection and rectification, where appropriate, of administrative errors.
- Identification of areas for improvement in the council's administrative practices.
- Increase in awareness of the complaints process for the council's staff and the community.
- Enhancement of the community's confidence in the complaints process and of the reputation of the council as being accountable and transparent.
- Building the capacity of staff to effectively manage complaints in an environment of continuous improvement.

6. Policy Commitment

It is the council's intent to provide a level of customer service that does not attract complaints, but acknowledges the right of persons to provide feedback, both positive and negative, on its services and/or to lodge a complaint about a decision or other action it takes.

The complaints process has been instituted to ensure that, to the greatest practical extent, any complaint is dealt with fairly, promptly, professionally, in confidence (subject to any legal requirements) and in a manner respectful to the complainant.

The council commits to providing adequate resources and trained officers to deal with complaints and to record and analyse complaints data.

To this end, the council will endeavour to ensure that:

- Anyone who is dissatisfied about a decision or other action of the council, a council officer or a councillor can easily and simply lodge a complaint.
- Complainants are provided with information on the complaints process and, if necessary, assistance to make their complaint.
- Each complaint is initially assessed in terms of its seriousness, safety implications, complexity and degree of urgency.
- Council officers will receive complaints in a professional manner and welcome valid feedback as an opportunity for improvement of the council's administrative practices.
- Complaints are responded to as quickly as possible and in accordance with the timeframes set out in the complaints process.

- Complainants will not suffer any reprisal from council or its officers for making a complaint.
- Complaints are properly monitored with a view to continuous improvement of the council's business processes.
- If a complainant is not satisfied that a complaint has been satisfactorily resolved, he/she will be informed of any statutory right of review and, if they request, be provided with details of any further review mechanism that is available.

7. Definitions

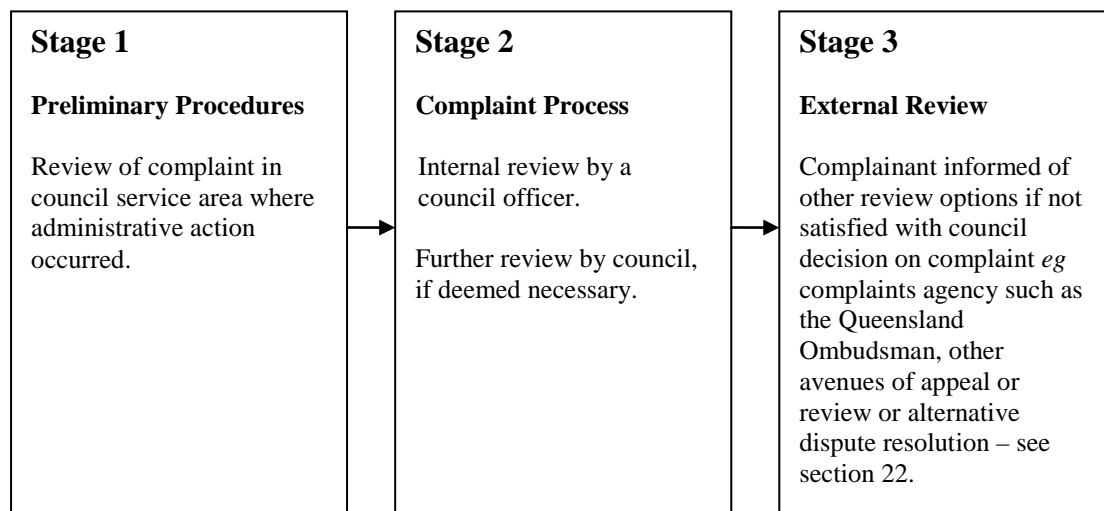
Terms used in the complaints process have the following meanings:

- *Administrative action* – an administrative action of the council, being an action about a matter of administration, including each of the following –
 - (a) a decision and an act;
 - (b) a failure to make a decision or do an act, including a failure to provide written reasons for a decision;
 - (c) the formulation of a proposal or intention;
 - (d) the making of a recommendation.
- *Affected person* – a person who is apparently directly affected by an administrative action.
- *CEO* – the chief executive officer of the council.
- *Complainant* – the affected person or organisation making a complaint.
- *Complaint* – an expression of dissatisfaction by a person regarding a decision or other action of the council.
- *Council* – Murweh Shire Council.
- *Council officer* – includes a permanent, temporary, casual or contract member on the council's staff.
- *Director* – a council director who is generally responsible for various functions of the council and who reports directly to the CEO.
- *Complaints Policy* – the statutory complaints process described in Chapter 6, Part 5 of the Act (the complaints policy)

