



Council Policy Manual

WEST WIMMERA SHIRE COUNCIL

COUNCIL POLICY	
COMPLAINTS POLICY	Policy No:
	Adopted by Council: 15 December 2021
	Next review date: September 2023
Senior Manager:	Director Corporate and Community Services
Responsible Officer:	Director Corporate and Community Services
Functional Area:	Corporate and Community Services
Introduction & Background	The West Wimmera Shire Council (the Council) provides a wide and diverse range of services to the community and understands that at times disputes arise around Council decisions, actions or the standard of service delivery.
Legislative Requirements	Section 107 of the <i>Local Government Act 2020</i> (LGA 2020) provides that a Council must develop and maintain a complaints policy. The specific legislative requirements are shown in Attachment 1.
Purpose & Objectives	This <i>Complaints Policy</i> (the Policy) sets out guidelines to manage complaints to ensure that where possible, an effective, agreed and positive outcome is achieved. The Policy provides: <ul style="list-style-type: none"> a) a process for complaints to be received; b) a structure for complaints to be investigated, processed and resolved in a timely, transparent and fair manner; and c) a process for appeals against decisions made.
Guiding Principles	This Policy is based around the seven following principles of complaints handling as outlined in the Ombudsman Victoria's publication <i>Councils and Complaints – A Good Practice Guide</i> .



	<p>1 Commitment</p> <p>Council is committed to resolving complaints received and recognises that members of the public have the right to complain. Council considers complaint handling processes to be essential and can lead to improvements in providing services to the community.</p> <p>2 Accessibility</p> <p>Support will be provided to enable people with a range of needs to lodge a complaint. Council will provide suitable resources to allow them to access the complaints handling process.</p> <p>3 Transparency</p> <p>Council will make it clear how to lodge a complaint and provide a clear framework for handling complaints.</p> <p>4 Objectivity and fairness</p> <p>All complaints will be dealt with courteously, impartially, on merit and within established timeframes.</p> <p>5 Privacy</p> <p>All information involved in receiving and processing complaints will be handled in accordance with applicable legislation and Council's <i>Information Privacy Policy</i>.</p> <p>Complainants will be provided with information about how personal information is disclosed.</p> <p>6 Accountability</p> <p>Council acknowledges that it is accountable internally and externally for its decisions and actions and will provide explanations and reasons for decisions and ensure that its decisions are subject to appropriate review processes where required.</p>
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	<p>7 Continuous Improvement</p> <p>Acting on, learning from and using complaint data helps Council identify problems and improve service levels to the community.</p>
<p>Definitions</p>	<p>In this Policy, the following terms have the meaning indicated:</p> <ul style="list-style-type: none"> a) business day means Monday to Friday except public holidays; b) in accordance with the LGA 2020, complaint includes the communication, whether orally or in writing, to the Council by a person of their dissatisfaction with: <ul style="list-style-type: none"> i. the quality of an action taken, decision made or service provided by a member of Council staff or a contractor engaged by the Council; or ii. the delay by a member of Council staff or a contractor engaged by the Council in taking an action, making a decision or providing a service; or iii. a policy or decision made by a Council or a member of Council staff or a contractor. c) complainant means the person making the complaint; d) Councillor Conduct Officer means the person appointed in writing by the Chief Executive Officer (CEO) to be the Councillor Conduct Officer under section 150 of the LGA 2020; ¹ e) Director means a level two Council employee who reports to the CEO; f) Manager means a level three Council employee who reports to the CEO or a Director; g) party means the complainant, the person the subject of the complaint and any Council staff involved in dealing with the complaint; h) public interest complaint has the same meaning as in section of the <i>Public Interest Disclosures Act 2012</i>; i) Receiving Officer means the Council staff member who receives the complaint; j) Reviewing Officer means a person appointed by the CEO to conduct an appeal against a decision made; and

¹ The Councillor Conduct Officer is currently the Director Corporate and Community Services



