



COUNCIL POLICY – NUMBER 001

DEPARTMENT OFFICE OF THE CEO

PROGRAM

POLICY TITLE GENERAL COMPLAINTS

SUB-TITLE

ADOPTED 16 APRIL 2008 – FOLIO 42

AMENDED

REVOKES

1. INTRODUCTION

Mackay Regional Council has developed a General Complaint Policy in recognition of the need to manage complaints efficiently, effectively and fairly, as well as to ensure compliance with the *Local Government Legislation Amendment Act (2005)*. The Policy also has been developed to support the application of the Code of Conduct for Councillors.

A complaint must be made by an affected person or complainant under Council's General Complaints Policy. The complaint must be about an administrative action of Council or an alleged minor breach of the Code of Conduct for Councillors, or an expression of dissatisfaction after Council has delivered a product or service. In order to be considered by Council, a complaint must fall under Council's jurisdiction or sphere of activity. (Refer section 2 – Definitions).

The policy does not cover staff complaints. These are addressed through alternate mechanisms.

Complaints received by Council will be processed in accordance with the following framework:

1.1 Mackay Regional Council Complaint Management Framework

	Complaints about Service Level	Complaints about Administrative Actions of Council	Complaints about Minor Breaches of the Code of Conduct for Councillors	Complaints about a decision or action of the CEO	Allegations of Official Misconduct
Example/s	Customer request not actioned within agreed timeframe.	Refusal to grant a licence or permit.	Dissatisfaction with Councillor behaviour	Complaint about a direct decision or action of the CEO	Complaint about a dishonest act or misuse of official information
Stage 1	Initial Review - complaint investigated and reviewed by an officer 1 level more senior to the officer who initially dealt with matter. Sign-off will be by officer at least 2 levels more senior. (Refer Appendix D).	Initial Review - complaint investigated and reviewed by an officer 1 level more senior to the officer who initially dealt with matter. Sign-off will be by officer at least 2 levels more senior. (Refer Appendix D).	Matter referred to CEO who investigates and prepares a report (refer Appendix E)	Matter referred to the Mayor and handled in accordance with Appendix G	Matter referred to the CEO for consideration in accordance with Crime and Misconduct Act (Appendix H)



	Complaints about Service Level	Complaints about Administrative Actions of Council	Complaints about Minor Breaches of the Code of Conduct for Councillors	Complaints about a decision or action of the CEO	Allegations of Official Misconduct
Stage 2	Complainant may seek an Independent Internal Review, if the complainant believes the Internal Review was deficient, lacked independence, or if new information has come to light	Complainant may seek an Independent Internal Review, if the complainant believes the Internal Review was deficient, lacked independence, or if new information has come to light	Report considered by full Council, which may involve referral for External Review by Conduct Review Panel Member (refer Appendix E)		

Note: In the event that a complainant is not satisfied with the outcome of an internal review, they may have recourse via the Queensland Ombudsman or other judicial body.

Definitions

1.2. Affected Person

Means a person who is directly affected by—

- an administrative decision of Mackay Regional Council; or
- an alleged minor breach of the Code of Conduct for Councillors.

1.3. Administrative Action

An administrative action includes each of the following—

- a decision and an act;
- a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision;
- the formulation of a proposal or intention;
- the making of a recommendation.

1.4. Complainant

Means an affected person or person lodging a complaint under Council's General Complaint Policy. An "affected person", must have a tangible, personal interest in the complaint.

1.5. Customer Request

Means a request for information or a request made of Council for some action to be taken on behalf of a customer.

1.6. Complaint

Means a complaint by an affected person or complainant under Council's General Complaints Policy about an administrative action of Council or an alleged minor breach of the Code of Conduct for Councillors. Complaints about competitive neutrality are excluded from the Policy.

Mackay Regional Council further defines a complaint as a statement of dissatisfaction by a customer about the delivery of a product or service offered by Council.

