

Clarence City Council Dispute Resolution Policy

1. PURPOSE

To establish the principles and procedures for dispute resolution with, and between, councillors related to matters outlined under the Code of Conduct in accordance with *Local Government Act 1993* section 28JA, the Local Government (General) Regulations 2015 and Council's Statement of Expectations.

2. SCOPE

This policy applies to disputes with, and between, councillors. Matters of dispute include those under the Code of Conduct and behaviour of councillors towards each other, council employees and community members more broadly.

Relationship to the Code of Conduct

This policy is to support the resolution of disputes with, and between, councillors before a Code of Conduct complaint is lodged.

Where a Code of Conduct complaint is lodged, the *Local Government Act 1993* requires that a complainant details why the outcome from the dispute resolution process was not satisfactory¹, or if the process was not used, why the dispute resolution process was not appropriate for the circumstances². An exception is where the dispute resolution process is not appropriate to resolve the dispute.

When this policy may not be appropriate

A Code of Conduct complaint may be required where either party is unable, or unwilling to participate in some, or all, of the dispute resolution process, such as mediated discussions. These reasons will be documented by the Dispute Resolution Officer.

¹ *Local Government Act 1993, Section 28V (fc).*

² *Local Government Act 1993, Section 28V (fd).*



Other matters such as, but not limited to, health and safety risks, criminal misconduct, discrimination, breaches of the *Local Government Act 1993* are to be addressed outside this policy.

3. PRINCIPLES

Procedural fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a dispute under this Policy.

In particular:

- I. the parties in the dispute will be afforded equitable opportunities to be heard
- II. any recommendations, or dispute resolution plans will be based on genuine consideration of the circumstances and evidence
- III. the roles in the process will support procedural fairness.

Roles

Complainant

The person raising the dispute about a relevant matter.

Respondent

The councillor(s) that are subject to a dispute.

Mayor

The mayor as Chairperson of the council may ask for parties to engage in the dispute resolution process.

Chief Executive Officer

The Chief Executive Officer is responsible for identifying a council officer to act as the Dispute Resolution Officer. Where the Dispute Resolution Officer has an actual or perceived conflict of interest with the parties in dispute, the Chief Executive Officer may appoint an alternative officer. The Chief Executive Officer may appoint themselves where no other person is able to perform this role, and they can meet the requirements of this policy.

The Chief Executive Officer is to identify a panel of Dispute Resolution Advisors for use under this Policy. Alternatively, councils may access the provider panel developed by the Local Government Association of Tasmania (LGAT).

Dispute Resolution Officer

The Dispute Resolution Officer manages the process, is responsible for maintaining the records of the process and appoints the Dispute Resolution Advisor. The Dispute Resolution Officer does not have a role in assessing the dispute.

Dispute Resolution Advisor (the Advisor)



The Advisor is a person external to the council who undertakes the dispute resolution process with the parties in dispute. Refer to section 4.4 for more detail on the Advisor.

Support person

The support person is a person who may support the complainant or respondent as part of the dispute resolution process. Refer to Section 4.7 for more detail.

Personal and shared responsibility

Councillors represent the views of the community, so at times they may hold and express views that are different, and opposing, to their fellow councillors. The democratic process means that there may be active debate that should be considered and respectful.

However, this debate may become a conflict or dispute. Where this happens, the parties should use their best endeavours to resolve the issue or dispute in an informal and courteous manner.

Where the parties have been unable to resolve the issue or dispute themselves, or it is not appropriate, then the dispute resolution process can then be applied. The process is to be approached by the parties in good faith to find a resolution.

Confidentiality

All parties will take all reasonable steps to maintain confidentiality when dealing with the dispute, to protect both the complainant and respondent.

With the mutual agreement of the complainant and respondent a closed meeting of Council may be advised that the parties are participating in dispute resolution process.

Accessibility

The Council will ensure that information on how to lodge a dispute, including this Policy, is available via its customer service centre and on the Council's website. The Council will make information available in accessible formats if requested. Any person wishing to lodge a dispute may contact the Dispute Resolution Officer if they require assistance in completing the dispute resolution form or otherwise navigating the dispute resolution process.

