

Cardinia Shire Council

Complaints Handling Guide

I. DEFINITIONS

Complainant	Person or entity affected by the action or inaction of Cardinia Shire Council.
Complaint	An expression of dissatisfaction with a specific action or service of Cardinia Shire Council, including the failure by an employee of Council to comply with its public service charter or mission.
Complaint handling system	The way individual complaints are dealt with by an organisation including the policy, procedures, practices and technology.
Complaint office	Person/s or unit within the organisation responsible for independently handling complaints. At Cardinia Shire Council: Manager – Customer Service.
Systemic complaint	Issue identified through complaints to be a serious problem in service or action of an organisation, which is likely to be ongoing and to apply to multiple cases.
Whistleblower	Any person who makes a disclosure about improper conduct by public bodies and public officers under the <i>Whistleblowers Protection Act 2001</i> .

2. KEY FEATURES OF AN EFFECTIVE COMPLAINT HANDLING PROCESS

2.1 Commitment

Cardinia Shire Council is committed to providing an effective complaints handling system that reflects the needs, expectations and rights of complainants. This is facilitated by a culture within Council that recognises the complainant's right to complain and provides the mechanisms for complaints to be addressed in an efficient, fair and timely manner.

Supporting this commitment is a dedicated system which is in place to address a complainant's concerns.

All staff at Cardinia Shire Council at all levels should know how to direct a complainant to the complaints handling system.

2.2 Fairness

At Cardinia Shire Council, we recognise the need to be fair to the complainant, the department and/or the person against whom the complaint is made.

Fairness works both ways. Our complaint handling system treats both customers and Council staff with respect and courtesy. The rules of natural justice are applied and, where appropriate, all parties involved in the complaint are given the opportunity to respond to any issues raised.

To be fair Cardinia Shire Council will:

- judge all complaints on their merits and facts
- take all complaints seriously
- treat complainants with sensitivity, respect and courtesy
- give customers and residents the opportunity to have their complaint dealt with by an officer not previously involved in the matter
- ensure all conflicts of interest are disclosed and acted upon
- ensure an appropriate remedy is provided if the complaint is substantiated
- have an appropriate policy for dealing with anonymous complaints
- provide all parties with clear reasons as to why any actions have been taken
- provide further avenues of review.

2.3 Transparency and access

At Cardinia Shire Council, our complaints handling system will be publicised to residents, customers and staff of Council and include information about the right to complain, how to do it, where to do it and how the complaint will be handled. There is no charge to the complainant for accessing Cardinia Shire Council's complaints handling system.

The complaints handling system and supporting information will be easy to understand, use, and be in plain language. Where Council is dealing with non-English speaking background clients, interpreter services will be provided where possible.

All residents and customers should be able to make a complaint with appropriate support if required.

Every person working at Cardinia Shire Council will be able to inform a customer how to make a complaint and what will happen to the complaint.

2.4 Responsiveness

Complaints will be dealt with quickly, courteously, fairly and within established timelines.

Complainants will be advised of how long it will take to deal with the complaint in accordance with Cardinia Shire Council's complaint handling timelines and kept informed of the progress. If additional time is required to resolve the issues the complainant will be kept informed and advised of the additional time required and the reasons for the delay.

Complaints will take no longer than three weeks to investigate. If there is to be a delay the complainant will be informed as soon as the possibility of delay becomes evident.

2.5 Privacy and confidentiality

Cardinia Shire Council will handle complaint information according to the relevant privacy legislation and any other Act that prescribes how information should be handled. Staff will have an understanding of the *Information Privacy Act 2000* (Victoria), *Health Records Act 2001* (Victoria), *Whistleblowers Protection Act 2001* (Victoria) and *Privacy Act 1988* (Commonwealth).

