

Community Complaints About a Councillor Policy

<p>Purpose</p>	<p>The purpose of this Policy is to:</p> <ul style="list-style-type: none"> • provide a framework for the open, fair, objective and transparent handling of complaints about a Councillor • maintain high standards of good governance and transparency • ensure alignment with the Local Government Act 2020 ('the Act').
<p>Scope</p>	<p>This Policy applies to all external complaints about Councillors.</p> <p>Disputes between Councillors and between Councillors and Darebin staff are dealt with through the dispute resolution procedures within the Councillor Code of Conduct.</p>
<p>Definitions and Abbreviations</p>	<p>In this Policy:</p> <p>Act means the <i>Local Government Act 2020</i> (Vic).</p> <p>Chief Executive Officer (CEO) means the person appointed by Council to be its Chief Executive Officer, or any person acting in that position.</p> <p>City means the Darebin City Council, being a body corporate constituted as a municipal Council under the <i>Local Government Act 2020</i> (Vic).</p> <p>Complaint means an expression of dissatisfaction with the quality of behaviour of a Councillor or group of Councillors that is contrary to the standards of conduct set out in Schedule 1 of <i>Local Government (Governance and Integrity) Regulations 2020</i>.</p> <p>Complainant means a person or entity affected by the behaviour of a Councillor who brings this to the notice of the Council.</p> <p>Complaint handing process means the way individual complaints are dealt with by the Council, including policy, procedure, technology, reporting, evaluation and improvement.</p> <p>Council means the Darebin City Council being all the Councillors collectively.</p> <p>Councillor means a person holding the office of member of Darebin City Council.</p> <p>Delegated Committee means delegated committees defined under section 63 of the <i>Local Government Act 2020</i> (Vic).</p> <p>Delegated Committee member means a person appointed to a Delegated Committee.</p> <p>Frivolous means a complaint that is of little or no weight, worth, or importance; not worthy of serious notice.</p>

	<p>Mayor means the Councillor elected to the Office of Mayor of the City or any person appointed by Council to be acting as Mayor.</p> <p>Member of Council staff means a natural person appointed by the CEO (other than an independent contractor under a contract for services or a volunteer) to enable the functions of the City to be carried out. The Chief Executive Officer is also a member of Council staff.</p> <p>Misconduct has the meaning as defined by the Act and replicated in Attachment One.</p> <p>Municipality means the Darebin City Council municipality.</p> <p>Role of a Councillor means the role as defined by section 28 of the <i>Local Government Act 2020</i> (Vic) and replicated in the responsibilities section of this Policy.</p> <p>Serious Misconduct has the meaning as defined by the <i>Local Government Act 2020</i> (Vic) and replicated in Attachment One.</p> <p>Vexatious means a complaint instituted without sufficient grounds and serving only to cause annoyance.</p>
<p>Policy Statement(s)</p>	<p>Darebin City Council recognises that members of the public have the right to complain about the behaviour of its elected representatives and is committed to a Councillor complaint handling system that reflects the needs, expectations and rights of members of the community and accords all parties natural justice.</p> <p>In doing this, the Council will recognise, promote and protect the rights of residents to comment and complain; and to have access to a system for resolving Councillor complaints which is fair, easily accessible and efficient.</p>
<p>Responsibilities</p>	<p>In performing their role as a member of Council staff, officers must:</p> <ul style="list-style-type: none"> • record and escalate all complaints about a Councillor. • report any concerns relating to Councillor misconduct to their General Manager or the CEO. <p>The General Manager or the CEO must:</p> <ul style="list-style-type: none"> • provide the complaint to the Head of Governance and Risk once advised of the Complaint. <p>The Head of Governance and Risk must:</p> <ul style="list-style-type: none"> • ensure an assessment by the Councillor Conduct Officer. If the complaint is about the Mayor or the Mayor is conflicted or on approved leave of absence the matter will be referred to the Deputy Mayor. • send the complaint immediately to the IBAC if it constitutes a Public Interest Disclosure. • ensure that if the complaint alleges a crime has been committed by the Councillor, the Head of Governance and Risk and/or the CEO must support the complainant to take the complaint to the Police for investigation.