- *Request for service* – a request for the council to take action to satisfy the needs of a customer or ratepayer. This may be of a physical nature, such as a request to fill a pothole or to collect a stray dog, or a request for information.
- The act – *Local Government Act 1993*.

8. Complaint Handling Framework

The following framework describes the model adopted by the council handling complaints:



STAGE 1 – PRELIMINARY PROCEDURES

9. Preliminary procedures before a complainant may make a complaint

This section is applicable if a person is making a complaint about an administrative action of the council.

When a person makes a complaint without first having contacted the relevant service area of the council to try to resolve the complaint, that person may be required to take this initial step before the complaint will be registered and dealt with under the complaints process.

If the complaint cannot be resolved by the relevant service area or with the relevant councillor, the complaint will be dealt with in accordance with the complaints process.

Compliance with this section is not a pre-requisite to the submission of a formal written complaint under the complaints process where it is clear on the face of the document that a complaint has been made. In those circumstances the complaint will

be dealt with under the complaints process, unless it is earlier resolved to the complainant's satisfaction or is withdrawn by the complainant.

10. How a complaint may be made

A complainant may make a complaint –

- (a) In writing (by letter, or by completing the council's complaint form)

All written and electronic complaints should be addressed to the CEO. The complainant's contact details should be identified to enable council to contact the complainant as required by the Act.

If an oral complaint is received the CEO, or delegate, will request that the complaint be put in writing if it is of a complex nature or contains complex material.

All written complaints will be referred to the CEO, or delegate, who will arrange for the complaint details to be recorded in the complaint recording system.

If necessary, assistance may be provided by a council officer to a complainant on how to make a complaint, including how it should be documented. The aim is to clarify the matter of concern to the complainant and the outcome/s sought.

If a complainant requires interpreter services, or has special needs, the complainant will be referred to the appropriate council officer who will provide advice or arrange for the giving of assistance, to the extent practicable.

Complaints by agents

If a complaint is lodged on behalf of a person by a professional advisor *eg* a solicitor or accountant, the council will respond direct to that advisor.

A complaint lodged by a person as agent for an affected person will be responded to direct to the affected person and not to the agent, unless a letter of authority is provided indicating the agent is acting on behalf of the affected person and the council considers that the appointment as agent has been validly made.

STAGE 2 – COMPLAINT PROCESS

11. Process for selecting and appointing a complaints officer to investigate complaints

Subject to the Ac, the council, by resolution, may –

- (a) Select and appoint the CEO as a complaints officer for the internal review of any complaint;
- (b) Delegate to the CEO the power to select and appoint a person or persons to be a complaints officer to investigate complaints.

The CEO may delegate his/her powers under (b) to another employee of the council under s.259 of the Act.

The investigation is to be undertaken by way of internal review. Relevant criteria to be applied in making the decision about the method of review are:

Internal review

An internal review of a complaint will be conducted where the administrative action in question was undertaken by a council officer. The review will be conducted by the CEO, or an officer appointed by the CEO or the CEO's delegate, as the complaints officer for the complaint. The complaints officer must not be less senior than the officer who took administrative action that is being reviewed.

Appointment of reviewer

The CEO, or delegate, will –

- (a) Assess the nature of the complaint and determine whether the complaint is to be investigated by means of internal review;
- (b) Based on the review criteria, appoint a suitable person as the complaints officer for the complaint from a panel established by the CEO for that purpose; and
- (c) Give the person appointed as the complaints officer an instrument of appointment that also stipulates the date by which the complaints officer must complete the report on the investigation if the complaint is not earlier resolved to the complainant's satisfaction or is withdrawn by the complainant.

The person appointed as a complaints officer for a complaint must have the appropriate knowledge, qualifications, skill and experience, including the relevant investigative, analytical and report-writing skills, to conduct an investigation into the complaint, make findings, formulate recommendations (where appropriate) and prepare a report on the outcome of the investigation for consideration by the council or its delegate.

