

Complaints Management and Investigations Policy

Policy Number:	KASC-STAT-017
Responsible Manager:	Chief Executive Officer
Legislation:	Local Government Act 2009 Local Government Regulation 2012 Crime and Corruption Act 2001 Ombudsman Act 2001 Public Interest Disclosure Act 2010 Public Records Act 2002 Public Sector Ethics Act 1994
Associated Documents:	Public Interest Disclosure Policy Code of Conduct Fraud and Corruption Control Plan Complaints About a Public Official
Approval Date:	25 January 2024

1. Purpose of this Policy

- 1.1. Kowanyama Aboriginal Shire Council (KASC) is committed to ensuring that the standards detailed in internal policies and stated in government guidelines and legislation are upheld.
 - 1.2. If a breach is identified, KASC encourages that a complaint be made so that KASC has an opportunity to remedy the breach and improve service provision, transparency, and accountability. KASC must deal with all complaints fairly, promptly, and professionally in accordance with this Policy.
 - 1.3. This document sets out KASC's policy and procedure for managing complaints, namely:
 - Part 1 - Councillor Complaints
 - Part 2 - Corrupt Conduct Complaints
 - Part 3 - Competitive Neutrality Complaints
 - Part 4 - Privacy Complaints
 - Part 5 - Public Interest Disclosures
 - Part 6 - Administrative Action Complaints
 - Part 7 - Investigations
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2. Terms and Definitions

- 2.1. In this policy:

Council: Means Kowanyama Aboriginal Shire Council

Administrative Action Complaint (AAC):	<p>As defined in the Local Government Act 2009 section 268. An AAC is a complaint about an administrative action of KASC made by an affected person. For a complaint to be an AAC, the complainant must be an affected person. An affected person is apparently directly affected by the administrative action.</p> <p>Generally, an AAC is about a KASC action that is contrary to a policy or procedure endorsed by KASC. For example:</p> <ol style="list-style-type: none"> a. Not charging in accordance with KASC's Fees and Charges; b. Not giving a dog owner notice that his or her dog has been impounded when local law says such notice would be given; c. Not emptying a rubbish bin that should have been emptied (if this happens once it might be recorded as a request for service. However, if a tenant says that her bin is rarely emptied it would be called an AAC); d. Cutting down trees in a park without public consultation in a situation where relevant policy says that consultation should have occurred; e. KASC officer entering property without necessary authority; or f. KASC not enforcing environmental nuisance requirements e.g., with respect to noise. <p>In the absence of policy or local laws, complaints about unfair actions can be considered as AACs (if the actions are not illegal) for example:</p> <ol style="list-style-type: none"> a. Only being given a few hours to put in a job application or respond to a KASC notice; b. Damaging a garden which a resident lawfully maintains on KASC owned land; or c. Providing greater or better services for some residents than for other residents (because of poor management as opposed to corruption).
Crime and Corruption Commission (CCC):	Is the Commission continued in existence under the Crime and Corruption Act 2001.
Complainant	A person lodging a complaint who is directly aggrieved by the action/ inaction complained of.
Complaint:	Is information or matter leading to allegations against a person.
Contact Details:	Should include a direct telephone number, email address and postal address to enable confidential communications.
Corruption:	See Schedule 2 (Dictionary) of the Crime and Corruption Act 2001.
Corrupt Conduct:	See Section 15 of the Crime and Corruption Act 2001.
Complaints Officer:	Is a person nominated by Chief Executive Officer to investigate the complaint.
Deal With:	<p>Means to:</p> <ol style="list-style-type: none"> a. investigate the complaint, information or matter; and b. gather evidence for— <ol style="list-style-type: none"> i. prosecutions for offences; or ii. disciplinary action; and c. refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary action; and d. start a disciplinary action; and e. take other action, including managerial action, to address the complaint in an appropriate way.
Department:	Is the department of State Development, Infrastructure, Local Government, and Planning, or its successor.
Employee Complaint:	Is a complaint regarding the way a KASC employee has behaved while conducting KASC business or representing KASC. An employee is a person who enters a contract of employment or service with KASC on a full-time, part-time, casual, or temporary basis, or a volunteer, or a contractor and/or a person prescribed by regulation.

