

1.34 DEALING WITH COMPLAINTS

OBJECTIVE

To provide a framework to guide the Shire of Gingin in its management and processing of complaints.

POLICY

The Shire of Gingin is committed to managing complaints in a consistent and unbiased manner that complies with guidelines set by Australian Standards and the Ombudsman Western Australia, therefore ensuring an open and responsive complaints handling process.

For the purposes of this policy, a complaint is deemed to be any expression of dissatisfaction with the level or quality of products or services delivered by the Shire, or with the actions or decisions of Shire employees, contractors, Councillors or the Council.

A complaint is not:

1. A first request for action or a service (eg a noisy dog, tree branch on verge, broken street sign etc).
2. A request for information or explanation of Council decisions, practices or procedures.
3. The lodging of an appeal or objection in accordance with a statutory process, standard procedure or policy.
4. A request for action or service provided by other agencies.
5. Enquiries in relation to non-compliance with legislation administered by the Shire.
6. A Freedom of Information request.
7. A formal petition.

These matters are either deemed to be general enquiries or customer service requests which are dealt with under separate procedures, or are processes that are regulated by statute.

Formal Complaints

The Shire will determine complaints as quickly as possible and will keep the complainant (and, if applicable, the person who is the subject of the complaint) advised of any progress, details of the ultimate resolution, and reasons for the final decision.

The Executive Manager of each department will be responsible for facilitating the investigation of complaints and responding to complainants.

The Executive Manager may elect to take one or more of the following courses of action:

1. Where appropriate, address the issues raised by the complaint and advise the complainant of any actions taken to resolve the situation.

2. Take no further action and provide the complainant with the reasons for this decision.
3. Resolve the complaint by use of other appropriate strategies such as (but not limited to) mediation, information discussion or negotiation.
4. Discontinue the assessment in circumstances where it becomes evident that the matter will require referral to another body or person, and advise the complainant accordingly.

As a minimum, the following information will be required in order to effectively process a complaint:

1. Name and address of complainant.
2. Complainant's contact details.
3. Details of complaint.
4. Date that the incident or circumstances that is the subject of the complaint occurred.

Customer correspondence, telephone conversations or interviews which proceed in an inflammatory or aggressive manner will not be acted on. In such instances, the Shire has the right to terminate conversations or interviews after warning the customer accordingly.

Anonymous Complaints

An anonymous complaint will only be investigated where reasonable and sufficient information is provided to enable investigation, and where, in the opinion of the responsible officer, the matter is or is likely to be:

1. A breach of statutory provisions.
2. A breach of an approval, licence or permit.
3. A matter on which the Shire is obligated to act as prescribed under the *Local Government Act 1995* or any other written law.
4. A matter which, if not attended to, could reasonably constitute a risk to the public health and safety of persons, animals or the environment.

Unreasonable Complaints

As a general rule, when a person approaches the Shire with a request, application, concern or complaint they first need to be heard, understood and respected.

Customers have a right to:

- be given an apology if required;
- be given information or an explanation;
- have action taken to address their concerns or fix their problem; and
- have the matter dealt with quickly, fairly and properly.

However, in instances where complainants:

- are aggressive;
- are rude, abusive and harassing;
- cannot be satisfied despite the best efforts of the Shire;
- constantly raise the same issue with different staff; and/or
- make unreasonable demands on the Shire where resources are substantially and unreasonably diverted away from its other functions or unfairly allocated (compared to other customers);

then the Shire reserves the right to take the following actions as applicable.

1. Customers who cannot be satisfied:

Customers who cannot be satisfied include members of the public or groups who do not accept that the Shire is unable to assist them, provide any further assistance or level of service than has been provided already, and/or disagree with the action the Shire has taken in relation to their complaint or concern.

If, in the opinion of the CEO, all appropriate avenues of internal review or appeal have been exhausted and the customer continues to write, telephone, email and/or visit, the following actions may be taken:

- a. The CEO may write to the customer re-stating the Shire's position on the matter if necessary, and advising that if the customer continues to contact the Shire regarding the matter the Shire may:
 - i. not accept any further phone calls from the customer;
 - ii. not grant any further interviews;
 - iii. require all further communication to be put in writing; and
 - iv. continue to receive, read and file correspondence but only acknowledge or otherwise respond to it if:
 - the customer provides significant new information relating to their complaint or concern; or
 - the customer raises new issues which, in the CEO's opinion, warrant fresh action.
- b. The CEO shall advise Councillors of a person who is deemed to be a *customer who cannot be satisfied*, together with details of the customer's concerns and any management strategy proposed by Shire officers.