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	<p>k) senior officer means a Director, Manager or other officer nominated by the CEO.</p>
Roles	<p>1. Council</p> <p>The Council is responsible for the adoption and periodic review of the Policy.</p> <p>2. Chief Executive Officer</p> <p>The CEO is responsible for:</p> <ul style="list-style-type: none">a) receiving complaints;b) referring complaints to the relevant Director or Manager for investigation;c) processing complaints which have been received from a Councillor concerning another Councillor in accordance with the Councillor Code of Conduct and referring the matter to the Local Government Inspectorate for investigation if necessary;d) receiving requests for a review of the outcome of a complaint and referring the request to a Reviewing Officer; ande) appointment of external advisers or investigators. <p>3. Director Corporate and Community Services</p> <p>The Director Corporate and Community Services is responsible for:</p> <ul style="list-style-type: none">a) receiving complaints referred by the CEO and:<ul style="list-style-type: none">i. investigating the complaints; orii. referring the complaint to another Council officer for investigation;b) acting as the Reviewing Officer when requested by the CEO; and



	<p>c) “maintenance” and review of the Policy.</p> <p>4. Director Infrastructure Development and Works</p> <p>The Director Infrastructure Development and Works is responsible for:</p> <p>a) receiving complaints referred by the CEO and:</p> <ul style="list-style-type: none"> i. investigating the complaint; or ii. referring the complaint to another Council officer for investigation; and <p>b) acting as the Reviewing Officer when requested by the CEO.</p> <p>5. Managers</p> <p>Managers are responsible for:</p> <p>a) receiving and investigating complaints referred by the CEO or relevant Director; and</p> <p>b) acting as the Reviewing Officer when requested by the CEO.</p>
Policy Details	
1.	<p>Scope</p> <p>This Policy applies to:</p> <ul style="list-style-type: none"> a) Councillors, including when acting in their role as a delegate to external organisations; b) members of Council staff; c) Council contractors; d) members of Council committees; and e) volunteers.



2.	The Complaints Process
	<p>2.1 Submission of complaints</p> <p>Complaints may be received:</p> <ul style="list-style-type: none">a) in person at one of Council's Customer Service Centres;b) by telephone;c) by email to the Council's email address; ord) by mail. <p>A complainant has the right to remain anonymous when making a complaint. In such cases no follow up or response can be made to the complainant.</p> <p>To enable complaints to be received:</p> <ul style="list-style-type: none">a) on business days:<ul style="list-style-type: none">i. the Customer Service Centres in Edenhope and Kaniva shall be open between 8:30am and 5:00pm;ii. Council staff will be available by telephone between 8:30am and 5:00pm;iii. the email address Council@westwimmera.vic.gov.au will be monitored between 8:30am and 5:00pm;iv. Council's mail shall be collected and reviewed; andb) the Council website will contain relevant information relating to the submission of complaints.
	<p>2.2 Form of complaints</p> <p>Complainants should ensure that sufficient information is provided concerning the complaint to enable Council to achieve a resolution.</p> <p>This should include:</p> <ul style="list-style-type: none">a) the subject of the complaint;b) the location and time of the item or action the subject of the complaint (ie: when and where);c) any suggestions the complainant has to resolve the matter; and



	<p>d) the complainant's contact details – however complainants may remain anonymous.</p>
	<p>2.3 Assistance with complaints</p> <p>People with disabilities, special needs or other barriers may obtain personal assistance to complete a complaint by contacting the Governance Manager or Governance Coordinator.</p>
	<p>2.4 Confidentiality</p> <p>The details of all complaints will be treated confidentially. Complaints will be forwarded to and discussed by only those officers who have a direct interest in resolution of the complaint.</p> <p>All information received will be stored and treated in accordance with the provisions of the <i>Privacy and Data Protection Act 2014</i>.</p> <p>Some complaints may take the form of a protected disclosure under the <i>Public Interest Disclosures Act 2012</i>. (Refer to Council's <i>Protected Disclosures Policy</i> for further information).</p> <p>Some complaints such as those which involve mandatory reporting, may result in disclosure to other agencies including;</p> <ul style="list-style-type: none"> a) the Victoria Police; b) Local Government Victoria; c) the Local Government Inspectorate; d) the (Victorian) Ombudsman; e) the (Victorian) Auditor General's Office; f) the Information Commissioner (in relation to privacy matters); or g) the Independent Broad-Based Anti-Corruption Commission.
	<p>2.5 Who deals with complaints?</p> <p>Complaints concerning staff shall be directed to the CEO, who may then, dependent upon the nature of the complaint, delegate investigation and resolution to the relevant Director or Manager.</p> <p>Complaints concerning Councillors shall be directed to the CEO and the Councillor Conduct Officer. The Mayor shall be informed of any complaints received against Councillors.</p> <p>Complaints about the Mayor shall be directed to the CEO and the Councillor Conduct Officer.</p>



