 MOUNT BARKER DISTRICT COUNCIL	Employee Conduct Complaint Resolution Procedure (External Complaints Only)	HPEM	DOC/18/47223
		Approved	22 June 2015
		Last Review	1 November 2016
		Next Review	1 November 2020

RESPONSIBLE DEPARTMENT:	Community Services
APPLICABLE LEGISLATION:	<ul style="list-style-type: none"> • <i>Fair Work Act 1994 (SA)</i> • <i>Equal Opportunity Act 1984 (SA)</i> • <i>Work Health & Safety Act 2012</i> • <i>South Australian Municipal Salaried Officers Award</i> • <i>Local Government Employees Award</i>
MOUNT BARKER 2035 - DISTRICT STRATEGIC PLAN	<p>Goal: Governance and Leadership</p> <p>Objective: Corporate capacity and leadership</p> <p>Strategy:</p> <p>Demonstrate accountability through clear, relevant and easily accessible policies and corporate reporting</p>
RELATED POLICIES / CORPORATE POLICY/PROCEDURE:	<ul style="list-style-type: none"> • Employee Code of Conduct • Managing Unsatisfactory Performance Guideline • Fair Treatment in the Workplace Policy • Internal Review Policy and Procedure • Complaints Policy • Complaints Procedure • Managing Unreasonable Complainant Conduct Practice Manual (endorsed by Australian Parliamentary Ombudsman)



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1. PURPOSE

A positive culture has a work environment which supports and addresses issues as they arise. The Mount Barker District Council has a strong commitment to ensure:-

- A safe, healthy, caring and non-discriminatory working environment
- Employee wellbeing is protected
- Disruption and work conflict is minimised
- Employee turnover is minimised
- Sickness and absenteeism is minimised

To support this positive culture, an impartial system for addressing complaints must be available to complainants who allege that they have been adversely affected by the conduct of employees.


The purpose of this procedure is to provide a guide which supports the management of both internal and external complaints in which the complainant is seeking a resolution. The procedure aims for the resolution of complaints constructively through combining a balance of concern for people and tasks.

This procedure applies to all employees of Council, including temporary labour hire employees.

This procedure does not exclude staff from raising matters under Council's Whistle-blower's Policy and Procedure.

2. RESPONSIBILITY

- 2.1. **Chief Executive Officer** - In addition to clause 2.3 below, ensure the procedure is implemented, monitored and evaluated. For external complaints – written acknowledgement of all complaints; and when deemed appropriate, advise the employee who is the subject of the complaint of the details of the complaint and conduct preliminary and formal investigations.
- 2.2. **General Managers** - In addition to clause 2.3 below for external complaints and when deemed appropriate, advise the employee who is the subject of the complaint of the details of the complaint and conduct preliminary and formal investigations.
- 2.3. **Managers** - are responsible for ensuring that their actions follow the principles of natural justice, fair treatment and due process in addressing performance and/or conduct matters.

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- 2.4. **Employees** - are responsible for working with their manager in a constructive manner to address any concerns about their behaviour and/or performance.
- 2.5. **Manager People and Culture** - will provide advice and support on issues contained within this procedure and when deemed appropriate conduct preliminary and formal investigations.
- 2.6. **Risk & Governance Officer** - when deemed appropriate conduct preliminary and formal investigations in relation to external complaints.

3. DEFINITIONS

Key Term - Acronym	Definition
Complaint	An issue, incident or grievance an employee or external party has with regards to the conduct and/or behaviour of other people working at the Mount Barker District Council.
Employee	Any person engaged by Council under an employment contract.
Manager	All manager/supervisor positions within Council irrespective of their actual title (e.g. Manager, Team Leader, etc.).

4. PROCEDURE

4.1 EXTERNAL COMPLAINTS


Any complaints from an external party that alleges an employee(s) has breached the Council's Code of Conduct must be received in writing. The written complaint must be marked 'confidential' and include:

- Name and contact details of the complainant(s)
- Name of the employee(s)
- Details of the nature of the complaint including the specific provisions of the Code of Conduct that have alleged to be breached.

If the complaint is about an employee it must be addressed or directed to the Chief Executive Officer (CEO). If the complaint is about the CEO it must be addressed or directed to the Mayor.

4.1.1 Initial Response

The CEO, relevant General Manager and the Manager People and Culture will be advised of the complaint.

