



Hawkesbury City Council

attachment
to
item 327

Complaints Policy

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Hawkesbury City Council

COMPLAINTS POLICY

October 2005

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COMPLAINTS POLICY

1.0 AIM

The aim of this policy is to define complaints and the system for dealing with complaints submitted or referred to Hawkesbury City Council. The keystone of this policy is to conduct an internal review of complaints where complainants are dissatisfied with the initial contact with Council, that provides satisfactory alternative means of redress for complainants.

This serves to ensure that the complaint is dealt with fairly and impartially and to strive to resolve disputes between the Council and complainants without the need for the complainant to make representations directly to external agencies such as the NSW Ombudsman, the Minister for Local Government or the Independent Commission Against Corruption (ICAC). Referral to an external agency is viewed as an action of last resort.

Nothing in this policy overrides the General Manager's obligation to report under Section 11 of the *Independent Commission Against Corruption Act 1988*.

Complaints and compliments are welcomed feedback by Council to assist in the planning process and the improvement of Council's systems, procedures and policies.

2.0 WHAT IS A COMPLAINT?

2.0.1 A complaint is an expression of dissatisfaction with the Council's level and quality of service or policies or procedures. Dissatisfaction may arise from the service provided by Council staff, contractors and systems or from the impact of a particular policy and procedure.

2.0.2 A complaint against a member of Council's staff will be handled in accordance with part 6 of this policy headed "Complaints Against Staff".

2.0.3 A complaint concerning an alleged breach of Council's Code of Conduct by a councillor or the General Manager is referred to as a "Code of Conduct Complaint" and will be handled in accordance with part 7 of this policy headed "Code of Conduct Complaints".

2.0.4 A complaint for the purpose of this policy does not include matters not related to Council staff or Councillors or services provided by Council.

2.0.5 A complaint does not include:

- a) A request for services.
- b) A request for information or explanation of policies or procedures or decisions of Council.
- c) Reports of damaged or faulty infrastructure (eg. road pothole). Reports of hazards (eg. fallen tree branch), etc

- d) Reports concerning neighbours or neighbouring property (eg. noise or unauthorised building works)
 - e) The lodging of an appeal in accordance with procedure or policy.
- 2.0.6 Requests for services or information, reports concerning Council's assets and activities, and the lodging of appeals to Council's decisions do not constitute a complaint, and should not be recorded as one.
- 2.0.7 A valid complaint is one where Council has or would appear to have failed to respond appropriately to a request for service or a report.

3.0 LODGING A COMPLAINT

- 3.0.1 Complaints, excluding a complaint against a member of Council's staff or a Code of Conduct complaint, may be lodged by:

- Telephone
- Facsimile
- Email
- Letter, or
- In person

and should detail the name, address and contact phone numbers of the complainant together with a brief description of the problem.

- 3.0.2 Complaints specifically against a member of Council's staff or a Code of Conduct Complaint must be in writing and lodged by facsimile, email, letter or in person.
- 3.0.3 Any staff member may receive a complaint and must follow the procedures set out in this Policy.
- 3.0.4 Any Councillor in receipt of a complaint should (preferably in writing) refer the matter directly to the General Manager or Public Officer.

3.1 Who deals with complaints

Except as provided elsewhere in this policy in relation to complaints about a member of Council's staff or a Code of Conduct complaint, all complaints will initially be referred to the General Manager or Public Officer for assessment and, where further action is appropriate, will be allocated to an appropriate Manager or Director for further investigation. The General Manager and Public Officer may determine that they will investigate a particular complaint if considered appropriate in the circumstances.

3.2 Complaints that will not be investigated

3.2.1 The General Manager and/or the Public Officer may determine that a complaint will not be investigated where that complaint:

- a) is considered 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 already exists, whether or not the complainant uses the remedy or right of appeal;
- c) relates to a decision of Council;
- d) relates to conduct before a court, coroner or tribunal;
- e) relates to matters under investigation by the Minister for Local Government, ICAC, the NSW Ombudsman's office, a Minister of the Crown or government department or the NSW Police Service;
- f) relates to the appointment or dismissal of any employee or an industrial or disciplinary issue;
- g) relates to a decision, recommendation, act or omission which is more than one year old;
- h) relates to a matter the subject of a current report to Council that has not been considered and/or determined;
- i) relates to the actions or conduct of private individuals;
- j) relates to a matter where there is insufficient information available;
or
- k) involves a matter where the complainant declines or refuses to provide further information and/or there are threats made against Council, Councillors and/or Council staff.

3.2.2 Should the General Manager and/or the Public Officer determine that a complaint will not be investigated, the complainant will be advised of the reason for this decision.

