

## GRIEVANCE POLICY

### PURPOSE

Council is committed to a legal, fair and effective process for the resolution of grievances. Our process aims to resolve grievances through discussion, consultation, cooperation, mediation and, if necessary, disciplinary action.

All grievances will be resolved in accord with the relevant provisions in the:

- *Fair Work Act 2009*
- *Fair Work Amendment Act 2013*
- *Equal Opportunity Act 1984*
- *Work Health & Safety Act 2020*
- *Local Government Industry Award 2020*
- *Privacy Act 1988*
- *Local Government Act 1995*
- *Local Government (Administration) Regulations 1996*
- *Model Code of Conduct*

### OBJECTIVE

This Policy has been put in place to provide a transparent process for Council and employees to follow to resolve employee grievances in accord with the law. The objectives of this document are: to ensure the organisation:

- a. Provides employees and Councillors with their legal rights and responsibilities;
- b. Encourages employees to come forward with grievances;
- c. Deals with grievances in a supportive way, without victimisation or intimidation of any person connected with the grievance;
- d. Encourages the resolution of grievances promptly and as close as possible to the source of the grievance;
- e. Focuses management on preventing and resolving grievances;
- f. Provides a grievance resolution process which complies with the law, including by establishing a process which provides for:
  - i. Mental and physical health and well-being of employees;
  - ii. Privacy and confidentiality;
  - iii. Fairness and impartiality;
  - iv. Freedom from victimisation;
  - v. Timeliness;
  - vi. Ease of use and trustworthiness; and
  - vii. Seriousness and sensitivity.

## DEFINITIONS

### **Bullying**

The *Fair Work Amendment Act 2013* defines workplace bullying as repeated unreasonable behaviour by an individual towards a worker which creates a risk to health and safety.

### **Conciliation**

Conciliation involves an impartial person experienced in mediation assisting the parties to a grievance to reach an agreement about how it should be resolved.

### **Discrimination**

Discrimination occurs where a person is given less favourable treatment than someone else based on the number of grounds under which it is unlawful to discriminate against a person.

Direct discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances. For example, unlawful sex discrimination may arise if a person is refused a job interview because she is a woman.

Indirect discrimination occurs when there is a requirement that adversely impacts on a particular person with an attribute covered by anti-discrimination legislation (e.g. sex, race, marital status, etc.). There may be no intention to discriminate, but the conduct or decision leads to a discriminatory effect if the conditions imposed are not reasonable.

For example: it may be indirect discrimination if the only way to enter a public building is by a set of stairs as people with disabilities who use wheelchairs are unable to enter the building.

### **Grievance**

A grievance is any type of problem, concern or complaint related to an employee's work or the work environment. A grievance can be about any act, behaviour, omission, situation or decision impacting on an employee that the employee thinks is unfair or unjustified.

### **Grievance Officer**

A self-nominated officer below executive level afforded grievance training.

### **Victimisation**

Victimisation is when a person is harassed, treated unfairly or intimidated because they have lodged a grievance, assisted someone else with a grievance or been a witness in a grievance investigation.

## SCOPE

This policy applies to all Shire employees and Councillors.

## POLICY

Council's grievance procedure is based on the following principles:

### **Compliance with Industrial Relations Law**

The *Fair Work Act 2009*, *Fair Work Amendment Act 2013*, *Equal Opportunity Act 1984*, *Work Health & Safety Act 2020*, *Local Government Industry Award 2020* and *Privacy Act 1988* demand specific due process for dealing with a grievance.

### **Privacy and confidentiality**

Privacy and confidentiality must be strictly observed at all times during the grievance process. Information relating to the grievance must only be passed on when in accordance with the *Privacy Act 1988* and where necessary to fairly and effectively deal with the grievance. This applies to everyone involved in each grievance, including the parties involved, witnesses, support people and the employees handling the grievance. A breach of privacy or confidentiality will result in disciplinary action.