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External complaints will be acknowledged in writing by the CEO and will indicate an approximate timeframe to respond, outline Council's complaint resolution process and attach a copy of this procedure. If the complaint relates to the CEO, the Mayor will undertake the above steps. If the timeframe is exceeded a further response will be provided indicating the revised timeframe.

Both the complainant and the employee will be kept informed of the progress of the complaint resolution process.

The employee who is the subject of the complaint will be advised by the CEO or their General Manager or the Mayor if the complaint relates to the CEO:

- the details of the complaint
- the process (including a copy of this procedure) and their rights (including the right to have a representative)
- requirement for confidentiality
- how the complaint will be investigated (preliminary investigation followed by a more detailed investigation if warranted)
- what support mechanisms will be in place for the employee
- if any interim measures will be taken to ensure the safety and welfare of the employee during the investigation. Interim measures may include:
 - suspension of the person who is the subject of the complaint pending the outcome of the investigation, or
 - assignment to other duties until the investigation is complete.


4.1.2 Preliminary Investigation

The CEO, the relevant General Manager (or the Mayor if the complaint relates to the CEO), or the Manager People and Culture or Risk and Governance Officer may conduct a preliminary investigation into the complaint. The preliminary investigation aims to:

- 4.1.2.1** determine the veracity of the complaint
- 4.1.2.2** determine whether there is evidence of the allegations of breach(es) of Council's Code of Conduct

The preliminary investigation will include communications with the complainant(s) and the employee(s).

If the preliminary investigation determines that there is insufficient

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evidence or substance to the complaint, the complainant and the employee will be advised in writing from the CEO (or the Mayor if the complaint relates to the CEO) to confirm that no further action will be taken by Council

4.1.3 Formal (Detailed) Investigation

The CEO or the General Manager (or the Mayor if the complaint relates to the CEO) may determine a formal and detailed investigation is required. The formal investigation will be conducted by the CEO, the General Manager, (or the Mayor if the complaint relates to the CEO) or the Manager People and Culture or Risk and Governance Officer, or an independent and/or external person.

The appointment of an independent and/or external person will be determined by the CEO, the General Manager, (or the Mayor if the complaint relates to the CEO). The decision to appoint an independent investigator will be informed by:

- 4.1.3.1** the nature of the alleged breach and the relative seriousness of the matter; and
- 4.1.3.2** any other matter deemed relevant having regards to the circumstances.


The following factors will be taken into consideration when considering the appointment of an appropriate investigator:

- 4.1.3.3** Impartiality and independence
- 4.1.3.4** No conflict of interest
- 4.1.3.5** Proven experience and competency in investigation processes

Prior to the appointment of the investigator all parties will be notified in writing of the investigator's name and credentials and will be provided with the opportunity to raise any objections. Objections must be provided to Council in writing and state the grounds of their objection. Council will take into consideration any objections.

The investigation will strictly adhere to the principles of fair procedure and natural justice.

A formal investigation will involve contacting the person(s) who is the subject of the complaint in writing and notifying them of:

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- 4.1.3.6** the details of the complaint
- 4.1.3.7** the interview time and location
- 4.1.3.8** the interview format (e.g. allegations provided with the complainants right of response)
- 4.1.3.9** process (including a copy of this procedure) and their rights (including the right to have a representative)
- 4.1.3.10** the expected time frame for the investigation and resolution of the complaint
- 4.1.3.11** requirement for confidentiality
- 4.1.3.12** the possible consequences.

Findings

Whether the matter is investigated externally or internally, the investigator will provide a draft written report that includes the findings and the facts upon which the findings are made. The draft report will be provided to the Manager People and Culture who will distribute the report to the parties for review with feedback required within a reasonable timeframe.


The investigator will consider the feedback from the parties and will then provide a final report to the Manager People and Culture. The Manager People and Culture will then meet with the CEO or General Manager (or the Mayor if the matter pertains to the CEO) to summarise the findings of the investigation. The findings will also be communicated to the parties in writing.

Where the complaint is substantiated, Council will take appropriate disciplinary action which may include:

- 4.1.3.13** apologising
- 4.1.3.14** counselling
- 4.1.3.15** performance improvement plan
- 4.1.3.16** training
- 4.1.3.17** progressing the matter as per the Managing Unsatisfactory Performance Guideline.

