

Internal Ombudsman

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This policy follows the establishment of an Internal Ombudsman at Council, and outlines the purpose and responsibilities of the Internal Ombudsman	July 2018
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1. PURPOSE

This policy outlines the purpose and responsibilities of the Internal Ombudsman. The Internal Ombudsman is Council's focal point for members of the community, staff, Councillors and other interested parties, should they have a complaint about suspected corruption, misconduct, maladministration by Council staff or Councillors; or if there is a perception that Council has acted in an unethical or partial manner.

2. RELATED LEGISLATION AND POLICIES

- *Public Interest Disclosures Act 1994 (PID Act)*
- *Independent Commission Against Corruption Act 1988 (ICAC Act)*
- *Privacy and Personal Information Protection Act 1998*
- *Government Information (Public Access) Act 2009 (GIPA Act)*
- *Local Government Act 1993*
- *Ombudsman Act 1974*
- *Local Government (State) Award 2017*
- *Dubbo Regional Councils Complaints Management Policy*

3. DEFINITIONS

To assist interpretation of this Policy, the following definitions apply:

Term	Definition
Affected person	Any Council officer who is the subject of a complaint
Corruption / Corrupt conduct	Within the meaning of section 8 of the <i>Independent Commission Against Corruption Act 1988</i> .
CEO	Chief Executive Manager
Executive Manager	Executive Manager – Governance and Internal Control
Internal Ombudsman	The Internal Ombudsman, including any personnel conducting activities associated with, or on behalf of, the Internal Ombudsman.
Maladministration	As per the definition in the <i>Public Interest Disclosures Act 1994</i> .
Procedural Fairness	The rules or principles of natural justice, developed to ensure that decision making is fair and reasonable.

4. APPOINTMENT

The Internal Ombudsman will be appointed following a merit based recruitment process.

4.1 SCOPE

This Policy applies to Dubbo Regional Council and to anyone who refers a complaint to Council's Internal Ombudsman. All Council officials are to cooperate fully with the Internal Ombudsman during the conduct of any investigation being carried out, and must comply with any reasonable request of the Internal Ombudsman or associated staff in connection with an investigation.

4.2 OBJECTIVES

The Internal Ombudsman will independently assess and investigate complaints and the administrative processes of the Council or Council staff. The Internal Ombudsman is responsible for the development and documentation of processes associated with the investigation and reporting of each matter.

Major functions performed by the Internal Ombudsman include:

- Ensuring complaints in relation to Council or Council staff are impartially and objectively managed and investigated;
- Progressively examining the way Council operates and making recommendations to improve accountability, transparency and fairness.
- Providing specialist advice, training and education to staff and management on ethical decision making, how to prevent and react to corrupt conduct, misconduct and/or other unlawful or unethical behaviour.
- Providing education, training and ad-hoc or written probity advice to staff; Councillors; or Council delegates.

4.3 AUTHORITY

In the event that a complaint may be received regarding the Mayor or the Chief Executive Officer, the Internal Ombudsman is Council's Complaints Coordinator and has the delegation to handle such complaints in accordance with Office of Local Government's (OLG) Conduct Review Process. The Internal Ombudsman can also refer complaints regarding the Mayor and CEO for investigation or review to Council's Panel of Conduct Reviewers.

The Internal Ombudsman is Council's designated:

- Disclosures Coordinator dealing with public interest disclosures in accordance with the Public Interest Disclosures Act 1994
- Complaints Coordinator in accordance with Council's Code of Conduct Procedures
- Privacy Officer

The Internal Ombudsman cannot:

- act as a community advocate;
- influence, overturn or amend Council's operational and planning decisions; or,
- support any organisation or body, including Dubbo Regional Council.

4.4 JURISDICTION

The Internal Ombudsman either, on receiving a complaint, or on the Internal Ombudsman's own initiative, may investigate a decision or recommendation, an act done or omitted, a procedure or process relating to a matter of administration or conduct of Council staff; without the need for any prior consent of any person or body against whom the complaint is made.

Council employees shall abide by the Internal Ombudsman's recommendations, once a recommendation has been accepted by the Chief Executive Officer. Nothing in these guidelines prevents Council officers from accessing their lawful rights to appeal under relevant legislation.