2. Customers who make unreasonable demands:

Customers who make unreasonable demands include members of the public whose demands on the Shire start to significantly and unreasonably divert Shire resources away from other functions or create an inequitable allocation of resources to other customers. Such demands may result from the amount of information requested, the nature or scale of services sought or the number of approaches seeking information, assistance or service.

If, in the opinion of the CEO, a customer is making unreasonable demands on staff and the customer continues to write, email, telephone and/or visit the Shire offices, the following actions may be taken:

- a. The CEO may write to the customer advising them of the Shire's concern, requesting that they limit and focus their requests and advising that, if the customer continues to place unreasonable demands on the Shire, then staff may:
 - i. not respond to any further correspondence and only take action where, in the opinion of the CEO, the correspondence raises specific, substantial and serious issues; or
 - ii. only respond to a certain number of requests in a given period.
- b. If the customer continues to contact staff after being advised of the proposed course of action, the CEO may, after considering representations from the customer, advise the customer that cl. 2.a.i and/or cl. 2.a.ii will be applied.

3. Customers who constantly raise the same issue with different staff:

If, in the opinion of the CEO, a customer is constantly raising the same issues with different staff or elected members, the CEO may notify the customer that:

- a. only a nominated staff member will deal with them in the future;
- b. they must make an appointment with that person if they wish to discuss a matter; or
- c. all future contact with the Shire must be in writing.

The customer may wish to make a formal complaint in accordance with Council Policy 1.34 Dealing with Complaints.

4. Customers who are rude, abusive or aggressive:

The Shire of Gingin will not tolerate or condone intimidating or offensive behaviour toward staff members by members of the public under any circumstances. Any staff member who is the victim of such behaviour may, at their own discretion, report the matter to Police for further action.

Rude, abusive or aggressive behaviour may include rude or otherwise vulgar noises, expressions or gestures, verbal abuse of a personal or general nature, threatening or offensive behaviour, physical violence against property or physical violence against a person.

If, in the opinion of any staff member, rude, abusive or aggressive comments or statements are made in telephone conversations or in person, the staff member may:

- a. warn the caller that if the behaviour continues the conversation or interview/meeting will be terminated; and
- b. terminate the conversation or interview/meeting if the rude, abusive or aggressive behaviour continues after a warning has been given.

Where a conversation or interview/meeting is terminated, the staff member must notify their relevant Coordinator, Manager or Executive Manager (as appropriate) as soon as possible.

If, in the opinion of the CEO, any correspondence to the Shire contains personal abuse, inflammatory statements or materials clearly intended to intimidate, it will be returned to the sender and not otherwise acted upon.

Violence, damage to property or threatening behaviour may be reported to Police, depending on the severity of the actions.

5. Documentation and reporting:

In all of the situations referred to in this section, adequate documentary records must be made and maintained on the appropriate file.

If an elected member feels that a customer is being difficult in a manner specified in this policy, they may notify the CEO who will consider taking action as per avenues described above.

Where the CEO determines to limit a customer's access in any of the ways specified in this policy, the CEO will advise Councillors as soon as possible of the relevant circumstances and the action taken, and forward such advice, where appropriate, to the Department of Local Government, Sport and Cultural Industries and the Ombudsman Western Australia for information.

Breaches of the Code of Conduct for Council Members, Committee Members and Candidates

The manner in which complaints relating to the behaviour of Councillors, members of Council committees and candidates who have nominated for Shire of Gingin elections are dealt with is determined by the *Local Government (Model Code of Conduct) Regulations 2021*. Complaints of this nature are subject to a separate policy of Council (Policy 1.42 Code of Conduct Behaviour Complaints Management) and the Shire's Code of Conduct for Council Members, Committee Members and Candidates. Policy 1.42 forms part of Council's Policy Manual and, together with the Code of Conduct and the form to be used when making a behaviour complaint, is available from the Shire's website.

Allegations of Serious Misconduct

Allegations concerning criminal, corrupt or seriously improper conduct will be dealt with independently of the Shire's complaint handling process.