4.1.4 Unreasonable Complainant Conduct

There may be occasions when the conduct of a complainant is unreasonable, resulting in a decision to take no further action on a complaint. See Attachment B for further guidance on unreasonable complainant conduct.

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5. REVIEW

This Procedure will be reviewed every three (3) years or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the Manager People and Culture.


6. ACCESS TO THE PROCEDURE

The Procedure is available to staff via the People and Culture section of the Intranet and available to members of the public on Council's website.

7. FURTHER INFORMATION

For further information on this Procedure, please contact:

Title: Manager People and Culture
Extension: (08) 8393 6436
Email: apett@mountbarker.sa.gov.au

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8 ATTACHMENT A – FRAMEWORK OF STRATEGIES TO MANAGE UNREASONABLE COMPLAINANT CONDUCT


Unreasonable complainant conduct in most cases can be grouped into five categories:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviour

This framework is a guide and it should be applied flexibly bearing in mind that more than one category of conduct may need to be managed at one time.


The use of the management strategies identified in the table below must also be based on the clear understanding that:

- Every complainant deserves to be treated with fairness and respect
- In the absence of very good reasons to the contrary, members of the public have a right to access the agency
- No complainant, regardless of how much time and effort is taken up in responding to their complaint should be unconditionally deprived of having their complaint properly and appropriately considered
- A complainant whose conduct is unreasonable may have a legitimate complaint
- The substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour.


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Management Strategies:

Conduct Category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence	<p>Unreasonable persistence includes:</p> <ul style="list-style-type: none"> • Persisting with a complaint even though it has been comprehensively considered by an agency and all avenues of review have been exhausted. • Reframing a complaint in an attempt to get it taken up again • Showing an inability to accept the final decision • Insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments • Persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly • Persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go • Demanding a review because it is available but not arguing a case for a review • Making an issue out of anything • Getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact 	<p>Strategies for dealing with unreasonable persistence are about saying ‘no’. They include:</p> <ul style="list-style-type: none"> • Communicating clearly and transparently – e.g. telling complainants firmly that something is ‘not going to happen’ • To the ‘where do I go to now’ question, telling complainants that not all problems have an institutional solution and they may have reached the end of the line, unless a realistic referral can be made • Requiring complainants who want a review to provide an argument for one – e.g. to tell the agency how it has erred or provide new information – and if they don’t, their file will remain closed • Providing one review only • Maintaining a ‘no means no’ stance following review • Adopting, when appropriate, a firm no further correspondence or contact stance and requiring any variation from this to be authorised at a high level • Not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues

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Conduct Category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence		<ul style="list-style-type: none"> Ending telephone calls that are unproductive Asserting the agency's position – e.g. 'I acknowledge that your view is ..., we see differently', or 'I acknowledge that your view differs from ours, however our job is to make a decisions about ... and this is what we have decided' Making it clear that our decision is final, and for better or worse, we have made our decision. <p>Managing unreasonable persistence also includes:</p> <ul style="list-style-type: none"> Managing expectations from the beginning, including ensuring initial expectations are realistic Adopting a firm and authoritative communication style both in writing and verbally Defining key issues and keeping focus on them.


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Conduct Category	Unreasonable conduct (trigger)	Management strategies
Unreasonable demands	<p>Unreasonable demands include:</p> <ul style="list-style-type: none"> • Insisting on outcomes that are unattainable • Insisting on a 'moral' outcome – e.g. justice in the community interest, when really a personal interest is at stake • Demanding an apology or compensation when no reasonable basis for expecting such outcomes exists • Wanting revenge, retribution • Wanting what is not possible or appropriate – e.g. copies of sensitive documents, names and contact details of staff, other complainants or whistle-blower's • Issuing instructions and making demands about how a complainant should be handled • Providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint • Making unreasonable resource demands out of proportion to the seriousness of the issue • Wanting regular and lengthy phone contact where this is not warranted • Showing reactions or demand for action that are out of proportion to the significance of the issue 	<p>Strategies for dealing with unreasonable demands are about setting limits. They include:</p> <ul style="list-style-type: none"> • Letting complainants know in advance how the agency intends to deal with the complaint – having a plan and sticking to it • Making sure the complainant is clear that the agency decide how the complaint should be handled • Clarifying the limitations of the particular complaint handling system • Avoiding being drawn into hypothesising, catastrophising, conspiracy theories, unproductive argument and personal attacks more generally • Restricting contact to defined times and staff members where necessary • Responding only to emails and mail addressed to the agency directly – not responding to mail where the agency is copied in. • Ending telephone calls that are unproductive • Limiting contact to writing only • Not doing for unreasonably demanding complainants something the agency would not normally do for any other complainant, just to appease them