### **Fairness and impartiality**

All grievances will be handled fairly and impartially. This means that:

- a. A lawful investigation, in accord with the Investigation Policy.
- b. Any person who is the subject of a grievance (respondent) is entitled to full details about the grievance, including the time, date and specifics of the alleged offence.
- c. The respondent must be given the lawful right of response to the grievance; and
- d. All parties to a grievance must have the lawful right of response to allegations and statements made by the other parties and by witnesses.
- e. If anyone involved in handling a grievance has a bias or conflict of interest that may affect their ability to be fair and impartial, they must declare this to the parties and to the employees member handling the grievance, in accord with the Conflict of Interest Policy. One or both of the parties may also perceive a bias or conflict of interest even if the officer handling the grievance does not. In these cases, the grievance will be handled by another officer.

### **Freedom from victimisation**

Council will take all reasonable steps to prevent the victimisation of anyone connected with a grievance. Victimisation constitutes a breach of this policy and will result in disciplinary action.

### **Timeliness**

Council will take all reasonable steps to ensure that grievances are handled as quickly as possible whilst following due process. This will ensure the best outcome for all parties involved.

### **Ease of use and trustworthiness**

This policy and procedure will be accessible to all employees and Council Members and implemented appropriately. All reasonable steps will be taken to ensure that the contents of this policy and procedure are understood by everyone working in the organisation.

**Seriousness and sensitivity**

All grievances will be taken seriously and handled with sensitivity, taking into account the individual background and values of each party and any differences between them.

**Internal and external support**

Both parties to a grievance have the right to have a support person of their choice at meetings relating to the grievance.

The parties to the grievance can contact an external agency for information, advice or help at any time during the grievance procedure.

**Malicious complaints**

Council encourages employees to raise all genuine concerns. Employees should not be put off from raising concerns because they are afraid that they may be wrong or they won't be able to prove their claims.

However, making allegations that are not true, or making a complaint solely to cause trouble for others may be considered to be serious misconduct. Employees making malicious and vexatious complaints will be subject to disciplinary action.

If it is alleged during the grievance procedure that the grievance is malicious or vexatious, this will be investigated at the same time as the original grievance.

**PROCEDURE****Employee Lodging Grievance against Employee**

In the first instance, it is preferable that the employee approaches the respondent directly to attempt to resolve the issue amiably. However, if the employee is not comfortable to approach the person directly, they must lodge the grievance directly with the Grievance Officer, the supervisor or the executive manager either verbally through an organised meeting or in writing.

If the employee is not comfortable to lodge the grievance with the Grievance Officer, the supervisor or the executive manager, s/he should lodge the grievance with the CEO.

All grievances against an employee are to be forwarded by the Grievance Officer, the supervisor or the executive manager to the CEO immediately (within 24 hours), who will appoint either the Grievance Officer, another appropriate officer or specialist consultant to investigate the grievance.

All parties to the investigation will receive written notice of the due process to be used, will be afforded the opportunity to bring a support person to meetings, will be afforded every reasonable right of response and will be duly advised of the outcome of the investigation.

### Employee Lodging Grievance against CEO

In the first instance, it is preferable that the employee approach the CEO directly to attempt to resolve the issue amiably. However, if the employee is not comfortable to approach the CEO directly, s/he has the option of lodging the grievance directly with:

- a. The Grievance Officer
- b. The supervisor or executive manager either verbally through an organised meeting or in writing.
- c. Council, with the letter addressed to the Shire President
- d. Fair Work Ombudsman  
Ph. 13 13 94 or to make an online enquiry visit <https://www.fairwork.gov.au/>
- e. Worksafe (Department of Commerce)  
1300 307 877 or visit <https://www.commerce.wa.gov.au/worksafe/ask-question-or-make-complaint>

When a grievance is lodged against the CEO, the Shire President is to be notified immediately (within 24 hours). The Shire President will advise Council and Council will engage an independent consultant to investigate the grievance.

All parties to the investigation will receive written notice of the due process to be used, will be afforded the opportunity to bring a support person to meetings, will be afforded every reasonable right of response and will be duly advised of the outcome of the investigation.

### Employee Lodging Grievance against Council or a Council Member

In the first instance, it is preferable that the employee approach the Grievance Officer or CEO to attempt to have the issue resolved amiably through mediation. However, if the employee is not comfortable to engage in a mediation process, the CEO will advise Council of this fact and the intention of the CEO and the Shire President (if the Shire President is not the person to whom the complaint regards) to engage an external specialist consultant to enact an investigation.