	<p>The appointed Councillor Conduct Officer must:</p> <ul style="list-style-type: none"> • provide support to assess the nature of the complaint and information provided to determine if the complaint aligns to a breach of the standards of conduct outlined in the <i>Local Government Act 2020</i> to warrant immediate submission to the Principal Councillor Conduct Registrar by the Mayor and Deputy Mayor. <p>The Chief Executive Officer (or delegate) must:</p> <ul style="list-style-type: none"> • Assist the Mayor (or Deputy Mayor) to undertake the Initial Assessment of Complaints. • Offer advice to the subject of a complaint on record keeping, the complaint handling process and their rights and responsibilities. • Support the internal investigation process, as requested. <p>The Mayor (or Deputy Mayor) must:</p> <ul style="list-style-type: none"> • Manage the complaint resolution impartially, transparently, fairly, and with confidentiality. • Liaise with the Chief Executive Officer (or delegate) and Head of Governance and Risk as required. <p>The Mayor and Deputy Mayor must:</p> <ul style="list-style-type: none"> • Submit the complaint to the Principal Councillor Conduct Registrar, where the preliminary assessment of the appointed Councillor Conduct Officer is that the nature of the complaint constitutes 'misconduct' or 'serious misconduct' by a Councillor or Councillors and direction is provided to do so. <p>The previous Mayor must:</p> <ul style="list-style-type: none"> • Fulfill the role of the Mayor in this process if both the Mayor and Deputy Mayor are subject to the complaint. 								
<p>How to make a complaint</p>	<p>A person can make a complaint (written or verbal) in several ways either by telephone, email or face-to-face interaction.</p> <table data-bbox="496 1420 1342 2024"> <tr> <td data-bbox="496 1420 852 1547">Mail</td> <td data-bbox="852 1420 1342 1547">Darebin City Council PO Box 91 Preston Vic 3072</td> </tr> <tr> <td data-bbox="496 1588 852 1626">Telephone</td> <td data-bbox="852 1588 1342 1626">03 8470 888</td> </tr> <tr> <td data-bbox="496 1666 852 1839">Multilingual phone line</td> <td data-bbox="852 1666 1342 1839">03 8470 8470 Residents can call the Multilingual Telephone Line and mention their preferred language and be connected to a Language Aide or an interpreter</td> </tr> <tr> <td data-bbox="496 1879 852 2024">In Person</td> <td data-bbox="852 1879 1342 2024">Main office Municipal Offices 274 Gower Street, Preston 8.30am – 5pm</td> </tr> </table>	Mail	Darebin City Council PO Box 91 Preston Vic 3072	Telephone	03 8470 888	Multilingual phone line	03 8470 8470 Residents can call the Multilingual Telephone Line and mention their preferred language and be connected to a Language Aide or an interpreter	In Person	Main office Municipal Offices 274 Gower Street, Preston 8.30am – 5pm
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	<p>Northcote Customer Service Centre 32-38 Separation Street, Northcote 10am – 5pm</p> <p>Reservoir Community & Learning Centre 23 Edwardes Street, Reservoir 10am – 5pm</p> <p>Email mayor@darebin.vic.gov.au or If the complaint relates to the Mayor ceooffice@darebin.vic.gov.au or pidcoordinator@darebin.vic.gov.au</p>
<p>Who can make a complaint</p>	<ul style="list-style-type: none"> Any member of the public, community groups or advisory groups who has been affected by the behaviour of a Councillor or group of Councillors can make a Complaint. For the purpose of this policy, members of Advisory Committees are considered to be members of the public and not employees, even if they are remunerated for their role. City of Darebin employees cannot make a complaint under this policy. They must raise their complaint with their General Manager or Council’s Public Interest Disclosure Coordinator. Complaints will be received in the format that is most appropriate and comfortable for the complainant. Complaints can be made through multiple channels, and outside business hours. Anonymous complaints will not be accepted. Complainants who wish to have their identity protected are entitled to lodge a Complaint through Council’s Public Interest Disclosure Coordinator via pidcoordinator@darebin.vic.gov.au. If required, an interpreter will be provided to facilitate lodging a complaint. A complainant may use an advocate or authorised personal representative to progress their complaint provided the authorisation is in writing.
<p>Complaint handling procedure</p>	<p>Darebin takes a four-tiered approach to complaint handling, as follows:</p> <ol style="list-style-type: none"> Receive and clarify the complaint Initial assessment and actions Investigation <ol style="list-style-type: none"> Internal investigation Internal arbitration Councillor Conduct Panel

