

# Procedure - Grievance



<b>Procedure Number</b>	<b>PR135</b>
Date adopted	20 March 2019
Scheduled for review	March 2021

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## Purpose

The Grievance Procedure exists to deal with workplace grievances raised by employees in a respectful, fair, confidential and reasonable manner to effectively resolve the grievance.

## Procedure Statement

### 1. Scope

This procedure applies to all council employees, including students and volunteers.

### 2. Grievance definition

A grievance is any kind of problem, concern, dispute or complaint related to work or the work environment.

### 3. Occupational Health and Safety (OHS) issue resolution process

For all OHS issues, with the exception of psychological matters (for example, bullying, stress, sexual harassment, etc), please refer to council's OHS Issue Resolution Procedure.

Workers Compensation grievances or appeal must be done in accordance with the *Workplace Injury Rehabilitation and Compensation Act 2013*.

### 4. Overview

The merit and context of each matter raised will be determined on a case by case basis. Employees are advised to keep diary notes of any incidents with names, dates, and witnesses to demonstrate concerns of repeated and/or unreasonable behaviour.

The Human Resources Department can be contacted at any time regarding a workplace grievance.

Council strongly encourages employees to report incidents, however, reporting is voluntary and not mandatory. Nevertheless, if a worker decides not to report issues, council expects that this will be the end of the matter. In particular, employees must not seek to progress the issue informally (for example, allowing the matter to be the subject of conflict, innuendo or gossip).

### 5. Escalation

#### a. Step 1 – Self management

- i. If comfortable to do so, employees should advise the other person, verbally or in writing, in a direct and firm manner that their behaviour is unacceptable. This may be enough to stop the unwelcome behaviour. The employee may find the other person was not aware of their grievance and the matter can be resolved directly.

#### b. Step 2 – Informal management

- i. Many grievances are able to be resolved through an informal procedure. It is important that the manager monitors the matter to ensure the grievance is effectively resolved to avoid escalation to formal complaint.
- ii. The employee should report the grievance to their direct supervisor when:
  1. the employee does not feel comfortable talking to the person(s) involved;
  2. the employee has tried to talk to the person(s) involved and it was ineffective in resolving the grievance; or

- iii. The supervisor will discuss the following with the employee:
  - 1. refer the employee to this procedure;
  - 2. decide if they are the appropriate person to handle the grievance; and
  - 3. obtain/record information about the employee's grievance and provide suggestions to help resolve it.
- iv. If the matter is not resolved by the direct supervisor, the grievance may be referred to the appropriate next up immediate manager who will attempt to resolve the matter.
- v. If the matter is still not resolved, the matter shall be referred to the Human Resources Department.

**c. Step 3 – Formal management**

- i. If the grievance is serious or has not been resolved either through self-management or informal management, the complainant is encouraged to raise their grievance via the formal management process. A grievance is recognised as being formal once a completed Formal Grievance Form (Appendix 1 attached) has been received by the Human Resources Department. Employees should not assume that their grievance has been treated formally by management without the completed form. Receipt of this form will initiate an investigation within ten (10) working days. The investigation will be conducted either internally or by an external investigator at the Human Resources Manager/CEO's discretion.
- ii. Mediation should be considered as a first step to resolving a formal grievance and only if all parties involved agree.
- iii. Council will not proceed with an investigation if the employee confirms in writing that they have reconsidered informal management options prior to proceeding with an investigation, or if the grievance has been effectively resolved.

**d. Step 4 - Enterprise Agreement – Clause 11 Prevention and Settlement of Disputes**

If the above steps fail to produce a satisfactory outcome, employees may use the provisions of Clause 11 (Appendix 2 attached) of the Shire of Campaspe Enterprise Agreement.

**e. Step 5 – Fair Work**

If a grievance is unable to be resolved internally, employees have the option to contact Fair Work. Employees can contact the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au).

Council encourages employees to give council the opportunity to resolve grievances internally prior to contacting Fair Work.

**6. Contact Officers**

Contact Officers are employees who have been trained to provide advice in relation to the grievance procedure.

Contact Officers details can be found on the intranet and workplace noticeboards.

**7. Resolution options**

Options for resolving grievances will vary on a case by case basis according to circumstances. There is no one 'fix' that will resolve every situation. Some options for consideration are:

- i. Mediation (only where both parties agree to mediation and to the mediator)
- ii. Counselling and other reasonable support
- iii. An apology, privately or publicly
- iv. Individual or group training
- v. Disciplinary action, including up to and including termination of employment

**8. Mediation/Conflict Resolution**

Mediation/conflict resolution is a voluntary process whereby two (2) parties discuss an issue with an independent party in an unbiased manner. The mediator/conflict resolution officer will provide each party the opportunity to identify the issues, develop resolutions and come to a mutual agreement in a safe

manner. The role of the mediator/conflict resolution officer is to facilitate a process that allows the parties to identify issues that may impact on their relationship. A structured process is managed to ensure equity and fairness to all parties to ultimately achieve an agreement of expectations between the parties

Typically at a mediation session, the parties will be asked to sign a written agreement detailing the terms of any agreements reached. The terms of any mediation agreement are confidential. While a mediation agreement is not legally binding, it is made in good faith between the parties.

