

Title	Grievances Involving the General Manager
Council Resolution	Item 15 (26 February 2018) as per Council Minutes
Responsible Directorate	Corporate Governance
Due for Review	Four (4) years from Council Resolution Date
Strategic Plan Reference	<u>Leading our Community</u> 4.1 Govern in the best interests of our community 4.1.1 Manage Council for maximum efficiency, accountability and transparency 4.2 Prioritise resources to achieve our communities' goals 4.2.2 Ensure we have a skilled, capable and safety-focused workforce.
ECM	Council Policy

PURPOSE

The purpose of this Policy is to set out the principles and procedures for dealing with a formal Grievance where the position of General Manager is named as a Respondent.

SCOPE

This policy applies to all employees, including the General Manager.

This policy does not apply to a complaint made against the General Manager under the *Public Interest Disclosures Act 2002*.

STATUTORY REQUIREMENTS

Acts	<i>Anti-Discrimination Act 1998</i> <i>Work Health & Safety Act 2012</i> <i>Workers Rehabilitation Compensation Act 1988</i> <i>Local Government Act 1993</i> <i>Human Rights & Equal Opportunity Commission Act 1986 (Cth)</i> <i>Racial Discrimination Act 1975 (Cth)</i> <i>Sex Discrimination Act 1984 (Cth)</i> <i>Disability Discrimination Act 1992 (Cth)</i> <i>Age Discrimination Act 2004 (Cth)</i> <i>Fair Work Act 2009 (Cth)</i>
Regulations	N/A
Australian/International Standards	N/A

DEFINITIONS

Complainant	The person making the complaint.
Complaint	Complaint means a complaint made under this Policy.
Contact Officer	A trained employee whose role is to inform and support either the person

	making a complaint or a person who has a complaint made against them.
EAP	Employee Assistance Programme
Grievance	Behaviour or action of another employee or employees, which has or is likely to have an unreasonable negative impact on the ability of an employee to undertake their duties or creates an unsafe working environment.
Mayor	Includes the Mayor's delegate.
Respondent	The person or persons who have had a complaint made against them.

POLICY STATEMENT

1. Objective

Council recognises its obligations under Commonwealth and State legislation as set out above and will comply with that legislation.

All formal Grievances where the position of General Manager is a named Respondent are to be managed in accordance with the processes and procedures set out in this Policy.

2. Types of Complaints

2.1 Formal Complaint

- A formal complaint involves matters of a serious nature, or where the parties are unable through discussion to resolve the complaint or concern.
- Formal complaints must be kept confidential at all times. All employees involved in the resolution of a complaint will be required to agree to confidentiality during the process.

3. Making a Formal Complaint

A formal complaint:

- must be in writing
- should identify all of the parties involved
- should include full details of the grounds of the complaint
- should include all relevant documents, and
- should be addressed to the Mayor.

4. Handling a Formal Complaint

- the Mayor will acknowledge receipt of a formal complaint within five (5) working days of receiving that complaint
- if the Complainant is an employee of Council, the Mayor will offer them the assistance of a Council Contact Officer

- the Mayor will, as a first step, determine if the complaint is of a sufficient gravity to constitute a formal complaint. The Complainant may be requested to provide further information, and
- if it is determined that the complaint is not of sufficient gravity to constitute a formal complaint, a direction will be made that it be dealt with informally in accordance with a process determined by the Mayor.

4.1 Preliminary Investigation

The Mayor will conduct an initial assessment of the formal complaint. They will:

- advise the Complainant how the process will be managed. This may include interviewing the Complainant to clarify any matters. EAP will be offered and information on Council Contact Officers will be provided
- notify the Respondent and advise them of the substance of the complaint and obtain their response to it. EAP is offered
- decide whether further information is required from the Complainant
- decide whether the formal complaint warrants any further investigation and if so, how and by whom that investigation will be conducted (**Full Investigation**)
- decide whether it is appropriate to refer the parties to the complaint to mediation, and
- decide if the complaint is frivolous or vexatious or without foundation and dismiss it.

4.2 Full Investigation

If a full investigation is necessary the following principles and procedures will apply:

- the Mayor will appoint an independent person or organisation to undertake the investigation.
- the Respondent will be provided with full details of the complaint and given fourteen (14) calendar days to respond to it. This includes being given copies of all documents relied on by the Complainant where appropriate.
- the Complainant will be provided with full details of the Respondent's response to it and will be given seven (7) calendar days to respond to any new and relevant matters raised in response. This includes seeing copies of all documents relied on by the Respondent to the formal complaint where appropriate.
- time frames can be extended by the Mayor.
- both parties will be entitled to have a support person present during any meetings or discussions about the complaint.
- other persons who are witnesses or have relevant knowledge related to the complaint may be interviewed.
- all parties will be offered support through the EAP throughout the process.
- if the formal complaint involves credible allegations of serious criminal conduct, it will be referred to Tasmania Police for investigation. If the formal complaint becomes the subject of a criminal investigation by Police, the formal complaint handling process will be suspended until that investigation has been completed and Council has been notified of the outcome.

5. Resolution

The Mayor will consider all the evidence and make a decision in writing. The Complainant and Respondent will be provided with a copy of the written decision as soon as reasonably practicable following the investigation of the complaint.

The decision will specify:

- whether the formal complaint is substantiated
- what further action will be taken, and
- whether the formal complaint has not been substantiated and is dismissed.

In some cases, the parties may be required to participate in mediation even though the formal complaint has not been substantiated.

6. Natural Justice and Procedural Fairness

Natural justice, procedural and substantive fairness will be afforded at all stages of the process. Both parties will be kept informed of progress throughout the process.

Respondents will be treated in accordance with the following principles of procedural fairness:

- they will be fully informed of any allegations against them
- they will be given the opportunity to respond, and
- they will be afforded fair decision making that is without bias.

Natural justice will be afforded to all persons whose rights or interests may be affected. Natural justice means the person affected must have the opportunity to:

- show cause why a particular action should not be taken
- put forward arguments supporting their position
- deny any adverse allegations and provide evidence in support
- present alternative explanations for particular matters, and
- request that a decision or determination is reviewed.

The standard of proof adopted in this area will be based on the civil standard (the balance of probabilities).

7. Outcomes

If the complaint is substantiated the following may occur:

- the parties may be required to attend mediation
- the Respondent may be required to apologise
- the Respondent may be counselled
- the Respondent may be given a written or verbal warning
- the Respondent may be required to undertake training, or
- the Respondent's employment may be terminated.

8. If a Complaint is Withdrawn

If a complaint is withdrawn either the Mayor may do any of the following:

- conduct a meeting with the Complainant to ascertain why the complaint has been withdrawn
- ask that the Complainant apologise for lodging a complaint against the Respondent
- require the parties to attend mediation;
- continue to investigate if deemed to be in the public interest, or
- conclude that the complaint was vexatious, frivolous or malicious.

9. Policy Review

This Policy is to be reviewed every four (4) years unless there is a significant legislative or organisational change that may prompt an earlier review.