In order to be considered by Council, a complaint must fall under Council's jurisdiction or sphere of activity. The following are examples of issues not considered to be complaints under Council's General Complaint Policy:

- A complaint about a neighbour or community group;



- A request for action or service (e.g.: a request to fix a footpath);
- A request for information about Council's policies or procedures;
- The lodgement of an appeal in accordance with Procedures, Local Laws and Local Law Policies, Regulations or Council policy.

1.7. Frivolous Complaint

A frivolous complaint is one that lacks substance or merit.

1.8. General Complaint Policy

Means Council's General Complaint Process as required under the Local Government Legislation Amendment Act (2005).

1.9. Vexatious Complaint

A vexatious complaint is one that is made primarily to embarrass, annoy or place an unreasonable burden on a respondent (the person complained about).

2. ACCESSIBILITY

Council will:

- Make copies of the Policy available on request from Council's Customer Service Centre in its Administration Building in Gordon Street, Mackay.
- Make a copy of the policy available on Council's Internet web site.
- Make a copy of the policy available for staff on Council's Intranet.
- Make Customer Service Officers available to assist complainants with the lodgement of complaints if needed.
- Make the policy available in alternative formats for those with language and other communication challenges:
 - For complainants from non-English speaking backgrounds, Council subscribes to the Federal Government's Translating and Interpreting Service. Telephone 13 14 50 and quote Client Code C461974.
 - For complainants with hearing and speech impairment, Council uses the National Relay Service. Telephone the National Relay Service on 13 36 77.

3. LODGEMENT

Stage 1 (frontline) complaints can be lodged in the following ways:

Method	Contact Details	Point of Receipt
Telephone	By phone to Council's call centre on 1300 MACKAY.	Customer Services
Face-to-face	In person at Council's Customer Service Centre, Administration Building, Gordon Street, Mackay.	Customer Services
Electronic	By e-mail to council@mackay.qld.gov.au or by accessing the electronic form on Council's web site www.mackay.qld.gov.au .	Records
Writing	Addressed to the Chief Executive Officer, Mackay Regional Council, PO Box 41, Mackay, Q 4740. A specially-designed form is available on request or available on Council's website www.mackay.qld.gov.au .	Records



Method	Contact Details	Point of Receipt
Fax	Complaints can be lodged by fax to 4944 2400.	Records

4. COMPLAINTS ABOUT MINOR BREACHES OF THE CODE OF CONDUCT FOR COUNCILLORS

A person who can claim to be directly affected by the matter can make a complaint about a minor breach of the Code of Conduct for Councillors.

The procedure for handling minor breaches is detailed in Appendix E.

5. COMPLAINTS ABOUT COUNCIL DECISIONS

There is no internal process of review of Council’s decisions. Once Council has made a resolution, the only recourse that an affected person or complainant may have is through an independent external party or other means.

6. POLICY REVIEW AND EVALUATION

The Policy will be reviewed from time-to-time as necessary.

7. COMPLAINT MANAGEMENT

7.1 Stage 1 – Frontline Complaint Handling

Refer to Appendix A for a Guide to Handling Complaints, which is to be read in conjunction with *Council’s Complaint Management Framework* (refer section 1.1 above).

7.1.1 Frontline Complaint Handling – Performance Standards

Element	Telephone	Face-to-Face	Written
Acknowledgement	At time of contact	At time of contact	Within 5 business days
Inform of progress	Complainant advised of progress within 20 business days	Complainant advised of progress within 20 business days	Complainant advised of progress within 20 business days
Finalise outcome of review*	Complainant advised of outcome Within 35 business days	Complainant advised of outcome Within 35 business days	Complainant advised of outcome Within 35 business days

* Any complaint which requires consideration of technical information or extensive investigation may take longer to finalise. In such instances, the complainant will be notified of the expected timeframe for finalisation.

Any complaints that allege fraud, corruption or misconduct by an officer must be referred directly to the CEO.

7.2 Stage 2 – Internal Review by Council’s Complaints Officer

Complainants who are not satisfied with Council’s initial response to their complaint about service level, administrative actions of Council or a minor breach of the Code of Conduct for Councillors, can make a request for an Internal Review of their complaint by Council’s Complaints Officer.