Equitable access

This Policy and process is designed to address the different needs and priorities of all persons, including of different genders. It provides measures that address different levels and types of experiences, power, information and influence. These measures include:

- Addressing power imbalances with an external neutral Dispute Resolution Advisor to support dispute resolution and providing for support person(s), detailing access to information, and maintaining accurate, clear records.
- Providing a safe environment through confidentiality and neutral party lodgement.



- Requiring Dispute Resolution Advisors with appropriate training for inclusiveness, gender responsiveness and trauma.

4. PROCEDURES

Lodging and withdrawing disputes

Any person may lodge a dispute regarding a councillor's behaviour.

The Dispute Resolution Form must be completed in full to lodge a dispute. Completed forms must include the name and contact details of the complainant. A dispute must specify the part(s) of the Code of Conduct and Statement of Expectations that the behaviour relates to.

Anonymous disputes cannot be accepted. Where an individual wishes to remain anonymous or does not want to put their complaint in writing the Dispute Resolution Officer may direct them to alternative avenues outside this Policy.

Where a Dispute Resolution Form omits required details, the Dispute Resolution Officer will invite the complainant to provide this information for the dispute to be progressed.

The dispute lodgement fee is 25 fee units. Separate costs and processes apply to Code of Conduct complaints.

Disputes may be withdrawn by the complainant by writing to the Dispute Resolution Officer. The Dispute Resolution Officer will provide written notice of the withdrawal to the respondent. Notice will not be provided if the withdrawal is prior to the respondent being notified of a dispute being lodged (Refer Section 4.3).

Notice to complainant

Within 10 business days after receiving a dispute, the Dispute Resolution Officer will provide written notice to the complainant that:

- I. confirms receipt of the dispute
- II. outlines the process that will be followed
- III. notes the confidentiality requirements of section 3.4 of this Policy
- IV. includes a copy of this Policy.



Notice to respondent

Within 15 business days after receiving a dispute, the Dispute Resolution Officer will provide written notice to the respondent that:

- I. advises that a dispute has been made in accordance with this Policy
- II. includes a completed Dispute Resolution Form
- III. outlines the process that will be followed
- IV. notes the confidentiality requirements of section 3.4 of this Policy
- V. includes a copy of this Policy.

Appointment of Dispute Resolution Advisor

The Dispute Resolution Officer is to engage a Dispute Resolution Advisor (Advisor) to conduct dispute resolution. The Advisor must:

- not be an employee of Council
- not have any direct relationship to the parties
- must be objective and impartial, with no real or perceived bias
- must be able to demonstrate that their practice is gender and trauma aware
- be accredited under the National Mediator Accreditation System (NMAS), or its successor, the Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS); or have a minimum of a Diploma in Mediation or Dispute Resolution.

In selecting a person to act in the capacity of the Advisor, the Dispute Resolution Officer will consider the nature of the issue under discussion, knowledge/experience of local government and interpersonal skills that can most likely assist in resolving matters of conflict.

The Dispute Resolution Officer will provide written notice of the appointment of the Advisor to the complainant and the respondent.



The parties may object to the Dispute Resolution Officer if they believe that the Advisor does not meet the requirements detailed in this section and will provide evidence to substantiate their view. The Officer will consider an objection and determine whether an alternate Advisor is to be appointed.

It is expected that there be no conflicts of interest between the Advisor and the complainant or respondent. If during the review process a conflict of interest arises between any party, the party must notify the Dispute Resolution Officer promptly. Where the Dispute Resolution Officer determines there is an actual conflict of interest, an alternative Advisor is to be appointed.

Dispute resolution process

- **Commencement**

In commencing the dispute resolution process, the Advisor will bring together the parties to conduct an initial facilitated discussion or mediation. Where needed they may also undertake initial individual interviews with the parties and others.

The initial discussion is to provide a general picture of the dispute and to allow the Advisor to provide an estimate of the timeframe for the process based on the parties' willingness and availability. This discussion will support the Advisor's consideration of the appropriateness of undertaking the process including:

- the parties' willingness to participate in the process
- health and safety risks to the parties, or others.