	<p>Complaints concerning service standards or quality shall be directed to the relevant Director (or Manager if the Manager reports to the CEO) who may then, dependent upon the nature of the complaint, delegate investigation and resolution to a relevant Manager.</p> <p>Officers receiving complaints may access the knowledge and expertise of other officers and/or external parties to assist in investigating and resolving a complaint. The onus on ensuring such investigation and resolution occurs remains with the Receiving Officer.</p>
	<p>2.6 Complaints about contractors</p> <p>Council recognises that it retains a level of responsibility for the actions of contractors providing works and services on Council's behalf.</p> <p>Where a complaint relates to a contractor, the complaint shall be referred to the relevant Director (or Manager if the Manager reports to the CEO) responsible for the relevant service.</p>
	<p>2.7 Rights of Complainants, Councillors, Members of Council Committees, Council Officers and Volunteers</p> <p>Complainants have the following rights under this Policy:</p> <ul style="list-style-type: none"> a) <i>confidentiality</i> - Council will ensure that the complainant's details are treated in compliance with the <i>Privacy and Data Protection Act 2014</i> and Council's <i>Information Privacy Policy</i> and are not distributed to any person unless for the purposes of investigating and/or resolving the complaint; b) <i>to be protected from detrimental action</i> - Council will ensure that a complainant does not suffer detrimentally and is not the subject of targeted detrimental action as a result of making a complaint; c) <i>access to information on the progress of a complaint</i> - a complainant may at any stage to enquire as to the progress of a complaint; and d) <i>review of resolution</i> – a complainant may request a review of the resolution of a complaint. Requests must be made in writing to the CEO. <p>Councillors, members of Council committees, Council officers and volunteers have the following rights under this Policy:</p> <ul style="list-style-type: none"> a) to provide evidence and a response to allegations made against them; b) review of resolution – to request a review of the resolution of the complaint. Requests must be made in writing to the CEO; and



	<p>c) to be protected from detrimental action – Council will ensure that parties to complaints are not punished or treated detrimentally in any manner beyond action directly related to the resolution of that complaint.</p> <p>All rights conferred under this Policy are complementary to all and any rights available to complainants and parties under the Victorian <i>Charter of Human Rights and Responsibilities</i>.</p>
	<p>2.8 Review of Resolutions and Outcomes</p> <p>If a complainant or respondent to a complaint is unhappy or dissatisfied with the outcome of a complaint, then they may request a review of that outcome.</p> <p>Such request must be made in writing to Council’s Chief Executive Officer. The review will be undertaken by a senior officer who was not originally involved in the complaint, or in the case where this is not possible, a suitably qualified and/or experienced external party.</p> <p>If after a review has been undertaken a complainant remains unsatisfied with the outcome, then they will be advised of relevant external agencies, such as IBAC, Local Government Victoria, The Victorian Auditor General’s Office or Victorian Ombudsman, to refer their complaint.</p>
	<p>2.9 Timeliness</p> <p>Upon receipt of the complaint, the complainant will be contacted to acknowledge receipt of their complaint within two business days (except where the complaint is made anonymously).</p> <p>Formal advice of the outcome of the investigation of the complaint shall be made to the complainant within 30 days of the receipt of the complaint.</p> <p>Some complaints may be complex in nature and a resolution may not be feasible within 30 days. In such cases, the complainant will be informed of this with an estimate of when a resolution may be possible.</p>
	<p>2.10 Redress</p> <p>If a review of a complaint results in the original decision being overturned, the following remedies may be taken to redress the situation:</p> <ul style="list-style-type: none"> a) a reversal or partial reversal of the decision; b) an ex gratia payment: <ul style="list-style-type: none"> i. of an amount determined by the CEO; ii. subject to the complainant signing a release;



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	<ul style="list-style-type: none">c) a commitment to undertake action to rectify the initial complaint as a minimum;d) a full explanation of why the initial decision was made and whether any steps have been taken to prevent an incorrect decision being made in future;e) a review of processes aimed at preventing future situations which gave rise to the initial complaint from happening again;f) disciplinary action against a staff member where applicable;g) in the case of a contractor:<ul style="list-style-type: none">i. counselling; orii. other action in accordance with the contract; andh) where Council has made an error in its initial assessment of the complaint, Council will provide a formal apology to the complainant acknowledging the error.
	2.11 Exclusions
	<p>This Policy does not apply to:</p> <ul style="list-style-type: none">a) complaints about third parties (unless it involves contractors carrying out work on Council's behalf), except when Council has legal responsibilities to report complaints, for example, child safe standards;b) instances where there is a statutory process to deal with an issue, including, but not limited to:<ul style="list-style-type: none">i. applications for planning permits;ii. complaints/disclosures which are more appropriately handled under Council's <i>Protected Disclosure Policy</i>;iii. objections to property valuations;iv. appeals against infringements;v. reviews of freedom of information decisions;vi. the submissions process pursuant to section 223 of the <i>Local Government Act 1989</i>;vii. a consultation or submission process in accordance with a Council policy;viii. industrial relations issues;c) initial requests for works or services;