Internal Review:	Is a review of a complaint by an authorised Complaints Officer as determined by the Chief Executive Officer
Frivolous, Trivial or Vexatious Complaint:	Is a complaint which, at the discretion of the relevant Complaints Officer, is minor, without merit, mischievous or without sufficient grounds and therefore not worthy of action.
General Enquiry:	Is a request for clarification, advice, information, or further information about KASC services, policies, or procedures. Enquiries can usually be resolved in one-off communication.
Office of the Independent Assessor (OIA):	The OIA assesses complaints to determine whether they raise a reasonable suspicion of a conduct breach, misconduct, or corrupt conduct. The OIA can receive complaints referred to it by the CCC or receive complaints directly from a member of the public. The OIA will only itself investigate allegations of misconduct and will refer alleged conduct breaches to the Local Government, and corrupt conduct to the CCC..
Public Interest Disclosure:	Is a complaint about KASC officer/s made under the Public Interest Disclosure Act 2010 (formally Whistle Blowers' Legislation).
Request for Service:	A request for KASC to act in relation to a service or product provided by KASC. A customer Request for Service may not be a complaint and should be dealt with through the customer request process, however concerns about inaction in respect of a customer request shall constitute an Administrative Action Complaint. Examples of a Request for Service include: <ul style="list-style-type: none"> a. A barking dog; b. A leaking water pipe; c. Slow service at the post office; d. An overflowing waste bin; e. A pothole; or f. Road maintenance.

3. Acronyms and Abbreviations

3.1. In this policy:

KASC:	Means Kowanyama Aboriginal Shire Council
AAC	Administrative Action Complaint
CCC	Crime and Corruption Commission
CC Act	Crime and Corruption Act 2001

4. Scope of this Policy

- 4.1. This Policy applies to all KASC employees, senior managers, CEO, volunteers, Councillors, the Deputy Mayor, the Mayor, Contractors, and agents of KASC.
- 4.2. This Policy applies to all complaints received by KASC, including:
 - Part 1 – Councillor Complaints
 - Part 2 – Corrupt Conduct Complaints
 - Part 3 – Competitive Neutrality Complaints
 - Part 4 – Privacy Complaints
 - Part 5 – Public Interest Disclosures

- Part 6 – Administrative Action Complaints

4.3. For the avoidance of doubt, only Part 7 of this Policy applies to Employee Complaints where allegations are referred for investigation.

5. Background

- 5.1. As detailed in our Code of Conduct, KASC intends to conduct its business with integrity, honesty and fairness and comply with all relevant laws, regulations, codes, and corporate standards.
- 5.2. Everyone working for, or appointed by, KASC must follow the highest standards of behaviour when dealing with customers and each other.
- 5.3. Our leaders must encourage a culture where ethical conduct is recognised, valued, and followed at all levels.
- 5.4. KASC is committed to working in accordance with the Local Government principles set out in section 4(2) of the Local Government Act 2009 and the Ethics Principles set out in section 4(2) of the Public Sector Ethics Act 1994
- 5.5. A failure of a local government employee, Councillor, contractor or agent to conduct oneself strictly in accordance with the KASC Code of Conduct, Local Government Principles and Ethics Principles, or other Council Policy or Procedure shall be thoroughly investigated by KASC and if proven, disciplinary action as available under KASC Policy, Procedure and/or Regulation, including but not limited to mandatory reporting to regulatory bodies (e.g. the Queensland Crime and Corruption Commission, the Office of the Independent Assessor or the Chief Executive Officer of the Department).

6. Complaints Process

There are six steps in the management of complaints:



Figure 1: KASC Complaints Process Steps

If a Complainant is not comfortable about reporting a Complaint to KASC, it can provide a report directly to the Queensland Crime and Corruption Commission and/or the Office of the Independent Assessor.

6.1. Step 1 – Lodging a Complaint

Complaints should be provided in writing to the “Complaints Officer.” Complaints can also be lodged through the KASC Website complaint form via <https://www.kowanyama.qld.gov.au/make-complaint>.

6.2. Step 2 – Record the Complaint

The Governance Officer has the responsibility to update the Complaints Register and ensure compliance with the Public Records Act 2002.

The Complaints Officer may review the complaint if the complaint does not involve them in fact or in perception.

6.3. Step 3 – Initial Review

The Complaints Officer will review the initial complaint and provide initial assessment whether it is a:

6.3.1. Frivolous, Trivial or Vexatious Complaints

If the complaint is deemed a Frivolous, trivial, or vexatious complaint, no further action will be taken to investigate. The complainant shall be advised that the complaint has been dismissed.