3.3 Anonymous complaints

3.3.1 The General Manager and/or the Public Officer will determine whether an anonymous complaint will be investigated dependant upon the seriousness of the complaint and provided there is sufficient information in the complaint to enable an investigation to be conducted, or whether there is a statutory requirement for identification of the complainant.

3.4 Serious complaints

- 3.4.1 All complaints, including those received verbally or anonymously, alleging corrupt conduct, pecuniary interest breaches, improper use of position, criminal action or maladministration are to be registered as detailed in the Procedures section of this Policy and referred to the General Manager or Public Officer. If the allegation relates to the General Manager, the matter must be reported to the Mayor. If the allegation relates to the Public Officer, the matter must be reported to the General Manager.
- 3.4.2 Complaints of this nature may be dealt with in accordance with Council's separate Internal Reporting System under the Protected Disclosures Act.

3.5 Confidentiality

- 3.5.1 Council will not disclose the identity of a complainant unless such action is considered necessary in order to adequately investigate such complaint and in such cases the complainant will be consulted in the first instance.

4.0 COMPLAINT HANDLING SYSTEM

A three-tier complaint handling management system has been adopted in respect of complaints other than Code of Conduct complaints or complaints against a member of Council's staff (these two latter categories are addressed in subsequent sections of this policy). This three-tier complaint handling management system involves:

4.1 Tier 1 - Frontline complaint handling

Staff will attempt to resolve complaints wherever possible at first contact.

4.2 Tier 2 - Internal review

The Public Officer or a senior officer designated by the Public Officer or General Manager reviews unresolved complaints.

4.3 Tier 3 - External review

Still unresolved complaints referred externally. This may take the form of:

- Complaint referred to external agency, such as the Ombudsman.
- Complainant informed of appeal procedure or other legal remedy.

5.0 COMPLAINT HANDLING PROCEDURE

5.1 Tier 1 - Complaint receipt

- 5.1.1 Any staff member approached by persons enquiring how to lodge a complaint must advise that person of the methods available. There is no need to record the enquiry. A record is only made when the complaint is lodged regardless of how minor the complaint may be.
- 5.1.2 Upon receipt of a complaint, the staff member receiving the complaint must ensure that the complaint is referred to Records who will then register the complaint into Council's records management system ("DataWorks") under the Service Complaints classification, so that all matters are reviewed by the Public Officer. All such complaints will be allocated a "confidential" category in the first instance.
- 5.1.3 A staff member receiving a verbal complaint of a minor nature, should deal with the complaint at that time or refer it immediately to the appropriate staff member who may be able to resolve the problem on the spot. If an "on the spot" resolution is achieved then no further action is required. If not, the complainant should be requested to either put the complaint in writing or fill in a "complaints form". The letter or completed form, when received, is to then be handled in the same manner as described hereafter.
- 5.1.4 Any written complaint in the form of a letter or facsimile must be referred to Records to be registered in DataWorks. All such complaints will be allocated a "confidential" category in the first instance.
- 5.1.5 Any electronic complaint (email) must be registered by Records if sent to the corporate mailbox or, if sent to an individual officer's mailbox, it is to be immediately referred to Records to be registered in DataWorks. All such complaints will be allocated a "confidential" category in the first instance.
- 5.1.6 Upon receipt of a written complaint, the General Manager or Public Officer shall forward a letter of acknowledgement of receipt and course of action to be taken.

5.2 Tier 1 - Complaint resolved following investigation

- 5.2.1 All complaints of a more serious or complex nature or minor verbal complaints that cannot be resolved on the spot must be registered in DataWorks in accordance with the workflow procedure for complaints and referred to the General Manager and/or Public Officer so that complaints may be monitored and followed up as necessary.

- 5.2.2 The Public Officer will determine if a complaint should have been lodged with an external agency or authority and will contact the complainant to refer that person to the appropriate agency or authority, if necessary.
- 5.2.3 The complaint is also referred to the relevant Manager or Director as part of the workflow process for investigation, action and a response to the complainant.
- 5.2.4 The Manager or Director to whom the complaint is referred is, if it appears that the complaint will not be concluded within 5 working days, to forward a letter to the complainant to acknowledge receipt of the complaint and to advise who will be dealing with the complaint.
- 5.2.5 The Manager or Director investigating the complaint will determine what, if any, remedial action will be taken and must ensure that all details of the investigation and remedial action taken or offered to the complainant and the subsequent response to the complainant are recorded in DataWorks and linked to the original complaint registration.
- 5.2.6 The information recorded in Dataworks should also indicate when and how the result of the investigation was communicated to the complainant, that is by phone, in person or by letter. The complainant should always be advised of this right to an internal review in respect of the results of the investigation.
- 5.2.7 Where a Manager has conducted the investigation, this response must be signed off by the relevant Director.
- 5.2.8 The response must then be referred to the Public Officer who will sign off on the investigation and remedial action taken or offered in response to the complaint.
- 5.2.9 If not already done, the Public Officer will, if considered necessary, refer the matter to the General Manager to be signed off.
- 5.2.10 This process must be completed within 20 working days of receipt of the complaint, excepting where further information is waiting to be received. In these cases the complainant is to be advised of the delay, the reason for the delay and an approximate timeframe in which it is expected that a response will be forwarded.

