



Dispute Resolution Policy

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1. POLICY STATEMENTS

- 1.1 The purpose of this policy is to establish the principles and procedures for dispute resolution with, and between, councillors before a Code of Conduct complaint is lodged in accordance with Section 28JA of the *Local Government Act 1993* and the *Local Government (General) Regulations 2015*.

2. LEGISLATIVE CONTEXT

- 2.1 Section 28JA of the *Local Government Act 1993* (the Act) requires Council adopt a dispute resolution policy. The policy is to specify the processes to be followed if there is a dispute as to matters that may be the subject of a code of conduct complaint made under section 28V of the Act. As required by section 28JA and regulation 30A of the *Local Government (General) Regulations 2015* (the Regulations) the policy is to contain the following information and include the processes to be followed in respect of those matters:

2.1.1 details of how the policy is to be used to resolve disputes, including:

- i. the matters covered by the policy;
- ii. the methods of dispute resolution available under the policy;
- iii. the circumstances in which the available methods of dispute resolution may be used;
- iv. the circumstances in which the council may engage external parties to assist or participate in the dispute resolution; and (v) when mediation may be considered suitable for resolving a dispute; and
- v. the circumstances in which the dispute resolution process may not be appropriate.

2.1.2 details of how the policy is accessible to complainants, including:

- i. the form and manner in which a complaint must be lodged;
- ii. the costs associated with lodging a complaint;

2.1.3 details of how the policy is equitable for both complainants and respondents, including –

- i. the process that is to be followed when resolving, or attempting to resolve, a dispute under the policy;
- ii. the anticipated timeframe for a dispute resolution process;
- iii. the confidentiality requirements that are applicable to a dispute resolution process;
- iv. the process for dealing with conflicts of interest relevant to a dispute resolution process; and
- v. the roles and responsibilities of the parties to a dispute;
- vi. how the policy is informed by, and supports, gender-responsive practices and principles; and
- vii. the processes and procedures in relation to the use of advocates and support people for a party to a dispute.

2.1.4 details of how the processes of, and decision-making under, the policy are transparent, including the procedure for documenting the outcome of the dispute resolution process.

- 2.2 Regulation 30A(3) of the Regulations also provides that a party to a dispute to which a dispute resolution policy applies must not be represented in the dispute resolution process for that dispute by an advocate, or support person, who is an Australian lawyer.

- 2.3 Section 28V of the Act provides that a Code of Conduct complaint is to:
- 2.3.1 Contain details of all efforts made by the complainant to resolve the issue that is the subject of the complaint;
 - 2.3.2 If the complainant completed the Council's dispute resolution process in respect of the complaint, contain the details of the outcome of that process and include the reasons why the complainant is not satisfied with that outcome; and
 - 2.3.3 If the complainant did not commence or complete the Council's dispute resolution process in respect of the complaint, contain details of the attempts made by the complainant, as part of the attempted dispute resolution process, to resolve the issue that is the subject of the complaint or why the complainant believes that the dispute resolution process is not appropriate in respect of the complaint.

3. DEFINITIONS

- 3.1 **"Chief Executive Officer"** means the General Manager appointed pursuant to section 61 of the Local Government Act 1993.
- 3.2 **"Code of Conduct"** means the Code of Conduct relating to the conduct of Councillors made under section 28R of the *Local Government Act 1993*.
- 3.3 **"Code of Conduct complaint"** means a complaint made under section 28V of the *Local Government Act 1993* against a Councillor in relation to the contravention by the Councillor of the Code of Conduct.
- 3.4 **"Complainant"** means a person lodging a Dispute Resolution Form in accordance with this Policy.
- 3.5 **"Council Employee"** means an employee of the Council appointed pursuant to section 63 of the *Local Government Act 1993*.
- 3.6 **"Councillor"** means the Mayor, Deputy Mayor and a Councillor within the meaning of the *Local Government Act 1993*.
- 3.7 **"Dispute Resolution Advisor"** means the person appointed under clause 5.9 of this Policy.
- 3.8 **"Dispute Resolution Form"** means the form contained in Appendix A to this Policy.
- 3.9 **"Dispute Resolution Officer"** means the Council Employee appointed under clause 5.3 of this Policy.
- 3.10 **"Respondent Councillor"** means the Councillor identified in a lodged Dispute Resolution Form.

4. SCOPE

- 4.1 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.
 - 4.1.1 Relationship to the Code of Conduct
 - i. This policy is to support the resolution of disputes with, and between, councillors before a Code of Conduct complaint is lodged.
 - ii. 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.

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

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

4.1.2 When this policy may not be appropriate

- i. 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.
- ii. 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.

5. PRINCIPLES

5.1 Procedural Fairness

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

5.1.2 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; and
- iii. the roles in the process will support procedural fairness.