6.3.2. Request for Service

If the complaint is a request for service, it will be forwarded to the relevant Executive Manager for their review and action.

6.3.3. Employee Performance Matter

If the complaint is a performance matter of an employee, it will be forwarded to the Manager Human Resources and the employee's Executive Manager or Chief Executive Officer for further review.

If the complaint is regarding the performance of the Chief Executive Officer, it will be forwarded to the Mayor and the Manager Human Resources.

6.3.4. Conduct or Performance of Councillors

If the complaint is a complaint about the conduct or Performance of Councilors, it will be dealt with in accordance with [Part 1](#) of this policy.

6.3.5. Corrupt Conduct Complaint

If the complaint is a Corrupt Conduct Complaint, it will be dealt with in accordance with [Part 2](#) of this policy.

The CCC has provided guidelines and resources to assist KASC with assessing and recording Corrupt Conduct complaints. Those resources can be accessed from the [CCC website](#).

6.3.6. Competitive Neutrality Complaint

If the complaint is a Competitive Neutrality complaint, it will be dealt with in accordance with [Part 3](#) of this policy.

6.3.7. Privacy Complaint

If the complaint is a Privacy complaint, it will be dealt with in accordance with [Part 4](#) of this policy.

6.3.8. Public Interest Disclosure

If the complaint is a Public Interest Disclosure complaint, it will be dealt with in accordance with [Part 5](#) of this policy.

6.3.9. Administration Action Complaint

If the complaint is an Administrative Action complaint, it will be dealt with in accordance with [Part 6](#) of this policy.

6.4. Step 4 – Initial Response

Acknowledgement and the results of the initial review of the complaint will be made in writing (letter or email) or by telephone, according to the preference expressed by the complainant within ten (10) working days from receipt of the complaint to both:

- a. The Complainant (if not anonymous), and
- b. The Respondent(s).

The Initial Response will confirm the allegations, the assessed category of complaint, and advise how the complaint is to be dealt with, along with, if applicable, an indicative timeframe. In some instances where

further information is required by the Complaints Officer in order to assess the complaint, a request for further and better particulars made be made ahead of an initial response.

6.5. Step 5 – Investigation

Where an investigation is required, the Complaints Officer will determine whether KASC has sufficient resources to thoroughly investigate the complaint and if so, how it will be investigated (ie. internally or externally). Part 7 of this Policy deals with the investigations process.

If it is determined that KASC does not have sufficient resources at that time, or if there may be a perceived or actual conflict of interest for a Complaints Officer to investigate a complaint, the complaint may be investigated by a third party as appointed by the Complaints Officer.

6.6. Step 6 – Recommend and Report

The Complaints Officer (internal or appointed external third party) will provide a recommendation to the Chief Executive Officer to action. Recommendations may include those specified under the LGA, including but not limited to

- a. Admission of fault
- b. Apology
- c. Change of decision
- d. Change of policy, practices, or procedures
- e. Refund or waiver
- f. Withdrawal
- g. fine
- h. Correction of incorrect records
- i. Repair
- j. Further officer training or discipline
- k. Referral to a third party including, the Crime and Corruption Commission, Queensland Ombudsman or Police.

If the investigator assesses that there has been potential criminal or fraudulent activity (as described in KASC's Fraud and Corruption Control Plan) by the CEO, paragraph 7.4 of this Policy shall apply.

7. Part 1: Councillor Complaints

A complaint about the conduct or performance of a Councillor.

7.1. Steps 1 to 6 of the Complaints Process apply to this category of complaints.

7.2. The Complaints Officer must assess whether the conduct amounts to unsuitable meeting conduct, a conduct breach, misconduct, corrupt conduct or more suited to administrative action or other complaint category set out in this Policy.

- a. If the Complaints Officer assesses the complaint as amounting to unsuitable meeting conduct or a conduct breach, it may proceed with steps 4 – 6 herein.

7.3. If the Complaints Officer assesses that the complaint is about misconduct, the CEO must refer the complaint to the OIA. If the allegation is proven, the OIA may make application to the Councillor Conduct Tribunal to seek disciplinary action against the councillor (or otherwise dismiss the complaint).

7.4. If the Complaints Officer assesses that the complaint is about corrupt conduct under the Crime and Corruption Act 2001 (Qld), the CEO must refer the complaint to the CCC. The CCC may refer allegations to the Queensland Police Service and/or Federal Police for investigation and/or criminal prosecution.