The complaints officer appointed to investigate a complaint by way of internal review must not have been involved with the administrative action in question.

12. Sending complaints to, and their investigation by, the complaints officer

The CEO, or an officer authorised by the CEO (“authorised officer”), after the oral or written complaint has been recorded, will arrange for the complaint and other materials, including relevant documents from the council’s records, to be forwarded to the complaints officer for assessment of the complaint as soon as practicable after the officer’s appointment.

The instrument of appointment of a complaints officer must indicate the timeframe for dealing with the complaint.

The timeframe for dealing with a complaint will depend on an assessment of the following factors by the CEO or authorised officer –

- The urgency of the situation in terms of loss or damage likely to be suffered if the complaint is not quickly resolved;
- The likelihood that the complaint can be quickly resolved;
- The complexity of the complaint issue/s;
- Whether the complaint requires internal review in accordance with the criteria for the selection of a complaints officer for the complaint as set out in the complaints process.

In general terms, the council will endeavour to meet to the following timeframes for dealing with a complaint –

- For urgent matters – within 14 days;
- For non-urgent complaints that are not considered to be complex or where the complaint is to be investigated under the internal review mechanism – within 30 days;

If the nominated timeframe for dealing with a complaint cannot be met for any reason, the CEO or delegate may, once only, extend the time for dealing with the complaint and notify the complainant in writing of the extension before the expiry of the initial timeframe. In determining any extension of time, the CEO, or delegate, must consult with the complaints officer for the complaint and fix a date that is reasonable in all the circumstances, but in no case more than 3 months from the date the complaint was received by the council.

The complaints officer will acknowledge receipt of the complaint and any other material, indicating date of receipt.

If a complaint is resolved to the complainant's satisfaction before it is sent to a complaints officer for investigation, notice that the complaint has been resolved may be given to the complainant in the same medium by which the complaint was initially made *eg* an oral response may be given to a complaint that was made orally.

However, the council may give a formal written response to a complaint irrespective of the medium by which the complaint was made. The council will make a record of any oral advice given to a complainant that the complaint has been resolved.

The timeframe for dealing with a complaint is measured from the date of receipt of a complaint to the date the complainant is informed of the outcome of the complaint.

13 Opportunity for complainant to provide further information about the complaint

The complaints officer will invite the complainant to provide further information after the initial assessment of the complaint material to assist in fully understanding the complainant's concerns, the issue/s to be investigated (if an investigation is to be undertaken) and the outcome or remedy sought by the complainant.

Seeking further information from the complainant at this stage of the complaints process may be undertaken by informal means such as telephone, email or face-to-face discussion. The complaints officer will record a fair summary of any oral information received and will confirm with the complainant in an appropriate manner that the summary accurately reflects the information provided by the complainant.

The complaints officer will attempt to resolve the complaint informally, for example, by providing an explanation for the council's or the councillor's action in the particular case. A complaint may be resolved or withdrawn by the complainant at any time during the complaints process. A complaint is taken to be resolved to the complainant's satisfaction, or is taken to be withdrawn, if the complainant gives a clear indication to that effect to the complaints officer. Written notice that the complaint has been resolved, and the general manner in which it was resolved, will be given to both the council and the complainant.

If in the opinion of the complaints officer, resolution of a complaint about an administrative action merely involves rectification of an obvious error or a remedy of a similar nature, the complaints officer will discuss the issue with the relevant council officer with a view to resolving the complaint.

14. Grounds for refusal to investigate complaint

In assessing a complaint (including any further information provided by the complainant) the complaints officer will consider whether there is a statutory ground on which the complaint may be refused. The complaints officer may refuse to investigate a complaint or, having started to investigate a complaint, refuse to continue the investigation if the officer reasonably considers that –

- (a) The complaint is trivial; or
- (b) The complaint concerns frivolous matter or was made vexatiously; or
- (c) The complainant does not have sufficient direct interest in the administrative action that is the subject of the complaint; or
- (d) 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;
 - ii. It would be reasonable in the circumstances to require the complainant to exhaust the right or remedy before the officer investigates, or continues to investigate, the complaint;
- (e) In the circumstances, investigating the complaint is unnecessary or unjustifiable.

