



## **POLICY – 6.5 - Grievance**

### **Relevant Delegation**

N/A

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### **Objective**

The Shire of Menzies is committed to providing employees with the ability to raise a grievance or complaint with respect to their employment or workplace related matters via an impartial internal process.

This policy aims to ensure grievances and complaints are resolved in a timely, fair and transparent manner in accordance with the principles of natural justice.

### **Policy Statement**

If an employee believes that they are the subject of behaviour that is inconsistent with the Shire of Menzies Code of Conduct, policies and procedures, the employee may raise a complaint by following the process in the procedure outlined below.

If the complaint is about the Chief Executive Officer (CEO), the Grievance Policy does not apply. A complaint about the CEO must be raised directly with the President.

### **1. Key principles in the complaint resolution process**

#### **1.1 Confidentiality**

Only employees directly investigating or addressing the complaint will have access to information about the complaint. The Shire may inform or appoint a third party to investigate or advise on the investigation. All parties involved in dealing with a complaint are required to keep the matter confidential, including the complainant, respondent and witnesses. Information will only be placed on an employee's personal file if they are disciplined as a result of the complaint.

This requirement does not preclude a complainant, respondent, witness or the Shire from seeking legal, financial or other professional advice.

#### **1.2 Impartial (unbiased)**

Both parties will have an opportunity to put their case forward. No assumptions will be made and no action will be taken until all available and relevant information has been collected and considered by either an impartial employee of the Shire or an externally appointed investigator.

#### **1.3 Sensitive**

The Shire will endeavour to ensure employees who assist in responding to complaints are trained to manage complaints sensitively and administer a process that is free of coercion or intimidation.

#### 1.4 Timely

The Shire aims to deal with all complaints as quickly as possible and in accordance with any legislative requirements.

#### 1.5 Documented

All complaints and investigations will be documented. In formal grievance processes, all documents collected and drafted as part of that process will be kept on records. For more informal processes, a file note or note in a diary will be sufficient.

#### 1.6 Procedural fairness

Procedural fairness in the complaint process means:

- a respondent has the right to respond to the allegations before any determination is made;
- a respondent has the right to be told (where possible and appropriate) who made the allegation;
- anyone involved in the investigation should be unbiased and declare any conflict of interest;
- decisions must be based on objective considerations and substantiated facts;
- the complainant and the respondent have the right to have a support person present at any meetings where practicable;
- the respondent is advised of the details of any allegations when reasonably practicable;
- a respondent is entitled to receive verbal or written communication from the Local Government of the potential disciplinary outcome if the allegations arising from the complaint are proven;
- any mitigating circumstances presented to the Shire through the grievance process are investigated and considered;
- any witnesses who can reasonably be expected to help with any inquiry or investigation process will be interviewed; and
- all interviews of witnesses are conducted separately and confidentially.

## **2. Outcome of a complaint**

If a complaint against a respondent is substantiated, there are a number of possible outcomes as detailed in the Procedure below.

## **3. Victimisation of complainant, respondent or witness**

A complainant, respondent or witness should not be victimised for making a complaint, being the subject of a complaint or providing information about a complaint. Anyone responsible for victimising a complainant, respondent or witness may be subject to disciplinary action, including but not limited to termination of employment.

## **4. Reporting obligations**

The Shire must comply with its obligations to report minor or serious misconduct to either the Public Sector Commission or Corruption and Crime Commission in accordance with the *Corruption, Crime and Misconduct Act 2003 (WA)*.

Employees must also be aware of and adhere to any obligations pursuant to the *Public Interest Disclosure Act 2003 (WA)*.

## 5. Complaint Procedure

The aim of this procedure is to resolve a complaint as quickly and confidentially as possible.

### 5.1 First step in making a complaint

Self-resolution or dealing with concern directly

A complainant should attempt to resolve the issue directly with the respondent concerned in the first instance. The complainant should identify the specific conduct of the complaint, explain the impact of that conduct on the complainant, and request that the conduct stops. In some circumstances, the respondent may be unaware that their behaviour offends the complainant. These actions should be taken as soon as possible.

Complainant is uncomfortable with direct approach

If a complainant is not comfortable attempting to resolve the issue directly with the respondent, if their attempts to resolve the issue are unsuccessful or if the issue is serious, the complainant should seek guidance from the Chief Executive Officer on the options available to the complainant.

The complainant will have the choice whether to proceed with or withdraw their complaint. If the Shire deems the complaint to be sufficiently serious, it may continue to investigate the complaint even if it has been withdrawn, to ensure the Shire complies with its legislative obligations.