In the case of complaints made against specific Council officers, the Internal Ombudsman will inform them of the nature of the allegations and give such person(s) an opportunity to answer any allegations.

The only circumstance where staff won't be informed of allegations against them is if such allegations have been found to be unsubstantiated, if the Internal Ombudsman has determined not to investigate the matter for one of the reasons stated below, or if the complaint is frivolous, vexatious or not made in good faith.

4.5 REFUSAL TO INVESTIGATE

The Internal Ombudsman may refuse to investigate, or cease to investigate a matter where:

- a) a remedy or right of appeal, deemed adequate by the Internal Ombudsman, already exists, whether or not the complainant uses the remedy or right of appeal.
- b) the complaint, in the opinion of the Internal Ombudsman, is frivolous, vexatious or not made in good faith, or concerns a trivial matter;
- c) the complaint relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than one year before making a complaint to the Internal Ombudsman;
- d) the complaint relates to a decision of the Council;
- e) the complaint relates to actions or conduct of the Chief Executive Officer, Mayor and/or Councillors, other than in an administrative capacity;
- f) the complaint relates to decisions of a standing committee of the Council;
- g) the complaint pertains to conduct relating to a matter before a court or a tribunal;
- h) the complaint relates to matters under investigation by the:
 - o Office of Local Government (OLG)
 - o Independent Commission Against Corruption (ICAC)
 - o NSW Ombudsman;
 - o NSW Police
 - o Information and Privacy Commission (IPC)
- i) the complaint relates to the actions or conduct of private individuals, unless such persons were Council officers or Councillors at the time such conduct was alleged;
- j) senior Council staff have not had adequate opportunity to address the complaint;
- k) there is insufficient information available; or,
- l) the complainant declines or refuses to provide further information and/or there are threats made against Council, or an employee or officer of the Council.

5. CONFIDENTIALITY

The Internal Ombudsman, every person carrying out duties in connection to an investigation conducted by the Internal Ombudsman, and any person who becomes aware of an investigation being carried out by the office of the Internal Ombudsman, shall maintain confidentiality in respect of all matters that come to their knowledge.

The identity or personal information of any complainant will not be disclosed without their consent. However, there may be situations where this is not possible or appropriate for the Internal Ombudsman i.e. in relation to procedural fairness or a conciliation setting; or if the Internal Ombudsman deems necessary to investigate the matter effectively. If this is the case, the Internal Ombudsman will confer with the complainant to ensure they are supported and protected from any risk of reprisal, undue publicity or embarrassment.

Investigations and reports by the Internal Ombudsman are confidential. They will only be made public when it is considered to be in the public interest or exceptional circumstances apply, and with the endorsement of the CEO.

6 COMPLAINTS

The role of the Internal Ombudsman does not absolve individual Directors, Managers or Team Leaders of their responsibilities in accordance with the Complaints Management Policy. Unresolved complaints initially managed as Tier 1 and 2 matters considered for Tier 3 escalation to the Internal Ombudsman, require every effort to be made in an attempt to resolve the matter in accordance with Council's complaint management policy.

6.1 REQUIREMENTS

On referring a complaint to the Internal Ombudsman for review, the following will need to be provided;

- full circumstances of the complaint in writing
- all documentation and available evidence for review
- documented attempts made by Council to resolve the complaint
- reasons for escalation to the Internal Ombudsman.

Following a review of the matter, the Internal Ombudsman may;

- provide an independent assessment, advice or recommendation;
- provide general assistance; or,
- accept transfer of the complaint

6.2 REFERRAL BY COUNCIL

Council may refer to the Internal Ombudsman, via the Chief Executive Officer, a matter that is before Council for review. The Internal Ombudsman shall, subject to any special directions of Council, review the matter within their jurisdiction and provide a report to Council.

6.3 COMPLAINT REQUIREMENTS

Complaints to the Internal Ombudsman, must be made in writing, outlining the full circumstances of the complaint. Specific details should be provided including a full description, dates the incident occurred/s, names or positions of persons involved, and any documentation which can support/evidence the allegations made.

