

Council Policy



Policy Title:	Complaints Management and Mandatory Reporting
Policy Number:	1.18
Focus Area:	CS1 Leading and Advocating for our Community
Responsibility:	Governance & Risk
Meeting Adopted:	21 April 2020 [Resolution Number 210420/14]

OBJECTIVE

To provide a complaints management framework for the effective handling of complaints and to ensure that complaints are dealt with in a consistent, systematic and appropriate manner.

To meet council's legislative requirement to have a system in place for identifying, receiving and responding to 'reportable allegations' of abuse against children under the *Children's Guardian Act 2019*.

1. COMPLAINTS MANAGEMENT

Richmond Valley Council aims to be responsive to complaints raised by the community. For this to be effective, a defined and readily understood system for the management of complaints needs to be in place. This policy is a tool, which will enable dissatisfied residents, non-residents or any authority/organisation to make a complaint to Council and have the complaint managed effectively within Council.

A major outcome of this policy will be the improvement in Council's efficiency and effectiveness in handling complaints, improved service delivery and strengthening public support.

1.1 Definition of complaint

What is a complaint?

- A complaint is an expression of dissatisfaction, made in respect to a Council Officer's role and/or Council in the provision of service delivery or lack of service delivery that has allegedly affected an individual, group or body of stakeholders whether justified or not.

What is not a complaint?

- A request for service is an action request, examples include: reporting of road potholes, water leaks, dust and noise, overgrown allotments and dog issues;
- A request for information or an explanation of a policy or procedure;
- Objections to a development application before Council determination; and

- Objections/dissatisfaction with regard to regulatory notices that are challengeable/reviewable via Court or other processes (reference should be made to Council's Enforcement - Unlawful Activity Procedure on these matters).

A complaint can progress from Council's lack of action following the lodgement of a request for service or a request for information.

If a complaint has been made to Council that alleges conduct that, if proven, would represent a breach of Council's Code of Conduct, it should be dealt with under the Code regardless of whether or not the complainant has requested that the complaint be dealt with under the Code of Conduct (reference should be made to Council's Code of Conduct – Councillors/Personnel Policy).

1.2 How to lodge a complaint

- In writing:
The General Manager
Richmond Valley Council
Locked Bag 10
CASINO NSW 2470
- By email:
council@richmondvalley.nsw.gov.au
- By telephone:
(02) 6660 0300
- In person at either of Council's offices at Casino or Evans Head.

1.3 Recording of complaints

Council will record all complaints received in the Records Management System. The principal benefit for recording complaints is that it provides a valuable tool for identifying trends and organisational weaknesses. Further, the information will be utilised as part of a program of continuous improvement.

Council's Governance department will analyse and report to Council on complaints received by type and outcomes/actions on an annual basis.

1.4 How complaints are reviewed

Complaints will be reviewed in accordance with Council's Complaints Handling Procedure, which provides an efficient, fair and accessible mechanism for resolving complaints. It recognises, promotes and protects the rights of individuals or organisations to comment and make complaints.

The Complaints Handling Procedure is affixed as Appendix A to this document. It outlines the actions which Council Officers will implement at each of the three levels of complaint review handling.

1.5 Dealing with anonymous complaints

Anonymous complaints will not be rejected, however Council's ability to investigate anonymous complaints will be dependent upon the substance of the information supplied.

Due to anonymity, Council will be unable to provide reasons for any decision of actions taken.

1.6 Dealing with difficult complainants

Council recognises and accepts members of the public will sometimes display frustration. Council staff are to ensure difficult complainants are not unreasonably denied rights.

1.7 Protecting complainants

Council acknowledges the rights of members of the public to make a complaint. Council will ensure that people who complain are not subjected to victimisation, harassment, discriminated against or prejudged.

Disciplinary action will be taken against any member of staff who breaches this policy.

1.8 Protected Disclosures

Councillors and Council staff are 'public officials' for the purposes of the *Protected Disclosures Act 1994*. That Act, amongst other things, allows public officials to make protected disclosures to the General Manager of a Council or to any other person authorised to accept protected disclosures under Council's Internal Reporting Policy. To be protected under that Act, the disclosure must relate to certain types of conduct, namely corrupt conduct, maladministration or serious and substantial waste of public money by the Council or any of its officers and must be made in accordance with the established procedures for dealing with such disclosures.

Council has a separate Internal Reporting Policy to meet its obligations under the *Protected Disclosures Act 1994*.