	<p>4. Review</p> <ol style="list-style-type: none"> a. Internal review b. VCAT <p>The Template File Note, at Attachment Two, provides a convenient resource to record the complaint, the assessment and the internal investigation, as well as a checklist for required actions at each step.</p>
<p>Receiving a complaint</p>	<p>The Mayor or CEO or Head of Governance and Risk may be the first point of contact in receiving a complaint about a Councillor from a community member.</p> <p>All complaints about a councillor must be referred immediately to the Head of Governance and Risk.</p> <p>The Head of Governance and Risk will receive, clarify, and record a complaint and capture:</p> <ul style="list-style-type: none"> • The complainant’s details including contact details (if provided) • How the complaint was received • A description of the complaint (i.e. date, location) • The complainants desired outcome (if known) <p>All information gathered must be uploaded in Objective with appropriate security levels.</p> <p>Complainants must receive an acknowledgement of the complaint details, in writing, within ten (10) working days. Where a complaint has been received via email to the Mayor or CEO email, the EA to the Mayor and Councillors or the EA to the CEO must acknowledge the complaint, in writing, within ten (10) working days, and then immediately refer it to the Head of Governance and Risk.</p> <p>All complaints about Councillors lodged within the Customer Request Pathway system must be allocated to the Head of Governance and Risk.</p>
<p>Initial assessment and actions</p>	<p>The Head of Governance and Risk must undertake a preliminary check to determine:</p> <ol style="list-style-type: none"> 1. The complaint meets the definition of a complaint (as opposed to a service request etc.) 2. If the complaint is directly related to acceptable speech/debate by a Councillor in the Chamber (informed by relevant Arbiter determinations and statement of reasons) 3. If there is sufficient information provided to proceed. If there is insufficient information, the Complainant will be contacted to provide additional information. 4. If the matter should be referred or reported to an external body i.e. Local Government Inspectorate, Ombudsman, IBAC or Victoria Police 5. If the Complaint should be dealt with as a Public Interest Disclosure <p>Should the complaint not fall within points 4 or 5 above, the Head of Governance and Risk will then forward the complaint and outcome of the preliminary assessment for assessment to the appointed Councillor Conduct Officer (CCO) to assess if the complaint is of the nature that it constitutes ‘misconduct’ or ‘serious misconduct’ by a Councillor or Councillors and should be submitted to the Principal Councillor Conduct Registrar (PCCR).</p>

	<p>The complaint will then be forwarded for assessment, accompanied by recommendation (or direction if the CCO determines it should be submitted to the PCCR):</p> <ol style="list-style-type: none"> 1. The Mayor, in consultation with the Chief Executive Officer; or 2. The Deputy Mayor, in consultation with the Chief Executive Officer, if the complaint is about the Mayor. 3. Where a complaint is assessed as constituting Misconduct or Serious Misconduct by the Councillor Conduct Officer, the complaint will be provided to both the Mayor and Deputy Mayor (unless the complaint is about the Mayor or Deputy Mayor.). In the event that the complaint is about both the Mayor and Deputy Mayor, the complaint will be referred to the most recent previous Mayor. <p>The initial assessment must determine and document:</p> <ol style="list-style-type: none"> 1. If the complaint is deemed frivolous, vexatious, misconceived or lacking in substance; 2. If the complaint should be referred by the complainant for external investigation (refer Attachment 3); 3. If the complaint may be dealt with formally; 4. If the complaint should proceed to internal investigation; 5. If, in the opinion of the Mayor and Chief Executive Officer, there is sufficient information provided that may amount to a breach of Councillor Code of Conduct and the Act of: <ol style="list-style-type: none"> a. Misconduct – the investigation may be escalated directly to the Internal Arbitration Process as per section 141 of the Act. b. Serious misconduct – the investigation may be escalated directly to the Councillor Conduct Panel as per section 154 of the Act. <p>In addition to the initial assessment the:</p> <ol style="list-style-type: none"> 1. Mayor must notify the subject of the complaint that a complaint has been made against them without going into detail or releasing the name of the complainant. 2. The Chief Executive Officer and/or Head of Governance and Risk must offer the subject of complaint advice in relation to record keeping, the complaint handling process and their rights and responsibilities
<p>Investigation</p>	<p>Internal Investigation</p> <ul style="list-style-type: none"> • The current Mayor and Deputy Mayor* with the support of the Chief Executive Officer, or if required an external party appointed by the Chief Executive Officer, will investigate the complaint. • The outcome of the internal investigation will be provided in writing to the complainant, including advice on how to escalate the complaint for further review. • Complainants must receive notice of the outcome, in writing, within twenty (20) working days. • The Councillor(s) who is the subject of the complaint will be afforded the opportunity to respond prior to the Mayor and Deputy Mayor providing the outcome of their internal review to relevant parties.