5.3 Tier 2 - Unresolved complaint referred for internal review

- 5.3.1 Complaints that have not been resolved to the satisfaction of the complainant following completion of the Tier 1 procedure, will be then subject to internal review, to provide a satisfactory alternative means of address for the complainant. A Council officer upon being advised by the complainant that the complaint has not been dealt with satisfactorily must refer the matter to the General Manager or Public Officer who will advise the complainant that the matter has been referred for internal review.

- 5.3.2 The internal review will be conducted by the relevant Director, the Public Officer or a senior officer designated by the Public Officer or General Manager to review and investigate the unresolved complaint, with the focus being on resolving the complaint wherever possible. In this regard a person involved in dealing with the original complaint shall not be involved in conducting an internal review.
- 5.3.3 The Director, Public Officer or designated senior officer will have the delegation to:
- a) reconsider the original decision or remedial action afresh and take any appropriate corrective action.
 - b) overturn previous decisions and apply remedies as considered necessary.
 - c) apply appropriate redress in cases where the review reveals maladministration or detriment arising from dealing with the complainant.
- 5.3.4 The internal review must be conducted within 15 working days of referral of the matter in writing to the Director, Public Officer or designated senior officer.
- 5.3.5 At the conclusion of the review a letter is to be sent to the complainant advising of the result of the review, any action taken and of the right to an external review.

5.4 Tier 3 - External review

- 5.4.1 Should a complaint and subsequent review not be resolved to the satisfaction of the complainant, the complainant is to be advised that the complaint may be referred to an external agency for review. Complaints, dependant on their nature, can be referred to the following external agencies for an external review:

<i>External Agency</i>	<i>Nature of Complaint</i>
The NSW Ombudsman Level 24,580 George Street Sydney NSW 2000 Phone: 02 9286 1000 or Toll free: 1800 451 524 Facsimile: 02 9283 2911 Email: ombo@nswombudsman.nsw.gov.au	Matters concerning maladministration or related to child abuse
NSW Department of Local Government Locked Bag 3015 NOWRA NSW 2541 Phone: 02 4428 4100	Matters concerning a serious breakdown in Council's operations, if the Council as a whole is not operating

Facsimile: 02 4428 4199 Email: dig@dlg.nsw.gov.au	satisfactorily or pecuniary interest matters
The Independent Commission Against Corruption GPO Box 500 SYDNEY NSW 2001 Phone: 02 9318 5999 or Toll free: 1800 463 909 Facsimile: 02 9699 8067	Matters concerning corrupt conduct, which is defined as dishonest or partial exercise of any official functions by a public official. The ICAC Act requires the General Manager to report suspected cases of corrupt conduct to the ICAC.
Anti-Discrimination Board PO Box A2122 SYDNEY SOUTH NSW 1235 Phone: 02 9268 5555 or Toll free: 1800 670 812 Facsimile: 02 9268 5500	Matters in relation to discrimination, disability and harassment.
Australian Competition and Consumer Commission Level 7, Angel Place 123 Pitt Street SYDNEY NSW 2000 (GPO Box 3648, SYDNEY NSW 1044) Phone: 9230 9133 Fax: 9232 6107	Competitive neutrality complaints.
Privacy NSW PO Box A2122 SYDNEY SOUTH NSW 1235 Phone: 9268 5588 Fax: 9268 5501	Breaches of the Privacy and Personal Information Act 1998

6.0 COMPLAINTS AGAINST STAFF

- 6.0.1 Complaints about a member of Council's staff will initially be referred to the General Manager for assessment and where further action is appropriate will be allocated to the relevant Manager or Director for further investigation. The General Manager may determine that he will investigate a particular complaint if considered appropriate in the circumstances.
- 6.0.2 The General Manager, or nominated Manager or Director, is responsible for making enquiries into complaints against a member of Council's staff, including alleged breaches of the Code of Conduct, and must either:
- determine not to make enquiries into the allegation;
 - make enquiries into the alleged breach to determine the particular factual matters, or
 - engage an independent person to make enquiries into the allegation to determine the particular factual matters.
- 6.0.3 Where the General Manager, or nominated Manager or Director, determines that a complaint against a member of Council's staff should not

be investigated the General Manager shall advise the complainant, in writing, of the reasons for such decision.