1.9 Complaints about privacy breaches

Councils are public sector agencies for the purposes of *the Privacy and Personal Information Protection Act 1998*. Under that Act, a person may seek an internal review by a Council of the following conduct:

- a breach of any Information Protection Principles applying to the Council;
- a breach of the Privacy Code of Practice for Local Government;
- disclosure of personal information held on a public register in a manner inconsistent with that permitted under the Privacy Code of Practice for Local Government;

- a breach of a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* that applies to the Council; or
- a breach of a health privacy code of practice that applies to the Council.

The Act imposes certain obligations on Councils on how they conduct internal reviews. Council is also obliged to notify the Privacy Commissioner of internal reviews and report their findings. Council is also required to report certain information about internal reviews in its annual reports. Accordingly, privacy breaches are dealt with separately by Council.

1.10 Competitive Neutrality Complaints

Competitive neutrality is one of the principles of National Competition Policy. Competitive neutrality is based on the concept of the 'level playing field' for all competitors in a market, be they public or private sector competitors. Under the principles of the National Competition Policy, all levels of government must establish an effective system to deal with complaints relating to competitive neutrality in respect of their business.

The framework for the application of the National Competition Policy to Councils is contained in the State Government's Policy Statement on the Application of Competitive Neutrality to Local Government, issued in January 2002. Under the Policy Statement, Council is required to apply a number of different elements of competitive neutrality to its business activities depending on the size of the business. Even where Council is not required to apply a particular element, it is expected to abide by the principle of competitive neutrality in the conduct of the business.

The Policy Statement sets out the framework that applies to competitive neutrality complaints concerning Council businesses. Under the Policy Statement, Councils are responsible for resolving competitive neutrality complaints at first instance, with review by the Department of Local Government where warranted.

A competitive neutrality complaint is:

- a complaint that a Council has not met its obligations under the Policy Statement or Pricing and Costing for Council Businesses - A Guide to Competitive Neutrality issued by the Department of Local Government in July 1997. This includes a concern that a Council has not established an effective complaint handling mechanism.
- a complaint that a Council has not abided by the spirit of competitive neutrality in the conduct of a business activity.

A competitive neutrality complaint is not:

- a complaint regarding the level of service provided by a business activity;
- a complaint regarding the cost of the service, unless it is that Council has not costed its service to take competitive neutrality into account; or
- a complaint regarding the trade practices laws and their application to Councils.

Complaints that do not concern competitive neutrality should be dealt with under the Council's normal complaint handling processes.

1.11 Complaints Handling Responsibilities

Council's General Manager is responsible for ensuring that Council's management of complaints is carried out in accordance with the Complaints Management Policy.

The General Manager will monitor policy compliance and arrange/ undertake independent investigations of complaints.

2. MANDATORY REPORTING

The *Children's Guardian Act 2019* commenced on 1 March 2020. Under the Act, the Reportable Conduct Scheme is administered by the Office of the Children's Guardian. Councils are required to have systems in place for identifying, receiving and responding to 'reportable allegations' of abuse against children and for preventing reportable conduct.

2.1 Reportable Conduct Scheme

The scheme monitors how relevant entities investigate and report on certain conduct (known as 'reportable allegations' and 'reportable convictions') made against their employees, volunteers or certain contractors who provide services to children.

Council's General Manager will be required to give written notice to the Children's Guardian within seven business days of becoming aware of a reportable allegation or a reportable conviction and conduct an investigation into the allegations. If the report is not ready to submit within 30 calendar days, the General Manager must provide an interim report with information about the progress of the investigation and an expected timeframe for completion.

Forms for the purpose of making a report under the Reportable Conduct Scheme are available on the website of the Office of the Children's Guardian. Relevant forms include 7-Day Notification Form, Entity Report Form and 30-Day Interim Report Form (all under Part 4 *Children's Guardian Act 2019*).

Reportable Conduct is defined under the *Children's Guardian Act 2019* to include:

- A sexual offence;
- Sexual misconduct;
- Ill-treatment of a child;
- Neglect of a child;
- Assault against a child;
- Offence under s43B (failure to protect) or s 316A (failure to report) under the *Crimes Act 1900*; and
- Behaviour that causes significant emotional or psychological harm to a child.

Councils are required to report on the inside work conduct relating to all their employees and volunteers, and if they hold a Working with Children Check, the inside and outside work conduct relating to those employees, volunteers and contractors.