In the first instance they will be referred directly to the Chief Executive Officer (or in instances where the complaint concerns the Chief Executive Officer, to the President) for determination, including whether there are reasonable grounds for notification to the Crime and Corruption Commission (CCC) or the Police.

Under Section 28 of the *Corruption, Crime and Misconduct Act 2003*, the Chief Executive Officer (or the President in instances where the matter concerns the Chief Executive Officer) has a legal obligation to notify the CCC of suspected misconduct by Councillors or employees. Councillors and employees may also report misconduct, but have no legal obligation to do so.

The Public Interest Disclosure Act 2003 (PID Act)

The PID Act is designed to facilitate the disclosure of suspected misconduct by public officers. This legislation specifically covers improper conduct, corruption, irregular or unauthorised use of public resources, conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment.

Requirements for dealing with disclosures made under the PID Act are dealt with in legislation and are not encompassed by this policy.

Further information in relation to public interest disclosures for the general public is available from the Shire's website. The Shire's internal procedure for dealing with Public Interest Enquiries is available to employees as Procedure 1.3 in the Corporate Procedures Manual on the Intranet.

Breaches of the Local Government Act 1995

The Department of Local Government, Sport and Cultural Industries has a comprehensive complaints handling system in place for the management of complaints received from local governments, residents and other agencies for a variety of matters such as local government administrative procedures and breaches of the *Local Government Act 1995*.

Complaints in this category are not encompassed by this Policy and should be submitted directly to the Department of Local Government, Sport and Cultural Industries.

Complaints to the Ombudsman

The Ombudsman can investigate complaints about most public authorities in Western Australia, including local government.

Generally the Ombudsman will investigate actions or decisions where the decision maker has:

1. Acted outside their legal authority;
2. Not followed policy, or applied its policy inconsistently;
3. Has not considered all the relevant information, or considered irrelevant information;
4. Unreasonably delayed making a decision or informing the complainant of a decision; or
5. Failed to notify the complainant of a decision or did not provide reasons for a decision.

The Shire plays no role in dealing with complaints of this type.

Privacy and Confidentiality

Personally identifiable information concerning the complainant will not be made publicly available to the offending party except to the extent required in law and/or with the express consent of the complainant.

Complainants seeking anonymity should note that the Shire of Gingin cannot guarantee that they will not be identified during investigation, and it is therefore the complainant's right to decide if they would like to proceed with a complaint.

Remedy

A complainant has the right to request a review of a process of investigation and/or decision.

Review

Where a complainant is dissatisfied with the way in which a complaint has been dealt with and/or the final determination of the complaint by the Shire, a review will be carried out of the complaint handling process to:

1. Ensure that responses to the complaint were dealt with in an equitable, objective and unbiased manner;
2. Ensure that external rights of review or appeal for unresolved complaints are made available to complainants; and
3. Reconsider the decision reached, taking all relevant matters into account.

Dispute Resolution

If unsatisfied with the manner in which the complaint has been dealt with, a complainant may direct written correspondence to the Chief Executive Officer for consideration. If, following the Chief Executive Officer's response, the complainant is still unsatisfied, then concerns may be raised with either the Western Australian Ombudsman or the Department of Local Government, Sport and Cultural Industries.

GOVERNANCE REFERENCES

Statutory Compliance	<i>Local Government Act 1995</i> <i>Local Government (Model Code of Conduct) Regulations 2021</i> <i>Corruption, Crime and Misconduct Act 2003</i> <i>Public Interest Disclosure Act 2003</i>
Industry Compliance	Ombudsman WA Guidelines – Dealing with Unreasonable Complainant Conduct
Organisational Compliance	Shire of Gingin Code of Conduct for Council Members, Committee Members and Candidates Shire of Gingin Policy 1.42 Code of Conduct Behaviour Complaints Management Shire of Gingin Corporate Procedure 1.3 Public Interest Enquiries

POLICY ADMINISTRATION

Review Cycle	Two years	Next Review	2024
Department	Office of the Chief Executive Officer		

Version	Decision Reference	Synopsis
1.	Item 11.1.2 – 27/10/2015	Policy adopted.
2.	21/01/2020 – Item 11.1.2	Policy reviewed and amended.
3.	20/09/2022 – Item 11.2	Policy reviewed and amended.