	<ul style="list-style-type: none">d) complaints about Councillors where the matter can be dealt with pursuant to the Councillor Code of Conduct;e) in relation to (d) above, where the Chief Municipal Inspector is investigating a complaint pursuant to section 182(2)(d) of the LGA 2020;f) public interest complaints referred from the IBAC to the Chief Municipal Inspector;g) in relation to a matter already before a court, tribunal or government agency; andh) instances where the complainant has also referred the matter to multiple government agencies.
	2.12 Unreasonable complaints
	2.12.1 General <p>Where complainants behave in ways that are inappropriate and unacceptable, despite Council's best efforts to help them, the Council or the CEO may determine their conduct to be unreasonable.</p> 2.12.2 Unreasonable complaints <p>Unreasonable complainant conduct is regarded as any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for the organisation, staff, other service users and complainants or the complainant himself/herself.</p> <p>Unreasonable complaint conduct can be divided into five categories of conduct, namely unreasonable:</p> <ul style="list-style-type: none">a) persistence;b) demands;c) lack of cooperation;d) arguments; ore) behaviour. <p>In this context:</p> <ul style="list-style-type: none">a) <i>unreasonable persistence</i> is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on the organisation, staff, services, time and/or resources;



- b) *unreasonable demands* are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on the organisation, staff, services, time and/or resources;
- c) *unreasonable lack of cooperation* is an unwillingness and/or inability by a complainant to cooperate with the organisation, staff, or complaints system and processes that result in a disproportionate and unreasonable use of services, time and/or resources;
- d) *unreasonable arguments* include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon the organisation, staff, services, time and/or resources; or
- e) *unreasonable behaviour* is conduct that is unreasonable in all circumstances, regardless of how stressed, angry or frustrated that a complainant is, because it unreasonably compromises the health, safety and security of staff, other service users or the complainant.

2.12.3 Dealing with unreasonable complainants

Council staff are aware that Council has a zero tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with in accordance with Council's duty of care and occupational health and safety responsibilities.

Unless a complainant's conduct poses a substantial risk to the health and safety of employees or third parties, a written warning concerning a complainant's unreasonable conduct will be provided to them in the first instance. If the behaviour of the complainant is not modified in response to the warning, further restrictions on contact or service provision will be considered.

The complainant will then be notified of these further restrictions and advised of any limitations or consequences should they not adhere. Such restrictions may include being limited to 'in writing only' contact with Council.

In rare cases, where employee safety and wellbeing has been compromised, the CEO may deem it necessary for the organisation to completely restrict a complainant's contact/access to Council services or facilities, including, but not limited to Council's:

- a) Customer Service Centres;
- b) swimming pools;



- c) recreation facilities;
- d) maternal and child health centres;
- e) pre-schools;
- f) landfill and transfer stations;
- g) community bus; or
- h) libraries.²

Such provisions will only be enacted if it appears the complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for Council staff or third parties because it involves one or more of the following types of conduct:

- a) acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking or assault
- b) damage to property while on Council premises;
- c) threats with a weapon that can be used to harm another person or themselves;
- d) physically preventing an employee from moving around freely either within their place of work or during an off site visit – e.g. entrapping them in their home; or
- e) conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access to specific services or facilities has been removed. Should this include one of Council's leisure facilities, the complainant's membership of the facility may also be reviewed/suspended or terminated.

² In the case of the Edenhope Library, the matter may be referred to the CEO of the Wimmera Regional Library Corporation.



