



DUBBO REGIONAL
COUNCIL

MAYORAL MINUTE: Independent Investigation Findings

AUTHOR: Mayor
REPORT DATE: 23 October 2021
TRIM REFERENCE: ID21/1898

To the Council
Ladies and Gentlemen

Office of the Mayor
Civic Administration Building
Church Street, Dubbo

Councillors and council staff are bound by a strict code of conduct issued under state law.

Through this code, councillors, elected officials, are able to be held to account for misconduct.

During this term of council our code of conduct processes were subverted. Serious allegations of breach of the code were not treated as such. Complaints were improperly dismissed.

Unsurprisingly, word spread in the community that this was occurring. Our code and our council were brought into disrepute. All this occurred on our watch. Yet we were unaware because the confidentiality provisions of the code meant we as councillors did not and should not have known.

When we did become aware, at least in part, the majority of councillors did two things; we issued a public call for complaints and we condemned some of the types of misconduct we feared had occurred. This was a courageous act of political communication and one of which those responsible should be proud. I certainly am. Secondly we moved for an independent inquiry and report into code of conduct handling.

Tonight I ask councillors to publicly release that report.

This report is damning and disgraceful. Our code of conduct procedures became a cover up mechanism. Relatively junior staff were enlisted by their employer to investigate allegations that should by law have been referred to an external independent assessor. This is only one of the miscarriages of process. Another was the use of powers to dismiss complaints without independent investigation; powers that did not exist.

The community will want to know what sort of allegations were mishandled and why. Bluntly, they will want to know who got the benefit of the cover up.

Sadly this report will not answer those questions. It will only provide further detail on exactly how the cover ups were perpetrated. Confidentiality provisions have required us to redact identifying details and details of complaints. This is a highly unsatisfactory state of affairs.

Only a public independent inquiry with the Independent Commission Against Corruption (ICAC) will do justice to the issues that have plagued this council. I again call for that. I also call for the Office of Local Government (OLG) to deal with the underlying issues that led to this independent inquiry being needed. The CEO of OLG has multiple powers and resources. They need to be used promptly so this community gets resolution and accountability.

I should mention also some detail on how this report has come to be proposed for release. At Council's Ordinary meeting held 26 July 2021, Council resolved with regards to the Independent Investigation report:

4. *That Council notes its desire to publicly release the full independent investigator report and notes the strong public interest in the community understanding the rationale for the recommendations and the findings made.*
5. *That Council request further specialist legal advice be obtained in regard to making available to the public the Independent investigation report ensuring Council meets its procedural fairness and legislative obligations.*
6. *That a workshop of councillors be held once the specialist legal advice is obtained.*
7. *That a report to be brought to the September meeting of council addressing the question of whether the report can be made public."*

Council, at its Meeting held 27 September 2021, considered a report from staff that noted Council had sought further specialist legal advice in relation to the release of the Pinnacle report. Specifically, advice was sought from two separate legal practitioners, being one of Council's panel solicitors and one of Council's Insurers' panel solicitors. This was not a peer review scenario, rather two entirely separate advices which returned very similar guidance on a number of concerns. Initially the advice was to withhold the Pinnacle Integrity investigation report. However, both practitioners noted the concerns were reduced if the report was redacted.

During a workshop with Councillors, and legal and insurance representatives, Councillors agreed to put a redacted version of the report to the Office of Local Government seeking its approval to release the redacted report and to ensure that Councillors met their obligations under the Code, associated Procedures and legalisation.

On the 22 October 2021 the Chief Executive Officer received correspondence from Office of Local Government (**Appendix 1**). The Office of Local Government noted that as the report was considering a specific aspect of its own performance, it was a matter for Council as to the release of the report. Council is reminded in the correspondence of its obligations under Part 9 of the Code of Conduct.

Given Council has carefully considered professional advice regarding its legal obligations and consulted the regulatory agency for local government, it is now appropriate to release the redacted Independent Investigator report (**Appendix 2**).

I hope the community carefully considers this report. The community cares about its council and this report is one source of relevant information that will inform the community about how they best can ensure this never happens again.