	<p>*Where the complaint relates to the current Mayor or Deputy Mayor the immediate former Mayor or Deputy Mayor will replace the Mayor or Deputy Mayor for that particular investigation.</p> <p>Internal Arbitration – alleged misconduct</p> <ul style="list-style-type: none"> • At any stage in the complaint handling process the complaint may be elevated to the Internal Arbitration Process by the Council following a resolution of the Council or by a Councillor or group of Councillors within three (3) months of the alleged misconduct occurring, and in accordance with the application process outlined in section 143 of the Act. • Where there is a prima facie case of alleged misconduct Council delegates the Mayor to make an automatic referral to an Arbitrator (in the case of alleged misconduct). <p>Councillor Conduct Panel – alleged serious misconduct</p> <ul style="list-style-type: none"> • At any stage in the complaint handling process the Complaint may be elevated to the Councillor Conduct Panel by the Council following a resolution of the Council or by a Councillor or group of Councillors within twelve (12) months of the alleged misconduct occurring, and in accordance with the application process outlined in section 154 of the Act. • Where there is a prima facie case of alleged misconduct Council delegates the Mayor to make an automatic referral to an Arbitrator (in the case of alleged misconduct) or a Conduct Panel (in the case of alleged serious misconduct).
<p>Review</p>	<p>Internal Review of Investigation Outcome</p> <ul style="list-style-type: none"> • An internal review of the Internal Investigation may be requested by a person who is affected by the decision. • The internal review will be undertaken by the Head of Governance and Risk in consultation with the General Manager Governance and Engagement. • The internal review must be completed, and all affected parties notified within a further twenty 20 working days. <p>Internal Review of Investigation Timelines</p> <ul style="list-style-type: none"> • If the complaint is not resolved in twenty (20) working days, it will be subject to a review. • The internal review will be undertaken by the Councillor Conduct Officer. • The internal review must be completed, and all affected parties notified within a further five (5) working days advising in writing: <ul style="list-style-type: none"> ○ How and when the internal investigation will be completed ○ Why the internal investigation was not completed within the twenty (20) working days. <p>Councillor Conduct Panel Review</p> <ul style="list-style-type: none"> • Under s170 of the Act a person who is affected by the decision made by a Councillor Conduct Panel may apply to VCAT for a review of the decision.

<p>Confidentiality & Fairness</p>	<p>Councillor(s) who are subject of a complaint:</p> <ol style="list-style-type: none"> 1. Will be notified by Mayor upon receipt of the Complaint. 2. Will be offered advice from the Chief Executive Officer and/or Head of Governance and Risk in relation to record keeping, the complaint handling process and their rights and responsibilities. 3. Will be afforded the opportunity to respond to the Complaint prior to the Mayor and Deputy Mayor providing the outcome of their internal review to relevant parties. 4. Will be advised of the outcome of the Complaint in writing. The letter will detail: <ol style="list-style-type: none"> a. If the complaint was upheld, partly upheld or not upheld b. What recommendations the internal review made for the Councillor(s) to act on c. If the Complaint has been escalated to an external review <p>All complaints received about Councillors will be kept confidential.</p>
<p>Transparency & Fairness</p>	<ul style="list-style-type: none"> • When gathering information to respond to a complaint, Darebin will only: • Use it to deal with the complaint or to address issues arising from the complaint • Disclose it in a de-identified format when disclosing data to the public • Share it with council staff on a need to know basis • Complainants will, within ten (10) working days of receipt of the complaint, receive an acknowledgement in writing confirming: • How the complaint was received • A description of the complaint (i.e. date, location)* • The complainants desired outcome (if known) • That Darebin will aim to resolve the complaint within twenty (20) working days • Who to contact in relation to their complaint • The review process that will occur if the complaint is not resolved within twenty (20) working days • *In the instance of a complaint not being assessed as a complaint against a Councillor how the Council will respond to the matter. • Once the internal investigation process has been completed the Complainant will receive an outcome letter in writing confirming: • If the complaint was upheld, partly upheld or not upheld • Any changes to services, policy and/or procedures as a result of the Complaint • If the Complaint has been escalated • What recommendations the internal investigation made that the Councillor(s) must act on