A right or remedy mentioned in paragraph (d) does not include a right to make an application to the Supreme Court under the *Judicial Review Act 1991*.

The complaints officer will give both the CEO and the complainant written notice of a decision made by the officer to refuse to investigate the complaint, or to continue the investigation, and the reasons for the decision.

15. Investigating a complaint

The investigation of a complaint will be undertaken by the complaints officer in an independent, impartial and objective manner. A complaints officer may, if the officer considers appropriate in the circumstances, undertake mediation between the parties with a view to resolving a complaint, but will not act as an advocate for either the complainant or the council or for any council officer or councillor the subject of the complaint.

The complaints officer will adhere to the following principles when conducting an investigation of a complaint:

- Procedural fairness/natural justice;
- Establishment and maintenance of a complete document trail (to facilitate any subsequent review that may be undertaken of the investigation conducted by the complaints officer);
- Council and other policies are designed for administrative guidance only, and should not be rigidly applied irrespective of the merits of a particular case. An administrative policy may be departed from if the merits of a particular case warrant that course of action.

- Lawfulness of a particular action is not necessarily decisive of the issue in dispute. The complaints officer will also assess whether the action was unfair, unreasonable or wrong.
- The civil standard of proof applies for administrative investigations. This means that allegations have to be established on the balance of probabilities – that is, it must be more probable than not that the allegation is made out.
- 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.

16. Obligation of complaints officer on completion of investigation

If a complaint is not resolved during the investigation process to the satisfaction of the complainant or is not withdrawn by the complainant, the complaints officer will give the CEO and the complainant a written report on the results of the investigation and any recommendations. The complaints officer must give the report to both the CEO and the complainant within the time stipulated in the instrument of appointment, subject to any approved extension of time.

The report will typically address the following matters to the extent each matter is relevant in the particular case –

- The complaint issue/s;
- A concise summary of the material facts and circumstances of the matter;
- Any relevant legislation;
- Any relevant council or other policy;
- Persons interviewed and/or consulted and relevant information obtained during any interviews and consultations;
- Results of any relevant research;
- Analysis of complaint issues to the extent necessary;
- Findings on material questions of fact and law;
- Whether the complaint is sustained and reasons for that finding;
- If the complaint is sustained, any recommendation/s to the council to redress the complainant's grievance, whether by way of benefit to the complainant and other affected persons (if any) and/or systemic improvements to the council's administrative practice with a view to preventing a recurrence of similar complaints.

The report will contain any recommendations that the complaints officer considers to be appropriate in the circumstances. In some cases, it will be appropriate to make a recommendation for procedural improvement even where the complaint has not been sustained. A recommendation may relate to –

- A specific remedy or remedies that is/are available under section 17 to redress the complainant’s grievance; and/or
- The proposed amendment of a relevant council policy, procedure or practice to address any systemic issue raised by the complaint with a view to preventing similar complaints in the future.

17. Remedies

The council has adopted a range of remedies for addressing administrative actions that it considers to be unfair or wrong. Remedies include, but are 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
- Waiver of debt.

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

18. Consideration of report by council

Report about an administrative action

A complaints officer’s report prepared under section 16 of the complaints process, including any recommendation(s), on a complaint about an administrative action will be considered –

- (a) By the council by resolution 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 chairman of a standing committee acting under statutory or delegated authority; or

- iii. The CEO;
- (b) By the CEO under delegated authority if the administrative action in question was taken by a senior officer who reports directly to the CEO;
- (c) By another council officer under delegated authority if the administrative action in question was taken by a council officer who is not more senior than the delegate.

A council officer exercising delegated authority to deal with the complaint, by accepting or rejecting the findings of the complaints officer, has authority to provide any lawful remedy for the complainant that is available under section 17 of the complaints process, irrespective of whether the remedy has been recommended by the complaints officer.

Where the complaints officer's report includes a recommendation that a suitable policy be made to address the complaint issue, or an existing policy be appropriately amended, the recommendation will be referred to the council for consideration by resolution.

19. Notice to complainant about outcome of complaint

Written notice of the outcome of a complaint will be given to the complainant following the council's consideration of, and decision on, the complaints officer's report and recommendations (if any).

