

## COUNCIL POLICY NO: 021

<b>Responsible Directorate</b>	Office of the CEO
<b>Responsible Section</b>	Governance
<b>Responsible Officer</b>	Chief Executive Officer

### OBJECTIVE:

The purpose of this policy is to provide guidelines for the management and processing of complaints that commit the Town to positively respond to complaints, allowing employees and customers to contribute to the improvement of the Town's services and functions.

### SCOPE:

This policy applies to all Elected Members, Employees and all Ratepayers, of the Town of Cambridge.

### POLICY STATEMENT:

The Town will endeavour to ensure that:-

1. There shall be a commitment by the Town to efficient and fair resolution of complaints at all levels.
2. The complaint management process shall recognise the need to be fair to the complainant, the Town and the person against whom the complaint is made.
3. There shall be adequate resources to manage a complaint with sufficient levels of delegated authority.
4. Complaint management will be well publicised to customers and employees, shall include information about the right to complain, be free of charge (subject to statutory requirements) and shall be easily accessible with assistance being provided to those who wish to submit a complaint.
5. A complaint shall be dealt with quickly, as outlined in the Town's *Customer Charter*, and the complainant treated courteously.
6. The complaint management procedures and guidelines will ensure:-
  - (a) Data is collected to ensure systematic recording and reporting of complaints and their outcomes;
  - (b) unacceptable conduct or behaviour does not re-occur; and
  - (c) policies, practices and procedures are reviewed and improved in order to accommodate the needs of our customers or the community in general.

This policy has been developed and complaints will be managed observing the requirements detailed in the Local Government Act 1995 (s5.103 – Codes of Conduct, *Local Government (Administration) Regulations 1996* (Regs 34b and 334C) and the *Australian Standard AS ISO 10002-2006 "Customer Satisfaction - Guidelines for complaints handling in organisations"*.

The Town will support and promote a culture where complaints are seen as opportunities to learn and improve service delivery.

## DEFINITIONS:

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

**"Complaint"** for the purpose of this policy a complaint is:-  
*any dissatisfaction with the level or quality of products or services delivered by the Town or with the actions or decisions of Town employees, contractors, Elected members or Council.*

### It may be about:-

1. A decision of the Council, Elected Member, Town employees or service providers contracted by the Town.
2. The standard or quality of a Town service, product, action or lack of action.
3. The behaviour of Elected Members, Town employees or service providers contracted by the Town.
4. Non - compliance with any legislation by Council, Elected Members, Town employees or service providers contracted by the Town.

### A complaint is not:-

1. A first request for action or a service (*unless there was no response to a first request for service*) e.g.
  - (a) *Noisy dog;*
  - (b) *Tree branch on verge;*
  - (c) *Street Sign broken.*
2. A request for information or explanation of Council decisions, practices or procedures made in accordance with due process.
3. The lodging of an appeal in accordance with procedures prescribed by legislation.
4. A request for action or service provided by other agencies.
5. Enquiries in relation to non - compliance with legislation administered by the Town.
6. A FOI (Freedom of Information) request
7. A formal petition.
8. An allegation of a breach of law by a third party.
9. An expression of dissatisfaction with a decision.

The above will be treated and registered as enquiries or service requests.

**"Service Request"** is defined as a request, however made, for a service to be provided by the Town or an action to be undertaken in relation to products or services administered by the Town.

**"Anonymous Complaint"**, where the complainant declines to provide their name and/or contact details, will only be investigated where the matter being brought to the attention of the Town constitutes:-

- (a) A breach of statutory provisions, or the Town's Code of Conduct;
- (b) A breach of an approval, licence or permit;
- (c) Could be considered a safety, health or security issue or has a legal or financial implication for the Town;
- (d) A matter for which the Town is obligated to act, prescribed in the *Local Government Act 1995*, or under any other written law; or
- (e) The Chief Executive Officer and/or Directors and/or Managers use their discretion to investigate the complaint.

All other anonymous complaints shall be disregarded.

## **Habitual or vexatious complaints:**

The Town may consider it appropriate to determine that vexatious questions, complaints and repetitive communications are not given priority as they may divert a substantial and unreasonable portion of the Town's resources away from its other functions.

Habitual or vexatious complaints can be a problem for a local government or agency. The difficulty in handling such complainants is that they are time consuming and wasteful of resources in terms of Officer and Elected Member time and displace scarce resources that could otherwise be spent on other priorities.

Whilst the Town will endeavour to respond to all complainants, there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

## **Definitions:**

**'habitual'** means *"done repeatedly or as a habit"*. The term vexatious is recognised in law and means "denoting an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant".