The request for review by Council’s Complaints Officer must be made in writing:



Chief Executive Officer
(Attention: Complaints Officer)
Mackay Regional Council
PO Box 41
Mackay QLD 4740

Or by:



Completing Council’s Complaint Lodgement Form, which is available on request from Council’s Customer Service Centre or Libraries. A copy of the form can be downloaded from Council’s web site www.mackay.qld.gov.au

Council will assist complainants with special needs to ensure that they can access the Internal Review process.

Requests for internal review following an initial complaint review will be provided in accordance with the Internal Review principles, processes and procedures set out in Appendix B.

7.2.1 Refusal to Investigate a Complaint

In accordance with the *Local Government Legislation Amendment Act (2005)*, 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:

- the complaint is trivial; or
- the complaint concerns a frivolous matter or was made vexatiously; or
- the person who made the complaint does not have sufficient direct interest in the administrative action or alleged minor breach of the Code of Conduct for Councillors; or
- both of the following apply—
 - the complainant has a right of appeal, reference or review, or another remedy that the person has not exhausted;
 - 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.



- In the circumstances, investigating the administrative action or alleged minor breach of the Code of Conduct for Councillors is unnecessary or unjustifiable.

Council's Complaints Officer also can refuse to investigate a matter if it has been referred to another authority for investigation by way of appeal, reference or review, or the matter is being pursued through legal action. This is to avoid an unnecessary duplication of resources.

7.2.2 Dissatisfaction with a Stage 2 Review by Council's Complaints Officer

If a complaint is not resolved to the satisfaction of the complainant through Council's General Complaint Policy, the Complaints Officer must give the complainant and the Chief Executive Officer—

- a written response (with attachments, if appropriate) outlining the results of the Officer's investigation of the complaint; and
- any recommendation in relation to the complaint that the Officer considers appropriate.

The Chief Executive Officer, or an appointed delegate, must consider the report and its recommendations and provide to the complainant a notice on the outcome of the consideration of the report.

7.2.3 Internal Review – Performance Standards

Element	Performance Indicator
1. Acknowledge receipt of Request for Internal Review within 5 business days	1. 100% of complaints acknowledged within timeframe
2. Inform parties of progress of the Internal Review within 21 business days	2. 100% of complaints followed up within timeframe
3. Finalise the outcome of the Internal Review within 35 business days	3. 80% of complaints resolved within timeframe.
4. Provision of a written response within 14 days to an expression of dissatisfaction by a complainant to the Complaint Officer's review of a complaint	4. 100% of complaints followed up within timeframe
5. Provision to the affected person or complainant within 35 days of the lodgement of the report and recommendation of the Complaint Officer	5. 100% of complaints followed up within timeframe

7.3 External Review

When a complainant is not satisfied with the outcome of Council's internal review of a complaint, the complainant may have recourse to external review by an independent third party or other means. Whilst complainants are encouraged to use Council's General Complaint Policy, they have the right to seek to have their complaint resolved by external means at any time.

7.3.1 Queensland Ombudsman

The Queensland Ombudsman has jurisdiction to investigate any administrative action taken by a local government. The Ombudsman provides a free service and has the power to make recommendations to local governments.

The Ombudsman is an avenue of last resort of review. Council will make every reasonable attempt to resolve the matter before it is referred to the Ombudsman for review. The Ombudsman's Policy is that Council should be given an opportunity to respond to a complaint before the Ombudsman intervenes.

The Ombudsman, therefore, requires that a complainant first submits or lodges their complaint in writing to Mackay Regional Council under its General Complaint Policy. The complainant needs to be made aware of this policy before writing the Ombudsman.

Contact details:

Telephone: 1800 068 908 **TTY:** 3006 8174
Address: Queensland Ombudsman **Fax:** 3005 7067
GPO Box 3314
Brisbane QLD 4001
Internet: www.ombudsman.qld.gov.au
E-mail: ombudsman@ombudsman.qld.gov.au

7.3.2 Tribunals and Courts

Depending on the nature of the complaint, complainants may have a right of appeal in a tribunal or court. Relevant tribunals and courts include:

- Queensland Building Tribunal;
- Anti-Discrimination Commission (Queensland);
- Magistrate's Court;
- Planning and Environment Court;
- Supreme Court;
- Human Rights and Equal Opportunity Commission (HREOC).