The notice to the complainant will generally include the following advice –

- Whether the complaint is sustained;
- If the complaint is not sustained, the reasons for the decision;
- If the complaint is sustained –
 - Any remedy to be made available to the complainant;
 - If applicable, the circumstances and timeframe in which the remedy will be made available; and/or
 - Whether the investigation identified the need to revise council policy, procedure or practice to prevent similar complaints arising, details of the proposed revision and the timeframe for implementation.

20. Implementation of remedy, etc

The council, through the CEO or delegate, will take action in a timely manner to implement any remedy to be made available to a complainant and/or any revision of its policy, practice or procedure.

21. Council review if complainant dissatisfied with outcome of complaint

If a complainant is dissatisfied with the outcome of the consideration of the complaints officer's report and any recommendation, the complainant may request a review of the decision on the complaint. The complainant may submit new information with the request for review and seek reconsideration of the complaint on the basis of the new information or on any other basis.

The council will –

- Undertake the review as requested and advise the complainant accordingly; or
- Decline the review on the basis that the complainant has not provided any reasonable basis for the review.

Any review undertaken will generally be in accordance with the complaints process. The reviewer will be independent of the original decision maker and the complaints officer.

STAGE 3 – REVIEW BY OMBUDSMAN OR OTHER COMPLAINTS ENTITIES

22. Review by other complaints entities

If the council decides not to undertake a review, it will inform the complainant that a complaint may be lodged with the Queensland Ombudsman or other relevant complaint entity (giving contact details).

COMPLAINTS MANAGEMENT SYSTEM

23. Reporting on complaint trends

Every 6 months, commencing from the date the complaints process commenced, the CEO, or delegate, will complete a report on all complaints (oral and written) received through the complaints process.

The report will include details for the particular 6 months and the financial year to date and, to the extent details are available, draw comparisons with corresponding periods for the 2 immediately preceding financial years.

Each report will set out –

- Details of complaints received and resolved during the period;
- Whether timeframes were met;
- How each complaint was dealt with (pre-complaint stage, by complaints officer, council decision on complaints officers report, or still not resolved to complainants satisfaction);
- A brief description of the outcome, including any remedy given to a complainant; and
- Details of any service delivery or business improvements that have been effected as an outcome of the council's consideration of complaints.

The report will also –

- Contain details of any systemic issues that have been identified and/or whether there is any trend in the complaints received; and
- Suggest whether any other action should be taken to change service delivery and/or improve business activities, services, systems and staff skills, etc.

The CEO will discuss the report with the complaints officer and will thereafter submit it to the council for consideration, together with any comments.

24. Responsibility of officers

CEO

The CEO will –

- (a) Encourage excellence in customer service by council officers;
- (b) Ensure that all council officers are aware of and implement the complaints process in the manner intended by the council;
- (c) Foster an environment where complaints management is the responsibility of all council officers; and
- (d) Ensure any necessary staff training is provided *eg* on the complaints process, conducting an investigation of a complaint, conflict management, customer service skills.

Directors

Each director will ensure that –

- (a) All council officers under the directors management and control are aware of their role in customer service and responsibility for complaint management; and
- (b) Service standards are met

Council officers

All council officers –

Are required to observe the complaints process; and

Wherever appropriate, attempt to resolve a complaint before it is referred for attention under the complaints process.

25. Related policies or procedures

All council policies and procedures must be taken into consideration when considering or investigating a complaint under the complaints process.

26. Evaluation and review of the complaints process

Every 4 years the council will conduct a review audit of the complaints process.

The review audit will evaluate the performance of the complaints process and will consider the following aspects, where necessary:

- Accessibility – whether the complaint process is readily available to members of the community and is user friendly.
- Timeliness – whether timelines for responding to complaints have been met and, if not, remedial action proposed.
- Satisfaction – as evidenced by any complaint about the complaints process.
- Compliance – by considering reports on the operation of the complaints process.

The complaints process will be amended in terms of any adopted recommendation arising from the review.

27. Communication

The council will take appropriate steps to publicise the complaints process. For example, the council will place this document on its website and include training on the complaints process in the induction process for new employees and in other appropriate staff training forums.