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	<ul style="list-style-type: none"> • Moving the goal posts – changing the desired outcome • Shopping for a sympathetic ear in the agency – demanding to talk to a supervisor or the manager personally • Placing the agency on an extensive email copy list and expecting responses to these emails • Consistently creating complexity where there is none • Presenting as overly needy or dependent – e.g. wanting to transfer responsibility for their wellbeing to the complaint handler or agency. 	<p>As a last resort, informing the complainant that the agency finds their interactions unreasonably demanding and setting defined limits for further contact.</p> <p>Managing unreasonable demands also includes:</p> <ul style="list-style-type: none"> • Managing expectations from the beginning, including ensuring initial expectations are realistic • Adopting a firm and authoritative communication style both in writing and verbally • Defining key issues and keeping the focus on them.
Unreasonable lack of cooperation	<p>Unreasonable lack of cooperation includes:</p> <ul style="list-style-type: none"> • Presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this • Presenting information in dribs and drabs'- refusing to present all information at the outset <ul style="list-style-type: none"> - Refusing to define issues of complaint - 'the attached (usually a large amount of information) speaks for itself' where the complainant is clearly capable of doing this • 	<p>Strategies for dealing with unreasonable lack of cooperation are about setting conditions. They include:</p> <ul style="list-style-type: none"> • Requiring complainants to organise or summarise the information they have provided before the agency will look at the complaint (where they are capable of doing this) • Requiring complainants to define what their issues are to pursue further inquiries before the agency will look at the complaint • Telling complainants that the agency will not look at their complaint until all the information has been presented

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	<ul style="list-style-type: none"> • Focusing on principles rather than substantive issues • Changing the complaint and raising new issues while the complaint is in the process of being considered • Displaying unhelpful behaviour – e.g. withholding information, being dishonest, misquoting others, and swamping the agency with documents. 	<ul style="list-style-type: none"> • Ending the agency's involvement in the complaint if it is discovered that the complainant has been wilfully misleading or untruthful in a significant way. <p>Managing unreasonable lack of cooperation also includes:</p> <ul style="list-style-type: none"> • Managing expectations from the beginning, including ensuring initial expectations are realistic • Adopting a firm and authoritative communication style both in writing and verbally <p>Defining key issues and keeping the focus on them</p>
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Unreasonable arguments	Unreasonable arguments include: <ul style="list-style-type: none"> • Holding irrational beliefs – e.g. seeing cause and effect links where there are clearly none • Holding what is clearly a conspiracy theory unsupported by any evidence • Interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one • Arguing the clearly bizarre • Insisting on the importance of an issue that is clearly trivial. • 	<ul style="list-style-type: none"> • The strategy for dealing with unreasonable arguments in complaints is primarily about declining or discontinuing the agency's involvement. • These complaints need to be declined at the beginning, or discontinued as soon as it becomes clear that the complaint is groundless. • Alternatively, if unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion. • This category of conduct is often associated with mental illness
Unreasonable behaviour	Unreasonable behaviour includes: <ul style="list-style-type: none"> • Displaying confronting behaviour – e.g. rudeness, aggression, threats or harassment • Sending rude, confronting or threatening letters • Making threats of self-harm • Making threats of harm to others • Displaying manipulative behaviour – overly ingratiating, tears or veiled threats. 	<p>The strategies for dealing with unreasonable behaviour are primarily about 'saying no' to unacceptable behaviours and setting limits and conditions for future interactions.</p> <p>Overt anger, aggression and threats in person, on the phone or in writing are never acceptable. Dealing with these includes having risk management protocols in place.</p> <p>Also:</p> <ul style="list-style-type: none"> • Return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate

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		<p>language.</p> <ul style="list-style-type: none"> • Point out that more moderate language is clearer and therefore more likely to achieve better outcomes. • End telephone calls and interviews if the complainant becomes abusive and confronting.
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