7.3.3 Supreme Court (Judicial Review)

An aggrieved person also has the right to apply to Queensland Supreme Court for review of the decision to determine whether it has been made properly and in accordance with administrative duty and relevant statutes and rules.



List of Appendixes

Appendix A – Guide to Face-to-Face Complaint Handling

Appendix B – Internal Review Principles

Appendix C – Frivolous or Vexatious Complaints

Appendix D – Process for Selecting and Appointing a Complaints Officer

Appendix E – Breach of the Code of Conduct for Councillors

Appendix F – Anonymous Complaints

Appendix G – Complaints about the Chief Executive Officer

Appendix H – Allegations of Official Misconduct

Appendix I – Remedies

GUIDE TO FACE-TO-FACE COMPLAINT HANDLING

The first stage is the acceptance of the complaint by Council. It is important that the initial contact is handled well. The environment in which the complaint is taken – if it is made face-to-face – should be private (if possible) and the complainant encouraged to fully express their concerns.

- The Officer is to greet the person courteously, give his/her first name and inquire in a positive manner as to how he/she can help.
- Treat complainants respectfully, courteously and professionally. Maintain confidentiality where appropriate.
- Listen empathetically to what the complainant has to say – everyone appreciates being listened to, so give the complainant time to tell his/her story.
- If necessary, for people whose first language is not English arrange for an interpreter from Translating & Interpreting Service (13 14 50 – TIS Client Code C461974).
- If necessary, for people with speech or hearing impairment, arrange to use the National Relay Service (13 36 77).
- Use active and reflective listening skills, use positive body language (adopt an open body posture), maintaining eye contact and showing interest.
- Take notes of the conversation for later reference.
- Seek clarification of any points that are not clear in a non-judgmental way, using open-ended questions that start with how? when? where? who? why?
- Ask the complainant about possible remedies to resolve the matter by asking, “How do you believe your complaint can be resolved?”
- Make it clear to the complainant that the complaint has been understood by summarising the main points and seeking confirmation.
- Provide any relevant information that will assist complainants to better understand the decision or action that they are aggrieved about.
- Show empathy. Remember, whether the complaint is justified or not, the complainant’s sense of grievance is real and it is Council’s job to deal with that grievance effectively.
- Review and investigate the complaint in accordance with Council’s General Complaint Policy, first ensuring that the matter meets Council’s definition of a complaint
- Inform the complainant of the outcome of the investigation
- Handle complaints quickly, within established timeframes and in accordance with Council’s policies, keeping complainants informed of progress.
- Log the complaint and any action taken on the Geac Pathways Customer Request system.

All written responses to complaints are to be personal and specific. When resolving a complaint – whether verbally or in writing – the Officer is to:

Give reasons — explain any relevant policy of Council or the legislative provision that is the basis for the decision made. If possible, provide the complainant with a copy of the relevant provision of the policy (Council’s Policies are public documents that are accessible via the web site at www.mackay.qld.gov.au), or legislation.

Where appropriate, apologise — if an apology is warranted, the receiving officer is to offer an apology there and then. It may sometimes be necessary to express regret without accepting blame on behalf of Council.

Be polite — be positive and focus on solving the problem rather than apportioning blame or finding fault.



Take action — take action to rectify the problem presented if it is within the Officer's authority to do so. If the Officer does not have the authority to rectify the problem, advise the complainant to whom the matter will be referred.

Let the complainant know — about any improvements that have been made as a result of their complaint.

Thank the complainant — for their feedback.