The Advisor may determine that the process cannot continue due to:

- the risk that the process may cause harm to the health and safety of either of the parties; or
- one of the parties is unwilling or unable to participate; or
- initial engagement reveals circumstances that must be addressed through a different process, such as those outlined in Section 2.2

Where the Advisor has determined the process cannot continue, they will provide a report to the Dispute Resolution Officer. The report will provide their reasons and state their determination that the dispute will need to be resolved through alternative avenues. The Advisor may make recommendations regarding these avenues.



- **Process**

The Advisor will determine the appropriate resolution processes based on their expertise and experience. This may include, but not be limited to, approaches such as mediation and facilitated restorative processes.

Resolutions may include, but not be limited to:

- a commitment to changing behaviours
- a commitment to cease the behaviour
- a commitment to apologise
- counselling
- undertaking professional development.

The Advisor may also make a recommendation to the Council that it review a policy, procedure, or other document related to the dispute.

The parties must represent themselves.

The maximum timeframe for a dispute resolution process is three months. At this time the Advisor is to provide a report to the Dispute Resolution Officer and close the dispute. This timeframe may be extended on the Advisor's recommendation and with the mutual agreement of the parties.

- **Information requests**

Councillors and council staff are to respond to the Advisor's reasonable requests for information about the dispute. Information pertaining to a third party will require their consent for the information to be released.

The Advisor may request the Dispute Resolution Officer to search for any relevant records or information in the Council's Record Management System. The Advisor must provide the complainant and respondent with a copy of any records that are identified.

In addition, where a clarification or additional information has been sought from the complainant by either the Dispute Resolution Officer or the Advisor, copies must also be provided to the complainant and respondent.



Order of disputes

Disputes will normally be dealt with in the order in which they are received. If more than one dispute is received that relates to the same alleged breach, the Dispute Resolution Officer may progress those disputes concurrently, provided confidentiality can be maintained.

Support person

Complainants and respondents may include a support person as part of the dispute resolution process.

The role of the support person is to observe and provide emotional support. They are not to provide views on the process or on legal context. The support person must not be an Australian lawyer.

The parties are to provide written notice to the Dispute Resolution Officer of their intention to include a support person in the dispute resolution process. This notice is to include the person's name, occupation and relationship to the party.

The Advisor is to consider, before and during the process, the impact of the support person's participation on the principles in this Policy. The Advisor has absolute discretion to remove, or not to allow the person to participate in some, or all, of the process. The Advisor's determination will be provided in writing to the parties and to the Dispute Resolution Officer.

5. REPORTING OBLIGATIONS

Report from Dispute Resolution Advisor

The Advisor must include in the confidential report to the Dispute Resolution Officer and to the parties:

- I. the process and methods that were used
- II. outcomes of the process including commitments made by one or more of the parties
- III. the views of the parties regarding the outcomes of the process.

Council

In accordance with Local Government (General) Regulations 1993, Regulation 30B, Council is required to maintain a record of the number of disputes, including whether they were determined, withdrawn or underway, and their total costs. This information is to be reported in its Annual Report.



6. IMPLEMENTATION AND COMMUNICATION

The Chief Executive Officer is responsible for the implementation of this Policy in accordance with responsibilities outlined.

7. ADMINISTRATIVE DETAILS

Table of amendments.

No.	Date	Brief details

Approval

Council Approval date	24 February 2025
Review	Every four years following the council election.
Responsible position	Chief Executive Officer
ECM reference	ECM 5537041



Dispute Resolution Form

This form is for lodging a dispute under Clarence City Council's Dispute Resolution Policy.

This form has been provided to ensure that you include all the information required under the Dispute Resolution Policy in your dispute. You will need to complete all the sections in this form.

To make a valid dispute, you will need to:

- Complete this form
- Lodge the dispute with the Chief Executive Officer of Council within two months of the alleged behaviour by the councillor or councillors.
- Pay the fee for lodging a complaint to the relevant council. 25 fee units (\$46.75 in 2024-2025). The Complainant is to pay upon receipt of an invoice from Council.

The fee may be waived if the applicant can demonstrate to the satisfaction of the Chief Executive Officer that they would find it difficult to pay the fee, for example they are receiving income support or are in financial hardship.