Information gathered during the complaint process should only be:

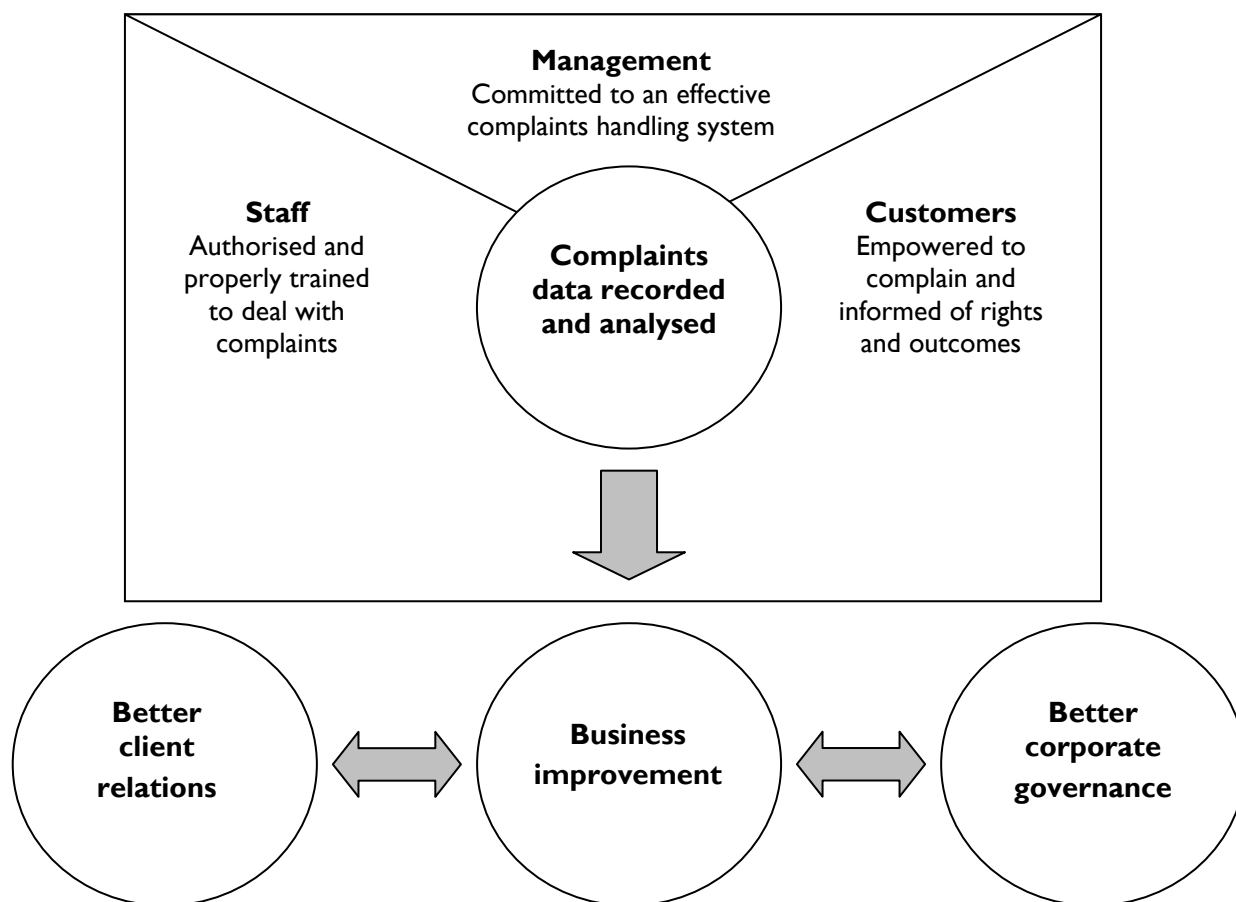
- used in order to deal with and resolve the complaint or to address systemic issues arising from the complaint
- shared with Council staff on a need-to-know basis.

2.6 Business improvement

The key to achieving business improvement for Cardinia Shire Council from a complaints handling system lies in having a systematic approach in recording complaints and outcomes, particularly whole of Council data. This data will be collected in sufficient detail to allow analysis to guide improvement.

Analysis of aggregated complaint data and identification of recurring or system-wide problems is part of the business improvement process. The findings will then be used to address the action or service of Council that has been the source of the complaints.

The following flowchart illustrates the benefits of complaint handling.



Source: Benefits of effective complaints management, Queensland Ombudsman Office (2003)

It is important to take action to change the underlying business process or service where investigations reveal several complainants have been wronged in similar circumstances. It is also important to extend corrective measures to all those that have been similarly affected.