When the Internal Ombudsman accepts transfer of a complaint, the following service standards will apply;

- Within five working days the Internal Ombudsman will confirm receipt of the complaint (with the complainant) and indicate whether preliminary inquiries will be undertaken.
- The Internal Ombudsman will provide feedback on preliminary inquiries to the complainant within 10 working days of receiving the complaint.
- If preliminary inquiries reveal evidence supporting the complaint, the matter may then progress to an investigation. The Internal Ombudsman will keep the complainant updated throughout the investigation process.
- At the conclusion of the investigation the complainant will be advised in writing of the outcome of the complaint, including any findings and recommendations made.

6.4 EXTERNAL AGENCIES

Lodging a complaint with Council's Internal Ombudsman does not preclude lodgement with external oversight and law enforcement agencies such as the police, ICAC, NSW Ombudsman, Office of Local Government or the Information and Privacy Commission. However, if a matter has already been or is referred to and/or investigated by one of the external agencies, the Internal Ombudsman may refuse or cease to investigate the matter, or postpone determination until the outcome of an external investigation is concluded.

The Internal Ombudsman may refer a matter to the ICAC, should the matter indicate that there are reasonable grounds to suspect that corrupt conduct has taken or may be taking place, and may liaise with the ICAC regarding the progress of an investigation which may ensue.

6.5 REPORTING

The Internal Ombudsman shall report directly to the Executive Manager – Governance and Internal Control. The Executive Manager / Chief Executive Officer shall receive and consider recommendations from the Internal Ombudsman and their implementation within Council. The exception to this is when the Executive Manager and / or Chief Executive Officer has a conflict of interest in a matter, which he or she will be expected to disclose, at the earliest practicable opportunity after having been made aware of a matter. On such an occasion, the determination shall then be made by the Mayor.

If both the Chief Executive Officer and Mayor have, or are perceived to have, a conflict of interest then the matter shall be referred directly to the Deputy Mayor to address and determine the recommendations.

Once an investigation is finalised, the findings and recommendations will be reported to the complainant in writing at such a time the Ombudsman considers appropriate.

7. REFUSAL TO INVESTIGATE

7.1 COMPLAINTS THAT ARE FRIVOLOUS, VEXATIOUS, TRIVIAL OR NOT MADE IN GOOD FAITH

Where the Internal Ombudsman has declined to investigate a matter on the basis that it is frivolous, vexatious, trivial or not made in good faith, and the complainant continues to contact Council in relation to that matter, the Internal Ombudsman may provide recommendation to the Executive Manager / Chief Executive Officer for the complainant to be managed in accordance with the Unreasonable Complaint Conduct (UCC) Policy.

7.2 REPORT OF DECISION NOT TO INVESTIGATE

Where the Internal Ombudsman decides not to investigate, or to cease to investigate a complaint, the Internal Ombudsman will, in writing, inform the complainant and any other interested person of the decision, and reasons for the decision.

8. ASSESSMENT

8.1 ACCESS TO INFORMATION

The Internal Ombudsman will have access to all relevant information upon which to conduct a fair investigation, and will not seek to access any irrelevant information. The actions of the Internal Ombudsman must be accountable and in accordance with the principles of natural justice and procedural fairness.

The Internal Ombudsman may enter and inspect any Council (business) premises and engage in conversations with persons; obtain or create records; make requests for information or records; and remove information or records from Council premises.

8.2 INVESTIGATIONS

An investigation by the Internal Ombudsman shall be conducted in private. Employees retain the right to have a support person (mutually agreed with the Internal Ombudsman) present during any conversation with the Internal Ombudsman. The Internal Ombudsman may determine that it is not appropriate for a certain person to be present if they are implicated in a matter under investigation or otherwise might be compromised.

No simultaneous or parallel investigations are to be conducted into matters being investigated by the Internal Ombudsman.

The Internal Ombudsman may hold meetings, obtain information from any person and make such inquiries as the Internal Ombudsman considers necessary.