2.2 What must be reported?

Council's General Manager must provide details of the following within seven business days after becoming aware of the allegation or conviction:

- a) Date the report was received;
- b) Type of reportable conduct;
- c) Name of employee;
- d) Name and contact details of the entity and head of entity;
- e) Whether Police were notified;
- f) Whether a ROSH (Risk of Significant Harm) report was made; and
- g) Nature of initial risk assessment and management (i.e. moving employee to a different role).

Penalties will be applied for failure to comply with notification requirements. Exemptions and a 'reasonable excuse' discretion apply.

2.3 Employee obligations under the Scheme

Employees who are captured by the Scheme are required to give a report (tell the General Manager) about reportable allegations against another employees (or themselves) that they become aware of, as soon as practicable.

Reports against the head of an organisation, must be made directly to the Children's Guardian via email reportableconduct@kidsguardian.nsw.gov.au.

A work culture that encourages and supports the appropriate reporting of child protection concerns is a critical component of a child safe organisation. Protections against retribution apply for people who make reports, these protections are outlined under s63 and s64 of the *Children's Guardian Act 2019*.

Failure to make a report may constitute misconduct. This may result in disciplinary action by Council, together with potential for a criminal offence under *Crimes Act* s43B.

REFERENCES

- *Children's Guardian Act 2019*
- Code of Conduct – Councillors/Personnel Policy (Richmond Valley Council Policy 1.1)
- Enforcement – Unlawful Activity (Richmond Valley Council Procedure 15.6)
- *Health Records and Information Privacy Act 2002*
- Internal Reporting Policy (Richmond Valley Council Policy 1.9)
- Key changes in the *Children's Guardian Act 2019* www.kidsguardian.nsw.gov.au
- National Competition Policy
- Office of the Children's Guardian website <https://www.kidsguardian.nsw.gov.au/>
- *Personal and Personal Information Protection Act 1998*
- Policy Statement on the Application of Competitive Neutrality, 2002
- Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality, 1997
- Privacy Code of Practice for Local Government
- *Protected Disclosures Act 1994*

CONSULTATION

This review was conducted in line with feedback by the Office of the Children's Guardian, together with Richmond Valley Council customer service staff.

REVIEW

This policy will be reviewed by Council at the time of any relevant legislative changes, compliance requirements or at least every four years.

Version Number	Date	Reason / Comments
1	21 February 2006	New policy
2	20 October 2009	Review
3	21 April 2020	Formerly CPOL 1.1.14 Now incorporates Complaints Handling Procedure Format update, references to policies updated, inclusion of Mandatory Reporting information

APPENDIX A – COMPLAINTS HANDLING PROCEDURE

This procedure should be read and applied in conjunction with Council's Complaint Management Policy. In addition, reference should be made to the Department of Local Government Practice Note No. 9 – Complaints Management in Councils (revised July 2009).

Complaints Handling Review Procedures

The Complaints Handling Procedure provides an efficient, fair and accessible mechanism for resolving complaints quickly. The procedure recognises, promotes and protects the rights of individuals or organisations to comment and complain. The three tiers of review outline processes and responsibilities that will be implemented to manage complaints.

First Tier - Frontline Complaint Handling

- First point of Council contact with the public will involve a complaint over the telephone, in person or in writing. The focus at this level is on an informal resolution of complaints. Council Officers have a clear delegation to resolve complaints wherever possible at the first level.
- Council Officers at all levels within the organisation from the General Manager to Customer Service Officers can be involved in the first level of complaint handling depending on the nature of the complaint.

Council responsibilities when managing complaints at this level are:

- Council Officers will deal with complaints from customers within the scope of their decision-making capacity and limitations on remedies that they can authorise.
- To determine if the issue is an action request or complaint in accordance with the Complaint Definition described in these procedures.
- If the issue is a request for service, then the Council officer receiving the information is to create an action request in accordance with the appropriate Council procedures.
- If the issue is a complaint, then the Council officer is to deal with the complaint in accordance with their level of responsibility.
- If the complainant remains dissatisfied then the complaint may need to be referred to the second tier of the complaint handling system.

Written complaints, then the Council Officer must:

- Within twenty-one days, contact the complainant by telephone or in writing with a response. If the complaint is unresolved, the Council Officer must advise the complainant of any action Council intends to undertake, which could involve investigation, conciliation, mediation or further direct negotiation.