2.7 Internal review

An effective and efficient complaint handling process has the means by which a complainant's expression of grievance about how their complaint was handled can be dealt with.

Cardinia Shire Council's internal review process should:

- be accessible to all complainants
- ensure the complaint or feedback is taken seriously and addressed promptly at a senior level
- ensure the reviewer is a more senior officer who has not previously dealt with the matter
- respond to the complainant and take appropriate remedial action, this may include an apology where appropriate
- rectify any systemic issues identified by the internal review.

3. HOW TO INVESTIGATE A COMPLAINT

Cardinia Shire Council deals with a wide variety of complaints and often the complaint may be resolved informally.

The investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct must be referred to the police.

3.1 Assessment and planning

Each complaint should be assessed to determine its nature, how it should be dealt with, who should be involved and whether further information or investigation is required.

The first step is to assess the seriousness of the complaint, as not all complaints require investigation. Many complaints involve communication problems or misunderstandings that can be resolved informally by talking to the complainant or discussion between the parties, or through other processes such as mediation.

Certain types of investigations such as whistleblower complaints are subject to particular legislative requirements. In these cases, the assessment of the complaint and the nature of the investigation must be undertaken in light of the relevant legislative framework.

Issues to consider in the assessment of a complaint:

- how serious the complaint is and the significance it has for the complainant and for the agency
- whether it indicates the existence of a systemic problem
- whether an alternative and satisfactory means of redress is available
- whether the parties are agreeable to informal resolution of the complaint
- whether the complaint is trivial, frivolous or vexatious
- the time that has elapsed between event and complaint.

After determining that a complaint requires investigation, Cardinia Shire Council must then decide on the nature of the investigation. This includes determining whether the investigation relates to Council's policies, procedures and practices, a decision or the conduct of individuals.

Determining the nature of the investigation from the outset assists Cardinia in identifying the powers required to conduct the investigation, the resources needed, whether any authorisation may be required, and the nature of the possible outcome. At this stage, a decision should be made by the Manager – Customer Service as to whether the complaint needs to be investigated internally or should be referred externally.

Council should also be mindful that the effectiveness of the investigation will depend on its available powers. The person investigating the complaint must ensure that they have the necessary powers to obtain evidence from relevant parties and access relevant records. In this context, it is important to distinguish

between the right to ask and the power to demand. The person investigating the complaint should consider whether they have the authorisation to compel parties to provide information.

It is critical that one person be responsible for the conduct of the investigation and establishing a framework for the investigation.

This framework includes:

- the appropriate authorisation to conduct the investigation
- terms of reference which establish a focus and set limits on the investigation
- an investigation plan, including identifying the resources required.

Investing time to ensure that the investigation is well planned will have a major impact on the ultimate success of the investigation.

3.2 Information gathering

The aim of investigating a complaint is to establish what has happened by gathering information, preparing a report where required and formulating resolution options.

The person investigating the complaint should talk to the complainant to ensure that there is clear understanding as to how the complaint system works, what they can expect and how long the investigation process will take.

It is imperative that the complainant's expectations of the investigation are managed from the outset as no matter what the service, the satisfaction the complainant ultimately feels will be determined by how well the agency meets their expectations. With this in mind, the person investigating the complaint must seek to ensure that the complainant's expectations are reasonable and achievable.

Where Council cannot meet the complainant's expectations, steps should be taken to shape realistic expectations by explaining what Council can provide and alternative review options.

In dealing with a complaint that involves considerable information gathering and analysis, the complainant should be advised as to the progress of the investigation on a regular basis and the expected timeframe for completion.

The person investigating the complaint should clarify the issues with the complainant before preparing the investigation plan. Talking through the complaint at this point can ensure that all the relevant issues are considered. Evaluating at this point may change the focus of the investigation.

The person investigating the complaint must act reasonably, fairly and objectively, and in good faith. In investigating the complaint, the person should not take

advantage of the fact that a complainant may not argue certain matters to their advantage.

In an investigation, the main sources of information are:

- oral evidence (recollections)
- documentary evidence (records)
- expert evidence (technical advice)
- site inspection.