- 7.5. Regardless of whether a complaint has been lodged for initial assessment with Council or not, where any KASC officer becomes aware of circumstances which may give rise to a potential allegation of misconduct or corrupt conduct, a timely CEO notification under paragraph 7.3 or 7.4 is mandatory.
- 7.6. If the Complaints Officer assesses that the complaint is more suited to another complaint category under this policy or another policy, the complaint shall be dealt with in accordance with that policy.
- 7.7. In addition to recording the complaint (Step 2), the Complaints Officer shall ensure that the public has access to the outcome of each complaint, including any disciplinary action or other action that was taken in relation to the complaint, unless the complaint was rejected at initial assessment stage or was assessed as a Public Interest Disclosure. This information shall be recorded on KASC's website, and the record shall be maintained by the CEO assisted by the Complaints Officer.
- 7.8. In some instances where complaints are made directly to the OIA or CCC by the Complainant, the OIA or CCC may refer an allegation of unsuitable meeting conduct and/or conduct breach back to Council for investigation and outcome advice. In such instance, steps 4, 5 and 6 will apply.
- 7.9. Council shall not be obliged to accept and/or investigate any complaint against a non-serving/ former Councillor (other than corrupt conduct).

8. Part 2: Corrupt Conduct Complaints

A complaint alleging the corrupt conduct against Council elected member, employee, contractor, or agent.

- 8.1. Steps 1, 2 and 3 of this Complaints Policy apply to this category of complaints, thereafter the Fraud and Corruption Control Plan should be followed.

9. Part 3: Competitive Neutrality Complaints

A complaint alleging a lack of competitive neutrality by a KASC business entity.

- 9.1. Steps 1 to 6 of the Complaints Process apply to this category of complaints.
- 9.2. If, without making a complaint, a person raises concerns about alleged failure of a KASC business entity to comply with the competitive neutrality principle in conducting the business activity, KASC officers shall seek to clarify and resolve the matter before the person makes a complaint. If a person brings such concerns to the attention of a KASC officer and the KASC officer is unable to resolve the matter, the KASC officer must refer the person's concerns to CEO.
- 9.3. If a person makes a competitive neutrality complaint to KASC, the CEO must give the complaint to the competition authority as soon as is practicable (as required under section 45 of the Local Government Regulation 2012).

10. Part 4: Privacy Complaints

A complaint alleging a breach of the Information Privacy Act/ Right to Information Act by KASC.

- 10.1. Steps 1 to 6 of the Complaints Process apply to this category of complaints.
- 10.2. Notice of the decision shall be given to the complainant within 45 business days of receipt of the complaint.

11. Part 5: Public Interest Disclosures

A complaint arising out of a public interest disclosure.

- 11.1. Steps 1 to 6 of the Complaints Process apply to this category of complaints.
- 11.2. The Public Interest Disclosure Policy shall apply.

12. Part 6: Administrative Action Complaints

A complaint arising out of the administration action of KASC.

12.1. Steps 1 to 6 of the Complaints Process apply to this category of complaints.

12.2. The following reporting requirements apply to this category of complaint:

12.2.1. The annual report for a financial year must contain:

- i. A statement about the local government's commitment to dealing fairly with administrative action complaints; and
- ii. A statement about how the local government has implemented its complaints management process, including an assessment of the local government's performance in resolving complaints under the process.

12.2.2. The annual report must also contain particulars of the number of the following during the financial year:

- i. Administrative action complaints made to the local government;
- ii. Administrative action complaints resolved by the local government under the complaints management process;
- iii. Administrative action complaints not resolved by the local government under the complaints management process; and
- iv. The number of administrative action complaints under paragraph (a)(iii) that were made in a previous financial year.

12.3. KASC must:

- a. record all administrative action complaints;
- b. ensure the public may inspect the complaints management process (including the related policies and procedures) at the local government's public office and on its website;
- c. ensure internal reports are occasionally provided to senior management about the operation of the complaints management process; and
- d. ensure mechanisms are in place to:
 - i. identify, analyse and respond to complaint trends;
 - ii. monitor the effectiveness of the complaints management process (e.g., by monitoring the time taken to resolve complaints).

12.4. To remove any doubt, it is declared that, in deciding if a complaint is an administrative action complaint, it is irrelevant:

- a. how quickly the complaint was resolved;
- b. to which area of a local government the complaint was made;
- c. whether the complaint was a written or verbal complaint; or
- d. whether or not the complaint was made anonymously.