	<ul style="list-style-type: none"> • How the Complainant can escalate their Complaint if they are unhappy with the outcome of their complaint. • If the complaint is not resolved within twenty (20) working days, it will be subject to a review in accordance with the Internal Review of Investigation Timeliness listed within the Review section above.
<p>Record Keeping</p>	<p>All complaints received about Councillors will be kept confidential.</p> <p>When gathering information to respond to a complaint, Darebin will only:</p> <ul style="list-style-type: none"> • Use it to deal with the complaint or to address issues arising from the complaint • Disclose it in a de-identified format when disclosing data to the public • Share it with council staff on a need-to-know basis <p>The complaint records must be captured in:</p> <ul style="list-style-type: none"> • The document management system Objective
<p>Reporting</p>	<p>The following performance indicators will be reported on the monitor and evaluate our complaint handling processes:</p> <ul style="list-style-type: none"> • Quantity of Complaints received • Proportion of Complaints: <ul style="list-style-type: none"> (a) At Preliminary Check <ul style="list-style-type: none"> i. Do not proceed due to insufficient information ii. Do not proceed due to reclassification iii. Proceed (b) At Initial Assessment: <ul style="list-style-type: none"> i. Do not proceed due to frivolous, vexatious, misconceived or lacking in substance determination ii. Are dealt with informally iii. Proceed to internal investigation iv. Proceed under Misconduct provisions of the Act v. Proceed under Serious Misconduct provisions of the Act (c) At Internal Investigation <ul style="list-style-type: none"> i. Are upheld, partially upheld, not upheld (d) At Internal Review <ul style="list-style-type: none"> i. Referred for outcome or lateness ii. Overturned or sustained <p>Average and individual response times for acknowledgement, investigation outcome and internal review</p> <p>Details of charges made to services, policy and or processes</p>

Attachments

- Attachment 1 – Definition Misconduct and Serious Misconduct from the Act
- Attachment 2 – Template File Note
- Attachment 3 – External Investigation Organisations

Attachment 1 - Definitions from the Act

Misconduct by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.

Serious misconduct by a Councillor means any of the following:

- a) the failure by a Councillor to comply with the Council's internal arbitration process;
- b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);
- f) bullying by a Councillor of another Councillor or a member of Council staff;
- g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with this Act.

Attachment 2

[Template File Note](#)

Attachment 3 – External Investigation Organisations

Independent Broad-Based Anti-Corruption Commission (IBAC)

IBAC accepts complaints about suspected corruption and misconduct including:

- taking or offering bribes
- using a position of influence dishonestly
- committing fraud or theft

	<ul style="list-style-type: none"> • misusing information or material acquired from the work place • conspiring or attempting to engage in the above corrupt activity <p>IBAC does not handle complaints about:</p> <ul style="list-style-type: none"> • issues from other States or Territories or Federal matters • matters in the private sector, unless it relates to a Victorian public sector employee • rudeness or poor customer service <p>www.ibac.vic.gov.au/report or 1300 735 135</p> <p>Local Government Inspectorate</p> <p>The Inspectorate accepts complaints about council operations and potential breaches of the Local Government Act, including:</p> <ul style="list-style-type: none"> • misuse of position • conflict of interest • disclosure of confidential information • electoral offences <p>The Inspectorate does not investigate complaints relating to councils' decisions or democratic processes, unless there is a breach of the Act. It does not look at services issues such as bins not being collected, rate charges being too high or parking infringements.</p> <p>www.vic.gov.au/lgi/complaints or 1800 469 359</p> <p>Victorian Ombudsman</p> <p>The Ombudsman investigates the actions, decisions or conduct of public sector organisations and their staff. It also looks at whether a public sector organisation has acted in accordance with the <i>Charter of Human Rights and Responsibilities Act 2006</i>.</p> <p>The Ombudsman will generally not become involved in a complaint when:</p> <ul style="list-style-type: none"> • you have not yet attempted to resolve it with the organisation directly • the matter may be decided by a court or tribunal • the complaint is more than 12 months old <p>www.ombudsman.vic.gov.au/complaints or (03) 9613 6222</p>
<p>Breach of Policy</p>	<p>Breaches of policies are treated seriously. Any concerns about non-compliance should be reported immediately to the owner of this policy.</p>

GOVERNANCE

Parent Strategy/ Plan	Customer Experience Strategy
Related Documents	<p>The following documents are related to this Policy:</p> <ul style="list-style-type: none"> • Councillor Code of Conduct • Employee Code of Conduct • Complaint Handling Policy
Supporting Procedures and Guidelines	Victorian Ombudsman: Councils and complaints – A good practice guide 2 nd edition
Legislation/ Regulation	<ul style="list-style-type: none"> • Local Government Act 2020 (Vic) • Human Rights Compatibility <p>The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.</p>
Author	Head of Governance and Risk
Policy Owner/ Sponsor	General Manager Governance & Engagement
Date Effective	28 August 2023
Review Date	The policy will be reviewed within 12 months of each municipal election.
Version Number	0.2
Document ID	A6497292
Content enquiries	Head of Governance and Risk