At Council's discretion, either a suitably trained council resolution officer or an external mediator may be offered as the mediator.

## 9. Unions

A Union is an organisation that advocates on behalf of employees. Employees may choose to be represented by their union from the beginning of their grievance. Key features of unions include:

- i. Working with Council to help resolve workplace issues;
- ii. Ensuring Council meets their minimum employment obligations; and
- iii. Looking into suspected breaches of:
  1. workplace laws
  2. discrimination laws

Union officials may only enter the workplace if council agrees. Union officials can also enter the workplace if they have a valid right-of-entry permit issued by the Fair Work Commission (the Commission). Union officials must identify the reason for entry with council prior to entry.

## 10. Confidentiality

Grievances are to be kept highly confidential at all times for all parties involved. Employees must not discuss grievances with colleagues or any person other than a support person or legal/union representative.

If an employee has been found to discuss the grievance with colleagues, they may be subject to disciplinary action.

## 11. Vexatious or frivolous grievances

Vexatious grievances occur when an employee pursues a grievance without merit and intends to cause harm, expense or inconvenience to others.

A frivolous grievance is where a grievance has little merit and an investigation into the matter would be disproportionate to the seriousness of the grievance.

All employees must appreciate that raising an allegation against another person in the workplace is a serious matter. Regardless of whether the grievance is substantiated, the act of raising the grievance may have consequences both personally and professionally for all parties involved.

Council will not tolerate abuse of the processes outlined in this procedure or the making of vexatious complaints. If a grievance is unsubstantiated because it is found to be of a frivolous or vexatious nature, disciplinary action may occur.

## 12. Victimisation

Every employee has the right to claim and enforce their right under this procedure without victimisation or the threat of victimisation.

Victimisation occurs when somebody has been treated detrimentally (for example, making hurtful statements) because an employee:

- a) intends to or raises a grievance
- b) intends to provide information as a witness
- c) raises a safety issue
- d) supports another employee who has raised a grievance
- e) has a grievance made against themselves

**13. Protected Disclosure**

Protected disclosure exists to encourage people to report serious wrongdoing in their workplace by providing protection for employees who want to 'blow the whistle' (also known as "whistleblowers").

For more information, please refer to council's Protected Disclosure Procedure.

**14. Employee Assistance Program**

The Employee Assistance Program (EAP) is intended to help employee's deal with personal problems that might adversely impact their job performance, health, and wellbeing. Employees who are involved in dealing with grievances can seek support from Council's Employee Assistance Program to assist throughout the process.

**15. Record keeping**

Managers are responsible to provide all related documentation (for example, records of conversation, statements, file notes, etc.) to Human Resources for record keeping purposes.

**16. Responsibilities****a. Managers (including Supervisors / Team Leaders)**

- i. Proactively address and resolve workplace grievances before they become formal.
- ii. Comply with and uphold this procedure and associated policies/procedures within area of responsibility.
- iii. Ensure that direct reports understand this procedure and that they can easily access a copy.
- iv. Assist with investigations and resolution as required, maintaining appropriate records and documentation.
- v. Ensure any grievance is handled in the most appropriate manner at the earliest opportunity.

**b. Employees**

- i. Treat other employees with respect and courtesy.
- ii. Comply with this procedure.
- iii. Fully participate and cooperate in investigations or management review of any grievance raised (including full cooperation in investigations) and maintain confidentiality at all times.
- iv. Make others aware if an employee's behaviour is making them feel uncomfortable.
- v. Speak up if they observe inappropriate behaviour.

**c. Human Resources**

- i. Support all parties involved and to ensure that processes are followed.
- ii. Provide coaching, advice and guidance to managers to assist them to effectively resolve grievances.
- iii. Upon request, act as a Council witness and scribe for managers conducting meetings.
- iv. Maintain employee personnel records as required.
- v. Oversee formal grievance investigations.
- vi. Ensure impartial facilitation of counter claims.