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	<p>A complainant's access to Council services and premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders (i.e. a prohibited persons order) to protect Council staff from personal violence, intimidation or stalking by a complainant.</p> <p>Council will review the limitations placed on all unreasonable complainants every 12 months.</p> <p>When undertaking a review Council will consider:</p> <ul style="list-style-type: none"> a) the level of compliance of the complainant with the restrictions/ limitations that have been imposed on their contact; b) evidence of capacity and willingness of the complainant to modify conduct; c) impacts on Council resources, including the time of officers spent investigating complainant matters; d) Council's OH&S and workplace responsibilities; e) other risks to Council; and f) legislative obligations.
	Policy Access
	This Policy will be published on the Council website.
	Policy Review
	This Policy will be reviewed within six months of the October 2024 Council elections or earlier if the Council so determines.
	Policy Amendments
	Minor amendments to the Policy may be made by the CEO to reflect legislative or organisational changes. The CEO must notify the Councillors of any such amendments.



12 ATTACHMENT 1

Relevant provisions of the *Local Government Act 2020*

Section 107 - Complaints policy

(1) A Council must develop and maintain a complaints policy that includes:

- (a) a process for dealing with complaints made to the Council;
- (b) a process for reviewing any action, decision or service in respect of which the complaint is made;
- (c) a discretion for the Council to refuse to deal with a complaint which is otherwise subject to statutory review;
- (d) the prescribed processes for dealing with complaints about the Council;
- (e) the prescribed processes for internal review of complaints made to a Council; and
- (f) the prescribed processes for exercising the discretion referred to in paragraph (c); and
- (g) any other matter prescribed by the regulations.

(2) A review process must provide for a review that is independent of:

- (a) the person who took the action; and
- (b) the person who made the decision; and
- (c) the person who provided the service.

(3) For the purposes of the complaints policy, complaint includes the communication, whether orally or in writing, to the Council by a person of their dissatisfaction with:

- (a) the quality of an action taken, decision made or service provided by a member of Council staff or a contractor engaged by the Council; or
- (b) the delay by a member of Council staff or a contractor engaged by the Council in taking an action, making a decision or providing a service; or
- (c) a policy or decision made by a Council or a member of Council staff or a contractor.



13 ATTACHMENT 2

13.1 Associated Agencies, Legislation and Documents

13.1.1 Agencies

The principal Victorian Complaint and Dispute Resolution Bodies

1. The Accident Compensation Conciliation Service Provides an independent service to resolve worker's compensation disputes in Victoria.
2. The Commissioner for Privacy and Data Protection is the key body regulating the way Victorian Government agencies and councils collect and handle personal information.
3. Consumer Affairs Victoria promotes consumer protection and ethical trading and ensures that consumer protection laws are properly enforced.
4. The Dispute Settlement Centre – Victorian Department of Justice and Regulation provides an informal, impartial, accessible, low cost dispute resolution service to the Victorian community.
5. The Disability Services Commissioner deals with complaints about disability services in Victoria.
6. The Health Services Commissioner deals with complaints about health services providers.
7. The Local Government Inspectorate investigates complaints of alleged breaches of the *Local Government Act 2020* by Councillors, senior Council officers and certain other persons.
8. The Mental Health Complaints Commissioner deals with complaints about public mental health services providers.
9. The Public Transport Ombudsman deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with the public transport operators.
10. The Victorian Equal Opportunity and Human Rights Commission is responsible for eliminating discrimination in Victoria and offers information, education and consultancy services, conducts research and provides legal and policy advice.



11. The Victorian Inspectorate is the key oversight body in Victoria's integrity system and can take complaints about the IBAC, the Chief Examiner and Examiners, the Victorian Ombudsman and the Auditor General.

13.1.2 Legislation

1. *Charter of Human Rights and Responsibilities Act 2006.*
2. *Freedom of Information Act 1982.*
3. *Health Records Act 2001.*
4. *Local Government Act 2020.*
5. *Occupational Health and Safety Act 2004.*
6. *Privacy and Data Protection Act 2014.*
7. *Public Interest Disclosures Act 2012.*
8. *Summary Offences Act 1966.*
9. *Wimmera Regional Library Corporation Local Law 2 – 2017.*

13.1.3 Other publications

1. Victorian Ombudsman – Councils and Complaints – a Report on Current Practice and Issues – February 2015.
2. Victorian Ombudsman – Councils and Complaints – A Good Practice Guide.

13.1.4 Council policies

1. Councillor Code of Conduct (February 2021).



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2. Customer Service Policy (February 2014)
3. Information Privacy Policy (March 2021).
4. Protected Disclosures Policy (June 2018).
5. Public Interest Disclosure Policy (June 2020).
6. Public Transparency Policy (June 2020).

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