INTERNAL REVIEW PRINCIPLES – COMPLAINT OFFICER

Council's Internal Review process ensures:

- The independence of the Complaints Officer from primary decision-makers;
- That the impartiality and independence of Complaints Officer is not compromised by other officers in Council;
- That the outcomes of the Internal Review are communicated to the primary decision-maker;
- That Council learns from the process of Internal Review by providing feedback;
- That primary decision-makers are not assigned the responsibility for reviewing their own decisions;
- That the review process is a free service.

The Complaint Officer has:

- Direct lines of communication to the appropriate part of Council for the purpose of resolving issues arising from the review;
- Access to relevant Council documents;
- Authority to recommend decisions in favour of the affected person or complainant; and
- Access to previous complaints to ensure consistent outcomes.

Internal Review Process

The Complaints Officer will:

- Provide an opportunity for the complainant to provide the Complaint Officer with additional information about the complaint;
- Provide a rational/logical process of review;
- Be fair and accessible;
- Assist complainants to understand the findings of the internal review by providing clear, written reasons addressing their concerns. Complainants will be informed of their external rights of review at this stage;
- Where necessary, provide Mackay Regional Council and complainants with a Notice of Decision – Refusal to Investigate a Complaint (refer section 8.2.1 above) made by the Officer under section 501F of the Local Government Legislation Amendment Act (2005) and the reasons for the decision;

Internal Review Procedure

In deciding how a matter should be dealt with, consideration is to be given by the Complaints Officer to:

- Whether the Complaint Officer was involved with the administrative action or alleged minor breach by a Councillor of the Code of Conduct for Councillors that is the subject of the complaint. If the Officer was involved in such a way, the complaint is to be referred to the CEO for direction.



In order to reach an outcome, the Complaints Officer must:

- Establish a list of people to be interviewed and files or locations to be inspected;
- Conduct interviews and inspect sites and documents;
- Gather and record information;
- Provide relevant information to people involved in the investigation;
- Give people an opportunity to comment on information adverse to them before deciding to act on it (natural justice);
- Observe any legal requirements involved in making decisions;
- Research and apply any relevant law;
- Evaluate the evidence and make findings;
- Identify factors that contributed to the complaint arising;
- Formulate recommendations;
- Prepare a report for the Chief Executive Officer, or an appointed delegate, summarising the matter and results of the investigation and setting out findings and recommendations, including any remedies (refer Appendix I).

FRIVOLOUS OR VEXATIOUS COMPLAINTS

The *Local Government Legislation Amendment Act (2005)* enables the Complaints Officer to refuse to investigate a frivolous or vexatious complaint. Frivolous and vexatious complaints are defined in section 2 of this Policy. The following information is provided to assist the Complaints Officer to determine whether a complaint is frivolous or vexatious.

Factors Which Indicate a Complaint is not Genuine

- Constant complaints against one person or body whether about the same or different issues;
- Seeking to revisit the same issue after an initial investigation and subsequent review, when no new evidence or material is produced;
- Making repetitive complaints and then withdrawing them;
- Using complaints about another person as an attempt to divert attention from the complainant's own situation;
- Making a complaint based on false statements of fact;
- An unwillingness by the complainant to co-operate with Council to resolve the complaint;
- Making on-going complaints about something which would be considered trivial;
- Constant complaints by a person who does not have a sufficient direct interest in the matter.

The Complaints Officer needs to exercise caution when determining whether a complaint is frivolous or vexatious. It is unlikely that such a determination could be made without some initial investigation of the complaint.

PROCESS FOR SELECTING AND APPOINTING A COMPLAINTS OFFICER**Criteria for Selecting a Complaints Officer for the Purpose of Internal Review**

The CEO, or an appointed delegate, must make the appointment of an officer to the position of Complaints Officer, having regard to Council's recruitment and selection policy.

The CEO may appoint a Complaints Officer for all complaints or individual Complaints Officers for specific complaints.

The officer(s) selected to fill the role of Complaints Officer for the purposes of Independent Internal Review will need to possess the following skills, attributes and experience:

- Tertiary degree or equivalent qualification/experience;
- Highly developed analytical and investigative skills;
- Sound decision making skills;
- Excellent written and verbal communication skills;
- High degree of independence, maturity and initiative;
- An understanding of the concept of independence;
- Experience in handling call-based and written complaints in a dynamic work environment;
- An understanding of the importance of filing and record keeping.
- Dispute resolution experience.