**Exclusions**

Nil

**Human Rights**

This report has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

**Definitions**

Nil

**Related Legislation**

*The Local Government Act 1989*

*Fair Work Act 2009*

*Victorian Charter of Human Rights and Responsibilities 2006 (The Charter)*

*Equal Opportunity Act 2010 (Victoria)*

*Occupational Health and Safety Act 2017 (Victoria)*

*Protected Disclosure Act 2012*

**Related Documents**

Shire of Campaspe Enterprise Agreement

Occupational Health and Safety Policy

Occupational Health and Safety Issue Resolution Procedure

Employee Code of Conduct

Contact Officer Procedure

Bullying & Equal Opportunity Procedure

Disciplinary Action Procedure

Formal Grievance Form

**Witness Statement Form Attachments**

Attachment 1 – Formal Grievance Form

Attachment 2 – Clause 11, Shire of Campaspe Enterprise Agreement 2016

**Review Period Responsible Officer**

Two years

Human Resources Manager

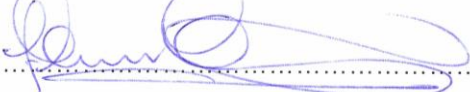
**Administrative Updates**

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter the procedure, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

**Approval History**

Adopted 20 March 2019

Executive Management Group

A/ Chief Executive Officer:   
Date: 27 March 2019

## CAMPASPE SHIRE COUNCIL FORMAL GRIEVANCE FORM

<b>EMPLOYEE:</b> <Employee name>	<b>POSITION:</b> <Position title>
<b>LOCATION:</b> <Work location>	<b>DATE:</b> <Date submitted>

### INCIDENT DETAILS

Date and Time of incident(s):	
Location of incident(s):	
Person whom the allegations have been made against:	
Witness names:	

### OVERVIEW

1. What Council policy/procedure do you believe the employee has breached?	
<Response>	
2. Describe what happened?	
<Response>	
3. Has this happened before?	
<Response>	
4. Is anyone else involved?	
<Response>	
5. Do you have any evidence to substantiate your grievance?	
<Response>	
6. Is there any other relevant information that the Council should be aware of?	
<Response>	
7. What steps have you taken to resolve your grievance to date?	
<Response>	
8. What remedy are you seeking by submitting a formal grievance?	
<Response>	

### ATTACHMENTS

9. Please list attachments of evidence to substantiate your grievance (if any).	
1	<Date> <Attachment title> <Document type>
2	<Date> <Attachment title> <Document type>

### ACKNOWLEDGEMENT

I confirm that the content outlined within this document is a true and accurate record of the grievance details I have provided.

<b>Name</b>	<b>Signature</b>	<b>Date</b>
<Employee name>	<Signature>	<Date Submitted>

*Please submit to the Human Resources Department once completed*

## Clause 11 – Enterprise Agreement 2016

### 11 PREVENTION AND SETTLEMENT OF DISPUTES

The parties to this Agreement are committed to good industrial relations practices and procedures based on consultation and goodwill. The employer shall ensure that they advise employees subject to this procedure that they may be represented by their Union from the beginning of this process.

11.1 If a dispute relates to:

- 11.1.1 A matter arising under the Agreement; or
- 11.1.2 The National Employment Standards; or
- 11.1.3 Any other work related matter

this term sets out procedures to settle the dispute.

11.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

11.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees, their representative if requested, and their immediate line-manager or supervisor. The line-manager or supervisor must make a genuine attempt to resolve the matter in a timeframe that is agreed by all parties.

11.4 If the matter cannot be resolved, in the first instance, it will be referred to the appropriate next up immediate manager who will attempt to resolve the matter in a timeframe that is agreed by all of the parties.

11.5 If the matter is still not resolved, the matter shall be immediately referred jointly, for discussion, to a manager with industrial relations responsibility, the employee(s) and their representative if requested.

11.6 If the matter cannot be resolved, the matter may be referred to a mutually agreed independent mediator (from an agreed list of mediators) who may exercise powers of conciliation or arbitration and whose decision will be binding subject to Agreement by the parties.

11.7 Should the matter still be unresolved, either party shall be entitled to refer it to Fair Work Commission.

11.8 Fair Work Commission may deal with the dispute in two stages:

- 11.8.1 Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including my mediation, conciliation, expressing an opinion or making a recommendation; and
- 11.8.2 If Fair Work Commission is unable to resolve the dispute at the first stage, Fair Work Commission may then:
  - Arbitrate the dispute
  - Make a determination that is binding on the parties.

*Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.*

*A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purposes of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.*

11.9 While the parties are trying to resolve the dispute using the procedures in this term:

- 11.9.1 An employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
- 11.9.2 An employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
  - 11.9.2.1 The work is not safe; or
  - 11.9.2.2 Applicable occupational health and safety legislation would not permit the work to be performed; or
  - 11.9.2.3 The work is not appropriate for the employee to perform; or
  - 11.9.2.4 There are other reasonable grounds for the employee to refuse to comply with the direction.

11.10 The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.