While only one person may be required to prove any fact or set of facts, additional evidence in the form of corroboration may be desirable. An investigator must have a good understanding of the rules of evidence and relevant standards of proof. This is to ensure that the evidence obtained is the best available and, where applicable, will be admissible if any subsequent legal proceedings arise.

Investigators must maintain a central investigation file that is a complete record of the investigation, documenting every step including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file must be stored securely to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

3.3 Making a decision

At the conclusion of an investigation, a report should be completed, documenting the findings. Although this report will be used by Cardinia Shire Council to arrive at a decision, it may at some later stage be subject to external scrutiny. This report is to be discussed with the relevant Manager, General Manager or CEO where appropriate.

The report should reflect the principles of procedural fairness and natural justice.

Decisions concerning a complaint should be made according to the weight of the evidence and on the balance of probabilities.

Council will seek to ensure that no one person alone investigates, determines, responds to the complainant and closes the investigation. Regardless of the seniority of the person investigating the complaint, he or she can always benefit from the views of a colleague who, having heard a summary or read a draft response, may make useful queries, suggest checks, or offer alternative approaches that may avert error or otherwise improve results.

The outcome of the complaint should be:

- clearly communicated to the complainant
- clearly communicated to appropriate Council staff and management
- integrated where appropriate into Council's business improvement program.

When communicating this information, Council must ensure private and confidential information is protected.

Council will provide a complainant with detailed reasons for its decision, including where possible, supporting information on which the decision has been based.

Where Council has made specific changes as a result of a complaint, the complainant will be advised of the changes and how these will be monitored.

Care should be taken to ensure that the following tasks are completed on making a decision:

- record the outcome of the complaint in the complaint handling system
- implement actions decided as part of the decision
- provide de-identified information to quality improvement teams, managers and senior management, ensuring confidentiality
- monitor the effectiveness of outcomes.

To maintain confidentiality, a case study approach without identifying information may be used as a learning tool to assist staff in process improvement.

3.4 Remedies

Where Council considers a complaint is justified, the next step is to determine an appropriate remedy. By working to address the complaint, Council is making a commitment to meeting the complainant's needs, improving internal processes and maintaining the reputation of Cardinia Shire Council.

The remedies offered by Council should be fair and reasonable for both the organisation and the complainant.

An investigation may lead to one or more of a range of possible outcomes, including:

- an explanation
- an apology
- mediation
- an admission of fault
- a change in decision
- a change to policy, procedure or practice
- a change to the relevant law
- a correction of misleading records
- financial compensation, including a refund of any fees
- the waiving of a debt
- the remission of a penalty
- protection to the complainant
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution.

Where possible, remedies should be implemented as soon as possible. In cases where a remedy is provided to a complainant, steps should be taken by Council to provide a remedy to other people similarly affected, even if they have not made a complaint.

If an apology is required, the best thing to do is apologise promptly and advise the complainant that appropriate action will be taken to ensure the problem is not repeated.

3.5 Evaluation

On completion of the investigation, the handling of the investigation is to be evaluated, preferably by someone independent of the investigation within Council. The frequency and depth of the review can depend on the volume and type of complaints. This can be done either informally or formally, depending on the nature and complexity of the investigation.

Evaluation enables the investigation to be assessed and any improvements identified in the investigation process recorded for future reference. Regular review of Council's complaint handling system will ensure it is operating efficiently and effectively.

Debriefing is a stress minimisation process for complaint handling staff. It is important to debrief with trusted colleagues at the end of a complex or difficult investigation. However, confidentiality should be maintained.

4. ALTERNATIVE AVENUES FOR DEALING WITH A COMPLAINT

An external complaints handling body is an independent avenue for complainants to lodge a complaint if they are unable to reach a satisfactory conclusion with Council. By working with the external reviewer, Council may identify opportunities for better administrative practices.

Review by an external body or tribunal aims to ensure that the decision making of Council is fair and reasonable and that proper procedures are followed in making decisions.

Complainants can approach Ombudsman Victoria for further assistance. Council should inform the complainant that they should try to resolve the complaint with them in the first instance. However, any person who thinks they may have been treated unfairly may make a complaint to the Ombudsman.