Name

Residential address

Postal address

Phone

Email

Summary of dispute

Name of councillor who you are in dispute with (the respondent):

Part(s) of the Code of Conduct or Council's Statement of Expectations that you believe have been infringed:

Date of incident(s):

Location(s) of incident(s):



Details of the dispute (further information may be attached)

Witness details (Include anyone with knowledge of what happened)

Have you previously made a complaint about this matter?

Yes ☐ No ☐

If yes, when and to whom did you make the dispute?

Have you made any efforts to resolve the dispute directly with the respondent?

(Note: this section is compulsory. Incomplete forms will be returned)

Yes

Briefly describe the efforts you have made,
(Note: You must complete this section)

No

Include a brief statement explaining why you have not made any efforts to resolve the issue with the respondent.

Desired outcome of dispute:

Please explain what you would like to happen because of lodging this dispute.

Please sign and date

Signature:

Date:

The personal information on this form is required by Clarence City Council for the purposes of dispute resolution. We will only use your personal information for this and related purposes. If this information is not provided, council may not be able to process this application. You may access and/or amend your personal information at any time. How we use this information is explained in our Privacy Policy, which is available at www.ccc.tas.gov.au or at Council Chambers.



APPENDIX 1

COUNCILLOR STATEMENT OF EXPECTATIONS

1. PURPOSE

As part of council's good governance program and earning the highest level of confidence in our elected members from our community, council has endorsed this document as a complementary document to support achievement of the standards of conduct and behaviour required by the Code of Conduct approved in accordance with the *Local Government Act 1993 (Tas)*.

This document also assists council to meet obligations under the Work Health and Safety Act 2012.

2. APPLICATION

This document applies to the conduct and behaviour of elected members towards each other, other council employees and community members, while performing the functions and exercising their powers of office with the council.

3. ELECTED MEMBER RESPONSIBILITIES

Elected members are obliged to uphold the law and actively contribute to a healthy working environment for colleagues, council employees and our community by adhering to high standards of behaviour whenever and wherever they may be undertaking their duties.

4. INAPPROPRIATE CONDUCT/UNREASONABLE BEHAVIOUR

While a range of behaviour and conduct are precluded by legislation, there is also behaviour that falls below misconduct but is still unreasonable, including:

- rude, loud, or insensitive remarks
- swearing, shouting, name-calling or generally ranting out loud about something
- repeatedly raising the same issue, and not letting go despite the matter being addressed
- continually making jokes about a person, or singling out one person for remarks more often than others in a group
- personal attacks, threats and intimidation



- deliberate exclusion, and
- deliberately withholding information from someone where that information is essential to their ability to perform their work effectively.

The standard of behaviour expected and to be adhered to is measured by how it is perceived by others not how it is intended. That is, inappropriate conduct / unreasonable behaviour is conduct or behaviour that a reasonable person, having regard to all the circumstances, believes or expects would be inappropriate within a workplace or work setting.

5. IMPACT OF INAPPROPRIATE CONDUCT/UNREASONABLE BEHAVIOUR

Inappropriate conduct and unreasonable behaviour has both physical and mental health impacts, including poor morale, stress, damage to reputation and disengagement.

Developing a culture where inappropriate conduct and unreasonable behaviour is not tolerated provides an environment which builds trust and confidence. In such an environment elected members, staff and our community feel safe to contribute openly and to challenge each other without fear of being embarrassed or marginalised; engendering respectful and meaningful communications.

6. ELECTED MEMBER BEHAVIOURS

Elected members will:

- Treat all people with dignity and respect.
- Recognise their individual role in contributing to and maintaining a respectful and positive culture.
- Ensure their behaviour is appropriate at all times in accordance with council's values.
- Maintain a professional and safe work environment free from unacceptable conduct.
- Take reasonable and proportionate measures to prevent and/or resolve unacceptable conduct as early as possible in a respectful and courteous way.
- Not make or cause to make a vexatious, false or frivolous complaint.
- Report any unacceptable conduct.
- Maintain confidentiality regarding any complaint raised in accordance with this Statement of Expectations, unless given explicit permission by the individual



bringing the complaint or they are legally obliged to provide information to appropriate authorities.

Examples in practice

- Take responsibility for being positive role models
- Not talk over the top of another speaker
- Be present in communications, listen to understand
- Ensure everyone has the opportunity to be heard
- Not embarrass someone if they make a mistake, or ask a question