13. Part 7: Investigations

13.1. Confidentiality

Complaints are confidential except as otherwise specifically provided for either in the LGA or this Policy.

13.2. Natural Justice

Any investigation must be carried out in accordance with natural justice. An overview of the principles of natural justice follows.

Natural justice or procedural fairness refers to three key principles:

- that the person being investigated has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing)
- that the investigator(s) should be objective and impartial (absence of bias)
- that any action taken is based on evidence (not suspicion or speculation).

A fair hearing means the respondent who is the subject of the suspected conduct must be told of the case against them including any evidence and be provided with an opportunity to put their case in writing.

An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.

Ensuring decisions are based on evidence requires that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material. A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.

13.3. Early Resolution

Before beginning an investigation, the investigator should consider whether the matter is appropriate for resolution prior to the investigation. This consideration can include any recommendations made by the assessor.

A matter is only appropriate for early resolution if the parties to the matter both voluntarily agree to explore early resolution. The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.

If the matter cannot be resolved, the matter will then be investigated as outlined in this Policy.

If the matter is resolved prior to investigation, the investigator will advise the Complaints Officer of this outcome.

13.4. Timeliness

The investigator will make all reasonable endeavours to complete the investigation and provide a report no more than eight weeks after the receipt of the complaint (subject to complexity).

Note: If the investigator is of the opinion that it may take longer than eight weeks to complete the investigation, the matter should be raised with Complaints Officer to seek an extension of time.

13.5. Possible Misconduct or Corrupt Conduct

If during the course of an investigation the investigator obtains information which indicates potential misconduct, the investigator must cease the investigation and advise the CEO. The CEO will then notify the Office of Independent Assessor of the possible misconduct.

If during the course of an investigation the investigator obtains information which indicates potential corrupt conduct, the investigator must cease the investigation and advise the CEO. The CEO will then notify the Queensland Crime and Corruption Commission of the possible corrupt conduct.

13.6. Completion of Investigation

On the completion of an investigation, the investigator will provide a report to the Complaints Officer as appropriate:

- the investigation process
- any witnesses interviewed
- documents or other evidence obtained

- a statement of the relevant facts ascertained
- confirmation that the respondent(s) has been provided with an opportunity to respond to the complaint and the evidence gathered
- the investigation findings
- a statement of any relevant previous disciplinary history
- any recommendations about dealing with the conduct in accordance with the relevant Acts
- a record of the investigation costs.

If a Conduct of Performance of Councillors Complaint, the Council (with the exception of the councillor(s) the subject of the investigation and the complainant, if another councillor) will consider the findings and recommendations of the investigator's report and decide whether the councillor has engaged in inappropriate conduct and, if so, what action it will take under the LGA.

The CEO is also required to ensure the details are entered into the Complaints Register.

If there is a risk to the health and safety of the complainant, under s 254J of the LGR the council may resolve that the meeting be closed to the public for the councillors to consider the investigation report and any recommendations. In accordance with s254J(6) of the LGR, the resolution in relation to what action is to be taken as a result of the investigation must be made after the meeting has been re-opened to the public and the decision recorded in the meeting minutes.

13.7. Disciplinary Action

Following an investigation, disciplinary action may be recommended. In such instance, such disciplinary action must be administered strictly in accordance with the provisions of the LGA and/or any other applicable act (e.g., Industrial Relations Act 2016).

13.8. Investigation Costs

Council shall promptly pay the reasonable investigation costs of third-party investigators, including but not limited to the following:

- the president of the Tribunal in undertaking an investigation for council
- an independent investigator engaged on behalf of, or by the Tribunal
- an independent investigator engaged on behalf of the local government
- travel where the investigator needed to travel to undertake the investigation, or to interview witnesses
- seeking legal advice
- engaging an expert.

14. Reprisal Action

It is a criminal offence for any Council officer or councillor to take reprisal action against a complainant-. Reprisal action is prohibited under this Policy.

15. Policy Review

15.1. This Policy is to be reviewed in accordance with the Policy Framework.

15.2. Kowanyama Aboriginal Shire Council reserves the right to vary, replace, or terminate this policy from time to time.

16. Approval

- 16.1. This policy was duly authorised by Council on 25 January 2024 as Kowanyama Aboriginal Shire Council's Complaints Management and Investigations Policy and shall hereby supersede any previous policies of the same intent.