6.0.4 Enquiries made by the General Manager, or nominated Manager or Director, will follow the rules of procedural fairness. The enquirer must:

- a) ensure that any enquiries made under this part which might give rise to disciplinary action is done so in accordance with the relevant local government awards. This may involve consultation with Council's Human Resources Manager during the process;
- b) ensure that the person/s who is/are the subject of the complaint is/are aware of their right to be represented by their union;
- c) inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them;
- d) provide the person/s with a reasonable opportunity to put their case;
- e) hear all parties to a matter and consider submissions;
- f) make reasonable enquiries before making a recommendation;
- g) ensure that no person is involved in enquiries in which they have a direct interest;
- h) act fairly and without bias, and
- i) conduct the enquiries without undue delay.

6.0.5 Where a complaint has been investigated by a nominated Manager or Director that person must decide whether the complaint discloses inappropriate action or a prima facie breach of the Council's Code of Conduct and report such decision, together with an appropriate recommendation, to the General Manager who is then to determine what action is to be taken. The General Manager will report his/her findings, and the reasons for these findings, in writing to the complainant and the person subject of the complaint.

6.0.6 Where a complaint has been investigated by the General Manager he/she must decide whether the complaint discloses inappropriate action or a prima facie breach of the Council's Code of Conduct and determine what action is to be taken. The General Manager will report his/her findings, and the reasons for these findings, in writing to the complainant and the person subject of the complaint.

6.0.7 In the case of a complaint under this part involving a "senior staff" person in the terms of section 332 of the *Local Government Act* and the General Manager decides that the complaint discloses inappropriate action or a prima facie breach of the Council's Code of Conduct the General Manager will, for its information, advise the Council of this decision and the actions, if any, proposed to be taken.

- 6.0.8 In the case of a complaint alleging corrupt conduct in the terms of the *Independent Commission Against Corruption Act 1988* the provisions of this clause does not override the requirements of Section 11 of that Act for such matters to be reported to the Commission. In the case of complaints reported to the ICAC the General Manager may decide not to investigate such complaints until such time as the ICAC advises of its proposed actions or requests the Council to commence investigations into the matter.

7.0 CODE OF CONDUCT COMPLAINTS

- 7.0.1 Council has established a Conduct Committee as required under its Code of Conduct that consists of the Mayor, the General Manager and at least one person independent of Council to deal with complaints under the Council's Code of Conduct against Councillors or the General Manager. In the instance of a complaint being made by or against the Mayor or the General Manager, the Deputy Mayor, or another Councillor who has been designated by Council, will take the place of the Mayor or General Manager on the Committee.
- 7.0.2 Complaints alleging breaches of the Code of Conduct should be reported to the General Manager, or Mayor in the case of a complaint against the General Manager, preferably in writing, in the first instance. Where appropriate, the General Manager, or Mayor in the case of a complaint against the General Manager, will report the matter to the Conduct Committee.
- 7.0.3 Where the General Manager, or Mayor in the case of a complaint against the General Manager, has determined not to report the matter to the Conduct Committee, the General Manager or Mayor in the case of a complaint against the General Manager, will give the complainant the reason/s in writing.
- 7.0.4 Council's Conduct Committee is responsible for making enquiries into allegations of breaches of the Code of Conduct by Councillors and must either:
- a) determine not to make enquiries into the allegation and give the reason/s in writing;
 - b) make enquiries into the alleged breach to determine the particular factual matters, or
 - c) engage an independent person to make enquiries into the allegation to determine the particular factual matters.
- 7.0.5 Enquiries made by the General Manager, or Mayor in the case of a complaint against the General Manager, an independent person or the Conduct Committee will follow the rules of procedural fairness. The enquirer must:

- a) inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them;
- b) provide the person/s with a reasonable opportunity to put their case;
- c) hear all parties to a matter and consider submissions;
- d) make reasonable enquiries before making a recommendation;
- e) ensure that no person is involved in enquiries in which they have a direct interest;
- f) act fairly and without bias, and
- g) conduct the enquiries without undue delay.

7.0.6 Council's Conduct Committee must decide whether a matter reported to it discloses a prima facie breach of the Council's Code of Conduct. The Conduct Committee will report its findings, and the reasons for these findings, in writing to the Council, the complainant and the person subject of the complaint.

7.0.7 The Conduct Committee may recommend that Council take any actions provided for in the Council's Code of Conduct that the committee considers reasonable in the circumstances.

7.0.8 In the case of a complaint alleging corrupt conduct in the terms of the *Independent Commission Against Corruption Act 1988* the provisions of this clause does not override the requirements of Section 11 of that Act for such matters to be reported to the Commission. In the case of complaints reported to the ICAC, the General Manager, or Mayor in the case of a complaint against the General Manager, or the Conduct Committee may decide not to investigate such complaint until such time as the ICAC advises of its proposed actions or requests the Council to commence investigations into the matter.