## ***"Habitual or Vexatious Complainants"***

1. For the purpose of this policy, the following definition of 'habitual' or 'vexatious' complainants will be used:

The repeated and/or obsessive pursuit of:

- (a) unreasonable complaints/requests and/or unrealistic outcomes; and/or
- (b) reasonable complaints/requests in an unreasonable manner.

2. Where complaints/requests continue and have been identified as habitual or vexatious in accordance with the definition detailed in this Policy, the CEO may seek agreement to treat the complainant as a habitual or vexatious complainant and for an appropriate course of action to be taken. Options available for dealing with habitual or vexatious complaints are detailed in this Policy.
3. The CEO will notify complainants, in writing, of the reasons why their complaints/requests are proposed to be treated as habitual or vexatious, and the action that will be taken if the complainant does not modify their behaviour. The CEO will report to the Council that a person is proposed to be designated as a habitual or vexatious complainant and provide:
  - (a) reasons for the proposed action; and
  - (b) a recommended course of action to be taken.
4. The Council may consider the CEO's report and determine appropriate action to be taken.
5. Once a complainant has been determined to be habitual or vexatious, their status will be kept under review for a period of a minimum of one year and monitored by the CEO with reports being submitted to Council as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed by the CEO and the designation may be lifted.

6. The safety of Town employees is of utmost importance, therefore all employees have discretion available to them to terminate any interaction in the event that the Town employee reasonably perceives that they are at risk of any type of whatsoever nature and particularly where the employee is being threatened or the behaviour of the complainant/customer is aggressive.
7. The Chief Executive Officer may decide, having regard to the nature, subject or number of complaints received, that a complainant is to be considered vexatious and that further complaints received from the person concerned or about a particular subject shall not be progressed. In these cases, the CEO will submit a report to the Council.

#### Criteria for Determining Habitual or Vexatious Complaints

Complainants (and/or anyone acting on their behalf) may be considered to be habitual or vexatious where previous or current contact with them shows how they consistently meet at least one of the following criteria:

Where complainants:

1. Persist in pursuing a complaint/request where the Council's complaints process has been fully and properly implemented and appropriately exhausted.
2. Persistently change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions whilst the complaint/request is being addressed.
3. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
4. Repeatedly do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of the Town to help them specify their concerns, and/or where the concerns identified are not within the remit of the Town to investigate.
5. Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point.
6. Have threatened or used physical violence towards employees or Elected Member at any time. This will, in itself, cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, thereafter, only be continued through written communication. The Council has determined that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Town is to be made.
7. Have, in the course of addressing a registered complaint/request, had an excessive number of contacts with the Town – placing unreasonable demands on employees. A contact may be in person, by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account the specific circumstances of each individual case.

8. Have harassed or been verbally abusive on more than one occasion towards employees or an Elected Member dealing with the complaint/request. It is acknowledged that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
9. Are known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.
10. Make unreasonable demands on the Town and its employees and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practice.
11. Make unreasonable complaints/requests which impose a significant burden on the human resources of the Town and where the complaint:
  - (a) Clearly does not have any serious purpose or value; or
  - (b) Is designed to cause disruption or annoyance; or
  - (c) Has the effect of harassing the public authority; or
  - (d) Can otherwise fairly be characterised as obsessive or manifestly unreasonable.
12. Make repetitive complaints and allegations which ignore the replies which have been provided in previous correspondence.

#### Options for Dealing with Habitual or Vexatious Complainants

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint process is ongoing or completed.

1. A letter to the complainant setting out responsibilities and conditions for the parties involved if the Town is to continue processing the complaint. If terms are contravened, consideration will then be given to implementing other action as detailed below.
2. Define the method of contact with the complainant, either in person, by telephone, letter, email, fax or any combination of these, provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact (and a named deputy in their absence). The complainant will be notified of these details.
3. Notify the complainant, in writing, that the Town has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Town does not intend to engage in further correspondence dealing with the complaint.
4. Inform the complainant that in extreme circumstances the Town may seek legal advice on habitual or vexatious complaints.
5. Temporarily suspend all contact with the complainant, in connection with the issues relating to the person being considered habitual or vexatious, while seeking legal advice or guidance from its solicitor or other relevant agencies.

## Legitimate Complaint Management

**‘Serious Misconduct’** means a complaint that indicates misconduct by employees or other Town representatives will be investigated by the Chief Executive Officer for determination if it should be dealt with independently and in accordance with the Code of Conduct and other relevant legislation.

Where the allegation concerns criminal, corrupt or serious improper conduct by employees or Town representatives, the CEO will determine whether there are reasonable grounds for notification to the Public Sector Commission, Corruption and Crime Commission of WA, Equal Opportunity Commission, referral to the Police or other agencies.

