

## **Internal Ombudsman Policy**

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**Responsible Position** Internal Ombudsman

**Branch** Governance & Internal Control

**Division** Executive Services

**Version** 1.0

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<b>Document Revision History</b>	
<b>Description</b>	<b>Date</b>
This policy follows the establishment of an Internal Ombudsman at Council, and outlines the purpose and responsibilities of the Internal Ombudsman	July 2018
<b>Notes</b>	

## 1. PURPOSE

This policy is to be considered as an addition to Council's Complaints Management Policy and serves to outline the purpose and responsibilities of the Internal Ombudsman.

### 1.1 BACKGROUND

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.

The Internal Ombudsman will also independently assess and investigate the administrative processes of the Council or Council staff. In the event that a complaint may be received regarding the Mayor, Councillors 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.

Other major functions performed by the Internal Ombudsman include:

- Ensuring complaints in relation to Council or Council staff are impartially and objectively managed and investigated, in accordance with best practice, natural justice and the principles of procedural fairness.
- 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.
- Provide ad-hoc or written probity advice to staff; Councillors; or Council delegates.

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.

### 1.2 RELATED LEGISLATION

- *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.*
- *Local Government (State) Award 2017*

### 1.3 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.

### 1.4 DEFINITIONS

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

<b>Term</b>	<b>Definition</b>
Affected person	Any Council officer who the subject of a complaint
Code of Conduct	Council's adopted Code of Conduct
Confidentiality	The characteristic of information being disclosed only to authorised or entitled personnel or organisations in an authorised manner.
Corruption / Corrupt conduct	Within the meaning of section 8 of the <i>Independent Commission Against Corruption Act 1988</i> .
Council	Dubbo Regional Council.
Executive Manager	Executive Manager – Governance and Internal Control
Expert	A person appropriately qualified in a particular area and available to provide advice to the Internal Ombudsman as required.
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.

### 1.5 APPOINTMENT OF COUNCIL'S INTERNAL OMBUDSMAN

The Chief Executive Officer shall appoint a suitably qualified person to carry out the position in accordance with the duties required.

## **1.6 REPORTING**

The Internal Ombudsman shall report directly to the Executive Manager – Governance and Internal Control. The Executive Manager / Chief Executive Officer shall receive and determine recommendations and consider 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.

## **1.7 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.

## **1.8 PROCESS**

The Internal Ombudsman is responsible for the development and documentation of processes associated with the investigation and reporting of each matter.

## **1.9 JURISDICTION**

The Internal Ombudsman may, on receiving a complaint, or on the Internal Ombudsman's own initiative, investigate;

- a) a decision or recommendation;
- b) an act done or omitted; or
- c) a procedure;

relating to a matter of administration or conduct of Council staff.

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.

The Internal Ombudsman shall have the right to investigate any complaint or initiate any investigation without the need for any prior consent of any person or body against whom the complaint is made.

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.

## **1.10 INTERNAL REFERRALS TO INTERNAL OMBUDSMAN**

**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.**

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

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

- Within five working days the Internal Ombudsman will acknowledge 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.

## **1.11 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.

## **1.12 REFERRAL BY COUNCIL**

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

## **1.13 QUESTIONS AS TO JURISDICTION**

Where a question arises as to the jurisdiction of the Internal Ombudsman to investigate a matter, the Internal Ombudsman may discuss the matter with the Executive Manager / Chief Executive Officer.

## **1.14 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:
  - i Office of Local Government (OLG)
  - ii Independent Commission Against Corruption (ICAC)
  - iii NSW Ombudsman;
  - iv NSW Police
  - v 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.

#### **1.15 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.

#### **1.16 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.

#### **1.17 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.

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.

### **1.18 RIGHT TO SILENCE**

All staff have a right to remain silent during investigations being conducted by the Internal Ombudsman.

### **1.19 INVESTIGATIONS TO BE CONDUCTED IN PRIVATE**

An investigation by the Internal Ombudsman shall be conducted in private.

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

### **1.20 MEETINGS AND RIGHT TO BE HEARD**

The Internal Ombudsman may hold meetings, obtain information from any person and make such inquiries as the Internal Ombudsman considers necessary; and no person is entitled, as of right, to be heard by the Internal Ombudsman except in their own defence.

### **1.21 REPORT ON INVESTIGATION**

Where, after completing an investigation, the Internal Ombudsman concludes, on the basis of an objective assessment, that a decision, recommendation, act, omission or procedure of an employee or employees of the Council:

- a) is contrary to law;
- b) is unjust, oppressive or improperly discriminatory;
- c) is based on a rule of law or practice that is unjust, oppressive or improperly discriminatory;
- d) is based in whole or in part on a mistake of law or fact or on an irrelevant ground or consideration;
- e) is related to the application of arbitrary, unreasonable or unfair procedure;
- f) was made without providing adequate reasons; or
- g) involves maladministration or misconduct of any kind,



the Internal Ombudsman shall provide a confidential written report, with reasons, to the Executive Manager / Chief Executive Officer.

## **1.22 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.

## **1.23 NATURE OF RECOMMENDATIONS**

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

- a) a matter be referred to the Chief Executive Officer for further consideration;
- b) disciplinary action be considered;
- c) an omission or delay be rectified;
- d) a decision or recommendation by an employee or employees of the Council be revoked or varied;
- 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 Model Code of Conduct for Local Councils in NSW*.

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.

## **1.24 REPORT TO COMPLAINANT**

Where an investigation is made of a complaint, the Internal Ombudsman shall report the result of the investigation to the complainant, in such manner and at such time as the Internal Ombudsman considers appropriate.