Telephone or in person complaints, then the Council Officer must:

- Record all information in the complaints form (attached) and refer to Records for registration and tasking to the General Manager. The complaint can also be recorded via Council's Incident Reporting System.

- Note on the form any comments made to the complainant regarding the resolution of the complaint, including form of response, telephone or written, i.e. the complainant can be advised that the matter will be referred to the General Manager and a response provided to them.
- If the complaint is unresolved, the Council Officer must advise the complainant of any action Council intends to undertake, which could involve investigation, conciliation, mediation or further direct negotiation.
- At all times, courteously assist with all issues raised by the public.
- Maintain confidentiality of the complainant's person information.
- Council Officers must keep the complainant informed of the progress of the complaint.

Final response requirement

- Council's final response must address the availability of other internal remedies available, where the complainant is dissatisfied with the Council response, including seeking an Internal Review or Investigation.

When frontline complaint handling staff should automatically refer a complaint on

When the complaint is about a staff member's own conduct and he or she is not confident about dealing with it fairly, or if the complainant requests it, the problem should be automatically referred on. Unless the whole matter can be resolved by some kind of conciliation on the spot, staying involved will almost certainly make it harder to resolve the complaint and may encourage the escalation of the dispute. In such circumstances, the staff member should politely suggest it would be better for the complainant if someone else reviewed the matter.

Automatically refer the problem on when:

- The problem is clearly outside a staff member's delegation or area of expertise.
- There are established internal or external referral procedures, (e.g. for protected disclosures or code of conduct complaints, ICAC notifications or referral of pecuniary interest matters to the Department of Local Government). These are discussed in more detail below.
- A staff member is alleged to have committed a criminal offence, acted corruptly, or engaged in other serious or controversial conduct, and/or
- Significant disciplinary action is a possible outcome.

Whenever a problem is to be referred on, the complainant should be told exactly what they need to do, or what staff will do to refer the matter, and what action the complainant can expect.

Second Tier - Internal Review or Investigation

- The role of Council Officers at this level is to review and/or investigate complaints, when a customer is dissatisfied with the outcome of the first level of complaint handling.
- At the second level of complaint handling, the complaint will be referred to the General Manager, Director or Manager for review.
- It may be appropriate for Council (in the case of more substantial enquiries) to refer the matter to a specialist complaint handler. Such decisions will be made by the General Manager.

Council responsibilities when managing complaints at this level are:

Investigation or review of telephone or in person complaints

- Council Officers are to discuss the issue of the complaint with the complainant.
- Council Officers are to ensure that a complaints registration form is completed and forwarded to Records.
- If the complaint is unresolved, Council must advise the complainant of any action Council intends to undertake, which could involve investigation, conciliation, mediation or further direct negotiation.

Written requests for internal review or investigation

- The responsible Council Officer must within twenty-one days contact the complainant by telephone or in writing with a response to the complaint.
- If the complaint is unresolved, Council must advise the complainant of any action Council intends to undertake, which could involve investigation, conciliation, mediation or further direct negotiation.
- Council officers must keep the complainant informed of the progress of the complaint at all times.
- Council officers must maintain the confidentiality of the complainant's personal details.

Final response requirement

- Council's final response must address the availability of other external remedies available, where the complainant is dissatisfied with the Council response including seeking an alternative dispute resolution, referring the complaint to agencies such as Ombudsman or Department of Local Government, or as a last resort any legal remedy.
- The final response at this level is to be signed by the General Manager.

Third Tier – Review by External Agencies

If the complaint remains unresolved after two prior levels of review, the General Manager will recommend to the complainant:

- Alternative dispute resolution remedy such as mediation or conciliation.
- The availability of external agencies, to resolve the complaint,
 - NSW Ombudsman
 - NSW Office of Local Government
 - Independent Commission against Corruption (ICAC)
 - Anti-Discrimination Board
 - Australian Competition and Consumer Commission
 - Privacy Commissioner
 - Legal remedies (to consider as a last resort).

Procedure for Anonymous Complaints

- Anonymous complaints will not be rejected, however, Council's ability to investigate anonymous complaints will be dependent upon the substance of the information supplied. The complaint should be recorded and assessed as per other complaints.
- Due to anonymity Council will be unable to provide reasons for any decisions or actions taken.

Complaints Handling Responsibilities

- Council's General Manager is responsible for ensuring that Council's management of complaints is carried out in accordance with its Complaints Management Policy.
- The General Manager will monitor compliance with the policy and will arrange/undertake independent investigations of complaints when requested.