### **Serious Misconduct**

Sec 12 of the *Fair Work Act 2009* provides that **“serious misconduct”** has the meaning prescribed by the regulations.

Regulation 1.07 sets out the definition as follows:

#### “1.07 Meaning of serious misconduct

1. For the definition of serious misconduct in section 12 of the Act, serious misconduct has its ordinary meaning.
2. For subregulation (1), conduct that is serious misconduct includes both of the following:
  - a. **Wilful or deliberate behaviour by an employee** that is inconsistent with the continuation of the contract of employment;
  - b. Conduct that **causes serious and imminent risk** to:
    - i. the **health or safety** of a person; or
    - ii. the **reputation, viability or profitability** of the employer’s business.
3. For subregulation (1), conduct that is serious misconduct includes each of the following:
  - a. the employee, in the course of the employee’s employment, engaging in:
    - i. **theft**; or
    - ii. **fraud**; or
    - iii. **assault**.
  - b. the employee being intoxicated at work.
  - c. the employee **refusing to carry out a lawful and reasonable instruction** that is consistent with the employee’s contract of employment.”

**Gross (or serious) misconduct** is an employee’s behaviour, which is serious enough to potentially destroy the relationship between an employer and employee. The conduct must be deliberate or amount to gross negligence, and entitles an employer to dismiss the employee with immediate effect, without any notice.

Often more severe than minor issues, gross misconduct can include:

- a) Theft or fraud;
- b) Physical violence or bullying;
- c) Deliberate and serious damage to property;
- d) Serious misuse of an organisation's property or name;
- e) Deliberately accessing internet sites containing pornographic or offensive material;
- f) Serious insubordination;
- g) Discrimination or harassment;
- h) Bringing the organisation into serious disrepute;
- i) Serious incapability at work brought on by alcohol or illegal drugs;
- j) Causing loss, damage or injury through serious negligence;
- k) A serious breach of health and safety rules; and
- l) A serious breach of confidence.

### **Minor Misconduct**

'**Minor misconduct**', as defined in the *Corruption, Crime and Misconduct Act 2003* (CCM Act) is actually not that minor. To meet the definition, the misconduct should be so significant that it could reasonably lead to termination of a public officer's employment if proved.

However, misconduct matters that do not meet that threshold still need to be dealt with. Conduct matters that are not misconduct under the CCM Act definition are appropriately managed by the employing authority under relevant discipline, grievance or performance management policies.

### **Minor misconduct defined**

Section 4(d) of the CCM Act defines minor misconduct.

Minor misconduct occurs if a public officer engages in conduct that:

- i. adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
- ii. constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
- iii. constitutes or involves a breach of trust placed in the public officer by reason of his or her office of employment as a public officer; or
- iv. involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person

and constitutes, or could constitute –

- v. a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (**whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct**).

## Examples of Minor Misconduct:

The list of things that could be classed as minor misconduct is endless; however, the following are examples:

- (a) Persistent lateness;
- (b) Not completing a piece of work on time;
- (c) Not following a manager's instruction;
- (d) Doing a piece of work incorrectly;
- (e) Not managing your attendance correctly;
- (f) Not following procedures properly;
- (g) Damage to your property;
- (h) Becoming hostile to other colleagues;
- (i) Theft or fraud.

## Sexual harassment:

Sexual harassment is an offence under the *Equal Opportunity Act 2010*.

**'Sexual harassment'** is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written. It can include:

- (a) comments about a person's private life or the way they look;
- (b) sexually suggestive behaviour, such as leering or staring;
- (c) brushing up against someone, touching, fondling or hugging;
- (d) sexually suggestive comments or jokes;
- (e) displaying offensive screen savers, photos, calendars or objects;
- (f) repeated requests to go out;
- (g) requests for sex;
- (h) sexually explicit emails, text messages or posts on social networking sites;
- (i) sexual assault.

Sexual harassment is not consensual interaction, flirtation or friendship. Sexual harassment is not behaviour that is mutually agreed upon.

A single incident may be enough to constitute sexual harassment – it doesn't have to be repeated.

Some types of sexual harassment may also be offences under criminal law. These include indecent exposure, stalking, sexual assault and obscene or threatening communications, such as phone calls, letters, emails, text messages and posts on social networking sites.

## Harassment

Workplace harassment is unwelcome conduct from a boss, co-worker, group of co-workers, vendor, or customer whose actions, communication, or behaviour mocks, demeans, puts down, disparages, or ridicules an employee.

Physical assaults, threats, and intimidation are severe forms of harassment.

## Discrimination

If someone is being bullied because of a personal characteristic protected by equal opportunity law, it is a form of discrimination.