The employee also has the option of lodging the grievance directly with:

- a. Council, with the letter addressed to the Shire President
- b. Fair Work Ombudsman  
Ph. 13 13 94 or to make an online enquiry visit <https://www.fairwork.gov.au/>
- c. Worksafe (Department of Commerce)  
1300 307 877 or visit <https://www.commerce.wa.gov.au/worksafe/ask-question-or-make-complaint>

When a grievance is lodged against Council or a Council Member, the Shire President is to be notified immediately (within 24 hours). The Shire President will advise Council and Council will consult with the CEO on the intent to engage an independent consultant to investigate the grievance.

All parties to the investigation will receive written notice of the due process to be used, will be afforded the opportunity to bring a support person to meetings, will be afforded every reasonable right of response and will be duly advised of the outcome of the investigation.

### Elected Member Lodging Grievance against another Elected Member

In the instance an Elected Member has a grievance against another Elected Member, in the first instance, it is preferable the Elected Member approach either the Shire President or the CEO so that an independent mediator can be engaged to negotiate a resolution to the issue.

If the mediation process fails or the Elected Member doesn't feel comfortable approaching the Shire President, the Elected Member can speak to the CEO who will direct the Grievance Officer to lodge a minor breach with the Local Government Standards Panel for further investigation. The Local Government Standards Panel does not accept complaints directly from the complainant.

All process must be in accord with:

- *Local Government Act 1995*
- *Local Government (Administration) Regulations 1996*
- Model Code of Conduct

### All Investigations

All investigations will include as a minimum:

- a. An appropriate officer or external consultant as appointed by the CEO or the Shire President/Council to conduct the investigation.
- b. An acknowledgment to the employee of the grievance in writing and the name and contact details of the person conducting the investigation.
- c. A meeting held with the complainant to obtain further information and to discuss the grievance and the preferred outcome. This meeting will occur within two working days of the original notification.
- d. A meeting held with all parties to the grievance (separately) to commence the investigation process.
- e. Dependent on the outcome of the investigation, options to resolve a grievance may include:
  - i. Informal discussion between the parties, where agreement can be reached on actions to resolve the grievance. This verbal agreement should be formalised in writing.
  - ii. Conciliation to reach an agreement between the parties using mediation or counselling. Conciliation may be used in the following instances:
    - When there is some basis for agreement (e.g. the parties may agree about what happened but have different interpretations);
    - The parties show some willingness to cooperate; and/or
    - Both parties have equal bargaining power.
  - iii. Disciplinary action, including potential termination of employment.
  - iv. Reporting the grievance to the Western Australian Police Force or Corruption and Crime Commission in the instance of suspected criminal activity.
  - v. Self-reporting the grievance to Work Safe or the Fair Work Commission.
  - vi. Dismissal of the grievance if there is limited proof and/or information to enable an appropriate or meaningful decision. In this instance, the outcome will be explained to all parties to the grievance and no disciplinary action will be taken.

- vii. Withdrawal of the grievance if this is lawfully acceptable. If a grievance is withdrawn it cannot be raised again, unless there is repeated behaviour or new facts come to fruition.

### Internal Appeals

Any party to the grievance may appeal the outcome of the grievance or the proposed resolution. All appeals should be directed to the Grievance Officer or, if the grievance is lodged against the Grievance Officer, the CEO or the Shire President.

This review may be conducted by:

- The CEO
- The relevant Executive Manager
- The Shire President/Council
- An external agency or consultant.

The person performing the review may confirm the original decision or make a different decision.

The ultimate decision on any internal appeal will rest with the CEO, unless the grievance is against the CEO, in which instance the ultimate decision will rest with Council.

### **STATUTORY ENVIRONMENT**

- *Fair Work Act 2009*
- *Fair Work Amendment Act 2013*
- *Equal Opportunity Act 1984*
- *Work Health & Safety Act 2020*
- *Local Government Industry Award 2020*
- *Privacy Act 1988*
- *Local Government Act 1995*
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