The Ombudsman will then consider the complaint and the administrative actions of the agency. The Ombudsman may conduct an enquiry for the purpose of determining whether an investigation under the *Ombudsman Act 1973* should be conducted or whether the matter may be resolved informally.

If Council is not able to assist the complainant, or the complaint is outside Council jurisdiction, other bodies may be able to help.

Victorian complaint and dispute resolution bodies

Accident Compensation Conciliation Service

Provides an independent service to resolve workers compensation disputes in Victoria.

CityLink Customer Ombudsman

Has the power to make decisions on individual customer cases involving CityLink that will be binding on the company.

Consumer Affairs Victoria

Promotes consumer protection and ethical trading and ensures that consumer protection laws are properly enforced.

Dispute Settlement Centre – Victorian Department of Justice

Provides an informal, impartial, accessible, low-cost dispute resolution service to the Victorian community.

Energy and Water Ombudsman

Investigates and resolves disputes between Victorian electricity, gas and water customers and their providers.

Equal Opportunity Commission of Victoria

Responsible for eliminating discrimination in Victoria. Offers information, education and consultancy services, conducts research and provides legal and policy advice.

Medical Practitioners Board of Victoria

Statutory authority established to protect the community and guide the medical profession. The board registers doctors and investigates complaints about doctors.

Privacy Victoria

The key body regulating the way Victorian government agencies and local councils collect and handle personal information.

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.

Victorian WorkCover Authority Complaints Team

Respond to complaints/disputes escalated from the WorkCover Agents and the self-insured employers.

Federal complaint and dispute resolution bodies

Banking and Financial Services Ombudsman

Considers complaints about banks and their affiliates operating in Australia.

Insurance Enquiries and Complaints Scheme

A national scheme for consumers aimed at resolving disputes between insured parties and their insurance companies.

Private Health Insurance Ombudsman

Provides private health insurance members with an independent service for health insurance problems and enquiries.

Telecommunications Industry Ombudsman

Dispute resolution scheme for residential and small business consumers in Australia who have a complaint about their telephone or internet service.

Police

The Office of Police Integrity (OPI)

Responsible for handling complaints against police as well as conducting investigations into a range of systemic issues and police corruption.

Ethical Standards Department – Victoria Police

Responsible for enhancing and further promoting a culture of high ethical standards throughout Victoria Police through the effective prevention, deterrence and investigation of unethical behaviour.

Courts and tribunals

Victorian Civil and Administrative Tribunal (VCAT)

Magistrates Court of Victoria

County Court / Supreme Court of Victoria

5. HOW TO DEAL WITH CHALLENGING BEHAVIOURS

Cardinia Shire Council recognises that dealing with upset, angry, confused, or challenging people can be an extremely difficult task, even for experienced complaint handlers.

There may be a variety of reasons why a person is difficult to deal with. Whatever the reason, Council will not necessarily assume that a 'difficult' person does not have a valid complaint. Wherever possible, Council will apply the same standards of communication to anyone asking a question or expressing a concern calmly.

In some cases, all that is required is for someone to take the time to talk to the person, listen to their concerns and tell them what is happening. Therefore, it is important to listen without interruption to what the person is saying – even if they are being difficult, aggressive, or incoherent at times. Once the person has had a chance to express their point of view, staff may need to ask questions to clarify what has been said to them. Remember, tone of voice is extremely important. Try not to make the person feel that they are being cross-examined – rather, make it clear to them that questions are being asked out of a desire to assist.

Things to consider when handling challenging behaviours:

- do not make empty promises – it is better to be realistic and honest about any limitations or expected time delays
- avoid premature opinions
- do not focus solely on placating an angry or upset person – treat their complaint seriously and try to focus on the issue at hand rather than just their emotions or behaviour
- communicate clearly – check if you are being understood
- use empathy to diffuse anger – listen without interruption
- use direct language – tell them what you can and cannot do
- use neutral tone and pitch
- be confident in your ability to help
- remain flexible – do not be too rigid in your approach
- know your limits – be willing to get help from someone else or pass the problem on to someone with more knowledge, time or authority
- try to remain calm and think clearly
- strike a balance between logic and emotion
- always be conscious of your own emotional and physical safety.