In most cases, bullying behaviour is persistent and happens over a period of time. However under the *Equal Opportunity Act 2010*, this behaviour does not have to be repeated to be discrimination – it may be a one-off event.

## Bullying in the workplace

Bullying and harassment can be discrimination when it happens because of someone's disability, race, sexual orientation, age, physical features or any other protected attribute under the *Equal Opportunity Act 2010*. Bullying and harassment can be verbal, physical or in writing, and includes behaviour that intimidates, degrades or humiliates another person. This can be a form of unfavourable treatment covered by the law.

### What is bullying?

A worker is bullied at work if:

- a) a person or group of people repeatedly act unreasonably towards them or a group of workers;
- b) the behaviour creates a risk to health and safety;

Unreasonable behaviour includes victimising, humiliating, intimidating or threatening. Whether a behaviour is unreasonable can depend on whether a reasonable person might see the behaviour as unreasonable in the circumstances.

Examples of bullying include:

- a) behaving aggressively;
- b) teasing or practical jokes;
- c) pressuring someone to behave inappropriately;
- d) excluding someone from work related events or;
- e) unreasonable work demands.

## Examples of bullying

Bullying can occur whenever people work together and in a range of different workplace relationships. It can be verbal or in writing, including online.

### Bullying can happen:

- (a) by managers towards workers;
- (b) among co-workers;
- (c) by workers towards managers.

Bullying can take many forms, such as:

- (a) publicly humiliating someone;
- (b) verbal abuse;
- (c) spreading malicious rumours or gossip.

## What isn't bullying?

Reasonable management actions carried out in a fair way are not bullying. For example:

- (a) allocating work and setting performance goals, standards and deadlines;
- (b) informing and warning a worker about unsatisfactory work performance;
- (c) informing and warning a worker about inappropriate behaviour;
- (d) undertaking performance management processes and providing constructive feedback.

## APPLYING THE POLICY

Some complaints will be dealt with as indicated in the **Schedule** attached to this Policy.

Document Control				
<b>Office Use Only:</b>				
<b>Previous Policy No</b>	Policy No. 1.2.12			
<b>Statutory Legislation and Compliance</b>	<i>Local Government Act 1995</i> <i>Australian Standard AS ISO 10002-2006 "Customer Satisfaction - Guidelines for complaints handling in Organisations</i> <i>Corruption, Crime and Misconduct Act 2003</i> <i>Equal Opportunity Act 2010</i> <i>Fair Work Act 2009</i> <i>Public Sector Management Act 1994</i> <i>State Records Act 2000</i>			
<b>Related Documents/Legislation</b>	<i>Town of Cambridge Code of Conduct</i>			
<b>Date of Adoption by Council</b>	Council Meeting – 28 September 2004			
<b>Date Reviewed/Amended</b>	28 February 2006 27 May 2014 23 February 2021	25 March 2008 28 July 2020	27 April 2010 22 September 2020	22 May 2012
<b>Next Review Date</b>	April 2024			

## Schedule

### COMPLAINTS MANAGEMENT POLICY

Nature of Complaint	To Be Investigated by
Request for information or explanation of Council decisions, practices or procedures	Coordinator Governance and Office of CEO or Chief Executive Officer
Initial queries regarding parking or other infringement notices	Ranger Administration Officer or Coordinator Ranger and Community Safety Services, or Manager Regulatory Services
Contractual matters e.g. tenders	Manager - Corporate Business
Human Resources recruitment matters	Manager - People and Culture
Complaint against an Employee or Elected Member of alleged serious misconduct	Investigation and determination to be dealt with independently and in accordance with the Town's Code of Conduct and other relevant legislation by the Chief Executive Officer.
Complaints about an employee (other than the CEO)	Chief Executive Officer.
Complaints about the Chief Executive Officer	Mayor, <u>as detailed in the Code of Conduct</u>
Complaint about an Elected Member	Chief Executive Officer to deal with in accordance with the <i>Local Government 1995</i> and Regulations Complaints about Code of Conduct are to be dealt with by the CEO <u>as detailed in the Code of Conduct</u>
Freedom of Information applications and requests for review	Coordinator Governance and Office of CEO or Manager - Legal and Risk or Chief Executive Officer.
Complaint concerning an issue that occurred more than 12 months ago, vexatious or frivolous complaint	Relevant Director
Complaint regarding matters requiring the exercise of the Town's authority e.g. noise, parking	These are service requests and will be referred to the relevant business area Manager
Public Interest Disclosures	Coordinator Governance and Office of CEO or Manager - Legal and Risk or Chief Executive Officer
Internal service complaint	Relevant Manager and/or Director. The Director shall review all complaints investigated by the Manager.