5.2 Roles

5.2.1 Mayor

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

5.2.2 Chief Executive Officer

The Chief Executive Officer will appoint a Dispute Resolution Officer to undertake the roles and functions as set out in this policy. The Chief Executive Officer is to identify a panel of Dispute Resolution Advisors for use under this Policy.

5.2.3 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.

5.2.4 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.

5.2.5 Support person

The support person is a person who may support the complainant or respondent as part of the dispute resolution process.

5.3 Personal and shared responsibility

5.3.1 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.

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

5.3.3 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.

5.4 Confidentiality

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

5.4.2 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.

5.5 Accessibility

5.5.1 The Chief Executive Officer will ensure that information on how to lodge a dispute, including this Policy, is available via its customer service centres 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.

5.6 Equitable access

5.6.1 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:

- i. 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.
- ii. Providing a safe environment through confidentiality and neutral party lodgement.
- iii. Requiring Dispute Resolution Advisors with appropriate training for inclusiveness, gender responsiveness and trauma.

6. PROCEDURES

6.1 Lodging and withdrawing disputes

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

6.1.2 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 that the behaviour relates to.

6.1.3 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.

6.1.4 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.

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

6.1.6 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.

6.2 Notice to complainant

- 6.2.1 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.

6.3 Notice to respondent

- 6.3.1 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.

6.4 Appointment of Dispute Resolution Advisor

- 6.4.1 The Dispute Resolution Officer is to engage a Dispute Resolution Advisor (Advisor) to conduct dispute resolution. The Advisor must:
- i. not be an employee of Council
 - ii. not have any direct relationship to the parties
 - iii. must be objective and impartial, with no real or perceived bias
 - iv. must be able to demonstrate that their practice is gender and trauma aware
 - v. 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.
- 6.4.2 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.
- 6.4.3 The Dispute Resolution Officer will provide written notice of the appointment of the Advisor to the complainant and the respondent.
- 6.4.4 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.
- 6.4.5 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.

6.5 Dispute resolution process

6.5.1 Commencement

- i. 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.
- ii. 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.
- iii. 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
- iv. 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.

6.5.2 Process

- i. 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.
- ii. Resolutions may include, but not be limited to:
 - a commitment to changing behaviours;
 - a commitment to cease the behaviour;
 - a commitment to apologise;
 - counselling; and/or
 - undertaking professional development.
- iii. The Advisor may also make a recommendation to the Council that it review a policy, procedure, or other document related to the dispute.
- iv. The parties must represent themselves.
- v. 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.

6.5.3 Information requests

- i. 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.

- ii. 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.
- iii. 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.

6.6 Order of disputes

6.6.1 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.

6.7 Support person

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

6.7.2 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.

6.7.3 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.

6.7.4 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.

7. REPORTING OBLIGATIONS

7.1 Report from Dispute Resolution Advisor

7.1.1 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.

7.2 Council

7.2.1 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.

8. IMPLEMENTATION AND COMMUNICATIONS

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

8.2 This Policy will be made available to all members of the public via council's website.

Appendix A - Dispute Resolution Form

Instructions for Use

This form is for lodging a dispute under Kingborough Council's Dispute Resolution Policy 1.25.

This form has been provided to ensure that you include all the information required under the *Dispute Resolution Policy 1.25* 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 the Kingborough Council within two months of the alleged behaviour by the councillor or councillors.
- Pay the prescribed fee for lodging a complaint to the relevant 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.

• Contact Details (of person lodging the dispute – the complainant)	
Name:	Telephone (mobile):
Address (Residential):	Telephone (work):
Address (Postal):	Telephone (home):
Email address:	Preferred mode of contact:
• Summary of dispute	
Name of councillor who you are in dispute with (the respondent):	
Part(s) of the Code of Conduct that you believe have been infringed:	
Date(s) of incident(s):	
Location(s) of incident(s):	

Details of the dispute (FURTHER INFORMATION MAY BE ATTACHED)

Witnesses (INCLUDE ANYONE WITH KNOWLEDGE OF WHAT HAPPENED)

• **Have you previously made a dispute about this matter?**

Yes NO

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

<ul style="list-style-type: none">• Have you made any efforts to resolve the dispute directly with the respondent?• (Note: this section is compulsory. Incomplete forms will be returned)	
<input type="checkbox"/> Yes Briefly describe the efforts that you have made (Note: You must complete this section)	<input type="checkbox"/> No Include a brief statement explaining why you have not made any efforts to resolve the issue with the respondent. <ul style="list-style-type: none">••••••••••
<ul style="list-style-type: none">• Desired outcome of dispute	
Please explain what you would like to happen because of lodging this dispute.	
Please sign and date	
Signature:	
Date:	