### 5.2 Informal complaint procedure

A complaint can be dealt with on an informal basis where:

- the allegations are not serious, for example interpersonal conflict or a minor breach of Local Government policies and procedures;
- the complainant is reluctant to lodge a formal complaint; or
- the complainant and the respondent work together closely on a regular basis and the preservation of the employment relationship is paramount.

The informal complaint procedure may be approached as follows:

- the complainant should approach their line manager to outline their concerns, the desired outcome and any ideas for resolution of the complaint;
- the complainant's line manager will explain the various options open to the complainant for the resolution of the complaint; and
- if the complainant chooses to proceed with the complaint, the line manager can either:
  - arrange for a mediation between the complainant and the respondent
  - meet with the complainant and the respondent separately to discuss the issues and explore possible solutions, and/or
  - write to the complainant and the respondent to obtain further information about the complaint and to explore potential solutions.

If the matter is resolved to the satisfaction of all parties, the matter will be concluded.

If the matter is not resolved, the line manager will determine what further action is required.

All meetings with the complainant and the respondent should be documented and any correspondence between the parties should be retained on a confidential basis by the Executive Officer being in charge of Human Resources.

### 5.3 Formal complaint procedure

A complaint must be dealt with through the formal complaint procedure where:

- the complaint involves serious allegations, including but not limited to, sexual harassment, discrimination, criminal conduct, serious or multiple breaches of Local Government policies and procedures, or breach of the *Local Government Act 1995 (WA)*;
- the complaint involves a particularly sensitive or personal matter; or
- a formal complaint procedure is deemed appropriate in the circumstances by the line manager.

A formal complaint should be made in writing to the CEO and include the following information:

- the complainant's name and contact details;
- details of the specific incident or issue being complained about including the time, date, location and what was said or done;
- if the complaint is about a person, the identity of the respondent and their relationship to the complainant;
- the names of any witnesses who were present during the specific incident or who have first-hand knowledge of the issue being complained about;
- the outcome the complainant is seeking; and
- any action that has already been taken in an effort to resolve the issue.

Before commencing a formal investigation, the CEO may conduct a preliminary inquiry. The purpose of a preliminary inquiry is to:

- obtain details about the complaint and assess the seriousness of the allegations;
- determine the level of factual dispute;
- assess whether there is sufficient evidence to proceed to a formal investigation; and
- determine whether the Shire should proceed with an investigation or refer the matter to an external authority.

It may be appropriate to refer a matter to an external authority where the alleged conduct is potentially of a criminal nature, breaches the *Local Government Act 1995 (WA)* or may need to be dealt with by the Corruption and Crime Commission.

### 5.4 Investigation procedure

#### External investigator

If necessary, the CEO may require a formal investigation to be conducted. The Shire can elect to appoint a person from outside the Local Government to conduct the formal investigation or an appropriate Local Government employee may conduct the investigation.

#### Role of an investigator

The role of an investigator is to collect information about the complaint and make findings about whether any allegations are substantiated. The investigator is responsible for ascertaining facts, reviewing documentation, interviewing parties and making a determination about whether or not the allegations are substantiated. In conducting an investigation, the investigator should comply with the Grievance Policy, particularly the principles of procedural fairness. The depth and scope of the investigation will depend on the nature of the complaint, however, as a general guide the following should be covered by the investigation report:

- the circumstances of any allegations made;
- a list of allegations made by the complainant, the respondent's response to the allegations and whether any of the allegations are substantiated;
- outline where any policies or legislation have been breached;
- evidence related to the complaint include any documentation such as emails, letters and witness statements; and
- any mitigating circumstances that have been presented through the investigation on behalf of the respondent.

## 5.5 Outcome and action

The potential outcomes that may be sought if a complaint has been investigated and substantiated will depend on the nature of the complaint. Some possible outcomes include the following:

- an apology from the respondent to the complainant (written or verbal);
- agreement from the respondent that the behaviour will not be repeated;
- a respondent may be issued with a verbal or written warning;
- transfer, demotion or termination of the respondent's employment;
- counselling for the complainant and/or respondent;
- a mediation between the complainant and respondent;
- implementation of a training program; or
- changes to the Local Government's policies.

### **Disciplinary action**

The outcome of the investigation will dictate whether disciplinary action is taken. What disciplinary action is taken is a matter of discretion for the Shire and, where relevant, in accordance with the lawful directions of the appropriate statutory body.

### **Vexatious or malicious complaint**

If a complaint is found to be deliberately vexatious or malicious after an investigation, the complainant may be subject to disciplinary action, including but not limited to, termination of employment.

*-End of Policy*

ADOPTED: 29 JUNE 2023