Criteria for Selecting a Complaints Officer to Conduct an Initial Review

Council's General Complaints Policy mandates that the officer appointed to conduct a preliminary investigation and review of a complaint must be an officer of at least one level more senior to the officer who initially dealt with the matter. Sign-off on any report and/or correspondence with the complainant must be by an officer at least two levels more senior to the officer who initially dealt with the matter.

The initial review will usually be undertaken within the section or department responsible for the matter giving rise to the complaint. To provide a level of independence from the initial action, the Complaints Officer for the Initial Review is to be at least one level senior to the Officer actioning the matter upon which the complaint has been made. Sign off on any report and/or correspondence with the complainant must be by an Officer at least two levels more senior to the Officer who initially deals with the matter.



APPENDIX E

MINOR BREACHES OF THE CODE OF CONDUCT FOR COUNCILLORS

Complaints about minor breaches of the Code of Conduct for Councillors must be made in writing addressed to the CEO.



Chief Executive Officer
Mackay Regional Council
PO Box 41
Mackay QLD 4740

Or by:



Completing Council's Complaint Lodgement Form

Council's Chief Executive Officer will investigate the matter in accordance with Council's Internal Review principles. The Chief Executive Officer will prepare a report summarising the matter and results of the investigation and setting out any findings and recommendations. The report is to be considered by the full Council.

The Chief Executive Officer may refuse to investigate a complaint on the grounds outlined under section 8.2.1 above. The complainant is to be provided with *Notice of Decision – Refusal to Investigate a Complaint* in accordance with Appendix B.

If the complainant is dissatisfied with the findings in the Chief Executive Officer's report, the report must be dealt with as follows:

Council may decide, by resolution, to take no further action in relation to the complaint if Council is satisfied it concerns a frivolous matter or was made vexatiously.

If Council does not consider the complaint to be frivolous or vexatious, Council must decide, by resolution, whether the Councillor has committed the alleged minor breach.

If Council decides the Councillor committed the minor breach, it may do any of the following—

- (a) take no further action in respect of the breach;
- (b) by resolution, impose a penalty on the Councillor under section 250X of *the Local Government Legislation Amendment Act (2005)*;
- (c) if Council considers the breach may be a repeat breach of the Code of Conduct for Councillors—refer a complaint about the repeat breach to the Conduct Review Panel for review.

In deciding whether the Councillor has breached the Code of Conduct for Councillors and whether to impose a penalty on the Councillor, Council must comply with the principles of natural justice.



APPENDIX F

ANONYMOUS COMPLAINTS

Council acknowledges the inherent difficulty in investigating and resolving complaints made by unknown persons. Nevertheless, anonymous complaints, or complaints from people who wish their names to be held in confidence, will be accepted for investigation, provided that there is sufficient information to enable an investigation to be conducted. People wishing to remain anonymous are to be advised that Council's ability to investigate the complaint may be limited by their anonymity.

Any anonymous complaints that allege fraud, corruption or misconduct by an officer will be referred directly to the CEO.



APPENDIX G

COMPLAINTS ABOUT THE CHIEF EXECUTIVE OFFICER

Only complaints involving a direct decision or action of the Chief Executive Officer (CEO) will be considered through this process. The complaint, which must be made in writing, is to be referred to the Mayor.

The Mayor will consider the information provided by the complainant and seek a response from the CEO. In the event that the Mayor considers that some form corrective action is required and the Mayor and CEO fail to agree on this action, the Mayor may refer the matter to the full Council.

In considering the matter, the full Council is to provide a reasonable opportunity to both the Mayor and the CEO to present supporting information in regard to the complaint, including providing reasonable notice to prepare to present such information.



APPENDIX H

ALLEGATIONS OF OFFICIAL MISCONDUCT

All complaints of possible official misconduct against staff or Councillors are to be reported directly to the CEO. Under the *Crime and Misconduct Act (2001)*, the CEO is required to report to the Crime and Misconduct Commission (CMC) anything that is reasonably suspected to be official misconduct.