## **1.25 PUBLICATION OF REPORTS**

Where the Internal Ombudsman considers it to be in the public interest, or in the interest of a person or Council, the Internal Ombudsman may, with the endorsement of the Chief Executive Officer, make public a report relating generally to the performance of duties under these guidelines or to a matter investigated by the Internal Ombudsman, whether or not the matters in the report are the subject of a report to Council under these guidelines.

## **1.26 REPORTS TO BE MADE PUBLIC**

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

- a) 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;
- b) Invite 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;
- c) 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.

## **1.27 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.



### What does the Internal Ombudsman do?

The Internal Ombudsman is Council's focal point for members of the community, staff, Councillors (via CEO) 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.

### The Internal Ombudsman will:

- independently assess administrative processes of the Council or Council staff
- investigate complaints that meet the assessment criteria of a Public Interest Disclosure (allegations such as corrupt conduct, serious misconduct, maladministration, contravention of the *Government Information (Public Access) Act 2009*, or Local Government pecuniary interest contravention).
- ensure complaints in relation to Council or Council staff are impartially and objectively managed and investigated, in accordance with best practice, natural justice and the principles of procedural fairness.
- progressively examine the way Council operates and make 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.
- Provide ad-hoc or written probity advice to staff; Councillors; or Council delegates.

In summary, Internal Ombudsman has three core functions – prevention, education and investigation.

### 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.

### How do I make a complaint to the Internal Ombudsman?

Before making a complaint you should take **all reasonable steps** to resolve the matter with Council (via Council's Complaints Management Policy) and allow a reasonable timeframe for a response to your concern or complaint. If after this period the matter has not been reasonably or appropriately resolved by Council, you may forward your complaint in writing to the Internal Ombudsman. Before lodging a complaint with the Internal Ombudsman, it is useful to ask yourself the following questions:

- **What has Council or Council staff done wrong in this situation?**
- **Has Council or Council staff breached a law or policy which they have a duty to uphold?**
- **Has a process been applied unfairly or discriminatively?**
- **Has a Council officer done something that is against the law or could be a breach of Council's Code of Conduct?**

Complaints can be made to the Internal Ombudsman in writing, marked for the attention of the Internal Ombudsman via Post to PO Box 81, Dubbo, NSW 2830; via email ([ombudsman@dubbo.nsw.gov.au](mailto:ombudsman@dubbo.nsw.gov.au)), or completion of an online pro forma on Council's website: <https://www.dubbo.nsw.gov.au/I-Want-To/Contact-Council/contact-the-internal-ombudsman>,

### **What can the Internal Ombudsman investigate?**

The Internal Ombudsman can investigate or refer for investigation matters including:

- Council administrative processes
- Any failure to comply with Council's Code of Conduct, policies or procedures
- Public Interest Disclosure allegations (poor administration, maladministration, corruption, or other alleged improper conduct by Council or Council Officials)
- Anonymous complaints if sufficient details are provided
- Matters referred to the Internal Ombudsman by the Chief Executive Officer or external agencies including but not limited to the following agencies: The NSW Independent Commission Against Corruption (ICAC), the NSW Ombudsman or Office of Local Government

### **What can't the internal Ombudsman investigate?**

The Internal Ombudsman is unable to investigate matters that:

- Do not concern Council's functions or business
- Require initial referral to external agencies such as NSW ICAC, NSW Office of Local Government, NSW Ombudsman or the NSW Police Force.
- Where adequate details of the complaint are not available
- Complaints that are frivolous, vexatious, not made in good faith, or are trivial in nature

### **What does an investigation involve?**

A review and assessment of the matter, where consideration will be given to the seriousness, merit and priority. Following this:

- The complainant will have their complaint acknowledged within 5 business days
- Available records and information will be obtained and reviewed in relation to the issues raised
- Interviews with the relevant person(s) will be conducted

- A confidential report to the Chief Executive Officer will be prepared. This will include a review of the evidence available, determinations on the complaint and any recommendations on the matters investigated.
- A letter will be sent to the complainant detailing the results of the investigation, and any actions, if appropriate, and in accordance with relevant legislative / privacy requirements.

The Internal Ombudsman may refer matters to other bodies, internal or external to Council for investigation, due to the nature and/or urgency of the matter.

**All matters will be dealt with in a timely manner, however the timeframe for the completion of an investigation will be determined according to the priority of the matter and other work constraints of the Internal Ombudsman.**

### **What outcomes can I expect from an investigation?**

If a report from the Internal Ombudsman finds that there has been an act or omission by a Council Official contrary to a policy or procedure and/or good administrative conduct, the Internal Ombudsman can recommend that specific appropriate action be taken.

It is the Chief Executive Officer's responsibility to address recommendations made by the Internal Ombudsman and consider their implementation within Council.

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

### **What about my privacy?**

All parties to a matter investigated by the Internal Ombudsman are required to maintain confidentiality. The Internal Ombudsman is to ensure that enquiries are undertaken in private and in a secure location. Personal and private information is managed in accordance with Council's Code of Conduct and the NSW *Privacy and Personal Information Protection Act 1998*.

Council staff and Councillors are also bound by the confidentiality and privacy provisions of Council's Code of Conduct. A complainant's details will not be disclosed unless written consent from the complainant has been provided.

### **Where can I get more information?**

More information is available via the Dubbo Regional Council Internal Ombudsman Policy. The document outlines in greater detail the scope of the Internal Ombudsman, including who can make complaints, what types of complaints will be investigated and how these will be resolved.

To view, go to the Dubbo Regional Council website - <https://www.dubbo.nsw.gov.au/>