8.3 BREACH AND PENALTY

A staff member who wilfully and without justification:

- a) obstructs, hinders or resists the Internal Ombudsman or any other person in the performance of the functions and duties of the Internal Ombudsman under these guidelines;
- b) fails to comply with a reasonable request of the Internal Ombudsman or an employee or delegate of the Internal Ombudsman; or
- c) makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under these guidelines, will be guilty of a breach of these guidelines and may be subject to disciplinary action in accordance with Council's Code of Conduct and/or other relevant policies.

In such a case, the Internal Ombudsman will report such matters to the Chief Executive Officer in the final investigation report. The internal Ombudsman may make recommendations as to what action should be taken. The Chief Executive Officer will consider such recommendations and make a determination as to what action is to be taken. The Chief Executive Officer's determination will be in accordance with relevant HR policies.

8.4 OPPORTUNITY TO RESPOND

Before making public a report that may damage the reputation of any person, the Internal Ombudsman will:

- Provide the draft or proposed report to the person or persons who are the subject of the Internal Ombudsman's report or identified in the report;
- Allow the person, or persons, to confirm the accuracy of relevant facts or matters in the draft or proposed report, or to indicate where, and in what respects, they regard any material as erroneous;
- Give the opportunity to the person or persons the subject of the report to provide a written response to the Internal Ombudsman's report and that response is to be made public with the report subject to the provisions of the relevant legislation such as the *Privacy and Personal Information Protection Act 1988*.

The Internal Ombudsman's final report shall contain no new material that has not been provided to the person or persons, subject of the report, allowing them to make a written submission under this clause.

8.5 OPPORTUNITY TO MAKE REPRESENTATION

Where it appears to the Internal Ombudsman that there may be sufficient grounds for making a report that may adversely affect the Council or a person, the Internal Ombudsman may request representations be made by the Executive Manager / Chief Executive Officer or any other person before the report is finalised. The request for this representation is at the discretion of the Internal Ombudsman.

9. OUTCOMES

In making a report, the Internal Ombudsman may recommend to the Executive Manager / Chief Executive Officer, that:

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- a) disciplinary action be considered;
 - b) an omission or delay be rectified;
 - c) a decision or recommendation by an employee or employees of the Council be revoked or varied;
 - d) a matter be referred to the Chief Executive Officer for further consideration;
 - e) reasons be given by an employee or employees of the Council for a decision;
 - f) a practice or procedure be altered;
 - g) a statute, regulation or by-law be reconsidered;
 - h) Council pay compensation to or otherwise recompense a complainant;
 - i) Council provide a particular service;
 - j) Council amend, or not impose, a charge or condition in relation to a particular service, application or consent;
 - k) Council supply a good or service or undertake any necessary corrective or other work to resolve a complaint;
 - l) Council make an appropriate correction, deletion or addition to a record; and/or,
 - m) such other steps are taken as the Internal Ombudsman considers reasonable and just.

It is the Chief Executive Officer's responsibility to address recommendations made by the Internal Ombudsman and consider their implementation by Council. The exception to this is when a conflict of interest may occur by referring the matter to the Chief Executive Officer, in which case, the matter is referred to the Mayor. If, for some reason, both the Chief Executive Officer and the Mayor are perceived to have a conflict of interest, then the matter is referred to the Deputy Mayor to address the recommendation(s).

Any report on a complaint that involves the Mayor, Chief Executive Officer or a Councillor, in relation to an alleged breach of Council's Code of Conduct, shall be treated in accordance with the *Procedures for the Administration of the Dubbo Regional Council Code of Conduct*.

Council is required to record each recommendation made by the Internal Ombudsman; take appropriate action; and record what action has been taken by Council, by whom and when, for each recommendation made by the Internal Ombudsman.

Where a recommendation is made by the Internal Ombudsman, the Internal Ombudsman may request information regarding Council's action on previous report recommendations. If within a reasonable time after a request is made, no action is taken that is considered reasonable or appropriate, the Internal Ombudsman may escalate the matter for review.

9.1 REVIEW

Once an investigation has been concluded, any executive decisions in relation to findings and recommendations of the Internal Ombudsman require the approval of the CEO or the Mayor (in the case of any findings or recommendations against the CEO), or Council.