Complaint of official misconduct against the CEO are to be reported directly to the Mayor.

Official Misconduct is defined in Part 4, Division 2 of the *Crime and Misconduct Act (2001)*, as follows:

Conduct means—

- (a) for a person, regardless of whether the person holds an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of—
 - (i) a unit of public administration; or
 - (ii) any person holding an appointment; or
- (b) for a person who holds or held an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—
 - (i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
 - (ii) a breach of the trust placed in the person as the holder of the appointment; or
 - (iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.

To hold an appointment means hold an appointment in a unit of public administration.

Meaning of *official misconduct*

Official misconduct is conduct that could, if proved, be—

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

Conduct happening over time, or at any time, may be official misconduct

- (1) Conduct may be official misconduct even though—
 - (a) it happened before the commencement of the *Crime and Misconduct Act (2001)*; or
 - (b) some or all of the effects or elements necessary to constitute official misconduct happened before the commencement of the *Crime and Misconduct Act (2001)*; or
 - (c) a person involved in the conduct is no longer the holder of an appointment.



- (2) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment may be official misconduct, if the person becomes the holder of an appointment.

Conduct outside Queensland may be official misconduct

Conduct may be official misconduct regardless of—

- (a) where the conduct happens; or
- (b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

Conspiracy or attempt to engage in conduct may be official misconduct

A conspiracy or an attempt to engage in conduct is not excluded from being official misconduct if, had the conspiracy or attempt been brought to fruition by the taking of a further step, the further step could constitute or involve—

- (a) an offence; or
- (b) grounds for terminating a person's services in a unit of public administration, if the person is or were the holder of an appointment in the unit.

Official misconduct not affected by time limitations

Conduct does not stop being official misconduct only because a proceeding or an action for an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services because of the conduct can no longer be taken.

REMEDIES

In the event that an Internal Review of a complaint finds that Council's initial action was incorrect – either in part or in full – it will attempt to remedy the situation. The remedy is to apply to the error only.

The following will be given consideration in attempting to remedy the situation.

Any remedy offered by Council will be appropriate to the complaint and, should, as far as possible, put the affected person or complainant in the position he or she would have been in had the decision been made correctly in the first place. This may not be possible in all cases because of the passage of time or events that have occurred. In such cases, Council will need to consider other ways to resolve the complaint.

General Principles

- **Fair and Reasonable** — any remedy provided should be fair and reasonable to the complainant and Council. Fairness means that whilst there may be no legal obligation for Council to provide a complainant with a remedy, there may be a moral obligation to take steps to redress any disadvantage caused.
- **Equal Treatment for Equal Circumstances** — in seeking to provide fair outcomes, Council will endeavour to be consistent. Previous remedies or actions in similar past circumstances will be a guide to suitable outcomes for current situations. However, changes in policy position or specific fact of individual situations will also be taken into consideration.
- **No Abuse of Power** — Council must not take advantage of its position of authority (in particular its knowledge and resources) to avoid or reduce its obligation to provide a fair remedy to the complainant.
- **Comprehensive Resolution of the Complaint** — the remedy should cover all issues raised in the complaint. This avoids any subsequent complaints about the same issues.
- **Explanation** — an explanation of Council's decision regarding a remedy is to be provided to the complainant.
- **Timeliness** — Council is to provide the remedy in a timely fashion, in accordance with the Performance Standards established in this procedure.

Mitigation

In some cases, it may not be possible to completely satisfy the complainant. In such cases, Council will attempt to take some action that may improve the situation for the complainant, i.e., mitigate the detriment suffered by the complainant.

Consideration will be given to any practical action which the complainant might suggest.

Practices of Council

In some cases, a complaint may identify some failure within Council's own practices, procedures or policies. An appropriate remedy would be to undertake a review of the practices to bring about change so that other people will not experience the problem. The complainant needs to be informed that Council is taking action to rectify a systemic issue.