RECOMMENDATION

1. That it be noted the Independent Investigation conducted an inquiry into Council's management of Code of Conduct complaints and did not:
 - Investigate new code of conduct complaints; or
 - Reopen previously considered matters for investigation.
2. That the correspondence from the Office of Local Government be noted.
3. That, as noted at the 26 July 2021 Ordinary Council meeting, the Chief Executive Officer is obliged to refer any findings of alleged misconduct relating to former Councillors and former staff to the Office of Local Government and other relevant agencies, (which might include the NSW Police and the Independent Commission against Corruption) for their consideration.
4. That it be noted Council staff are actioning the recommendations of the Independent Investigation.
5. That an appropriately redacted copy of the Pinnacle Integrity report be published on the council website.

Councillor S Lawrence
Mayor

Appendices:

- 1 [↓](#) Response from Office of Local Government - Release of Pinnacle Report
- 2 [↓](#) Pinnacle Report 2021 - Redacted



Office of
Local Government

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Mr Murray Wood
Chief Executive Officer
Dubbo Regional Council

By email: Murray.Wood@dubbo.nsw.gov.au

22 October 2021

PRIVATE AND CONFIDENTIAL

Dear Mr Wood

I am writing in regard to correspondence from Dubbo Regional Council's (DRC) Executive Manager, Governance and Internal Control, Ms Abbey Rouse, dated 17 September 2021. Ms Rouse has advised that DRC seeks the Office of Local Government's (OLG) endorsement to publicly release a redacted version of a report prepared by Pinnacle Integrity (the Report). The Report relates to whether code of conduct complaints received by DRC during this term of council have been managed in accordance with the *Procedures for the Administration of Dubbo Regional Council's Code of Conduct* (the Procedures).

The purpose of this letter is to advise that it is not appropriate for OLG to endorse or make any comment on the merits of DRC's proposal to release the Report to the public. Instead, OLG would provide DRC with the following advice.

OLG notes that the Report is a report to DRC about a specific aspect of its own performance. It is therefore a matter for DRC, and DRC alone, to consider whether to release a redacted version of the Report to the public, and to manage any risks that may be associated with doing so. Furthermore, DRC should consider whether the information proposed to be released alleges or makes findings of wrongdoing by an identifiable council official, and whether the disclosure of such information would be contrary to the obligations under Part 9 of DRC's Code of Conduct.

I understand that DRC's may be considering whether to release the redacted Report at its upcoming ordinary meeting in October. I would appreciate it if a copy of this letter is provided to the governing body for its consideration.

Should you have any questions about the matters raised in this letter, please feel welcome to contact OLG on (02) 4428 4100.

Yours sincerely

Kimberly Everett
Acting Director, Sector Performance and Intervention

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**Independent Inquiry
conducted by Pinnacle Integrity for
Dubbo Regional Council**

6 July 2021

Confidential

This document and the information within it are provided in confidence for the exclusive use of the Dubbo Regional Council and Pinnacle Integrity. It is not intended to be and should not be used by any other person or entity. No other person or entity is entitled to rely, in any way or for any purpose, on the information contained in this report. Pinnacle Integrity does not accept or assume responsibility to anyone other than Dubbo Regional Council for this report, or any reliance placed on this report by any other party. This report and the information contained in it may not be disclosed to any third party or used for any other purpose without the express written permission of Dubbo Regional Council.



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1. Executive Summary

Pinnacle integrity was engaged to conduct an inquiry into Dubbo Regional Council's handling of Code of Conduct complaints, determine whether Council had applied appropriate procedures and complied with legal and regulatory obligations, report on any systemic issues identified, and make recommendations, if necessary, as to reforms of Council's relevant procedures and policies.

The inquiry included an examination of 18 Code of Conduct complaints and how they were dealt with, and interviews of 26 current and former Councillors, Council Staff, and members of the community. A brief summary of the analysis of the 18 Code of Conduct complaints has been provided as an addendum to this report, including an opinion as to whether each complaint has been properly dealt with under the *Procedures*.

The inquiry identified systemic issues regarding the management of Code of Conduct complaints. This, in the main, involved a failure to consistently apply the *Procedures for the Administration of The Model Code of Conduct for Local Councils in NSW* [REDACTED]

The inquiry recommends that Council:

1. adopts a checklist for the initial triage of Code of Conduct complaints;
2. ensures Code of Conduct complaint determinations are only made by authorised persons;
3. limits the role of the Internal Ombudsman to that permitted by the *Procedures*;
4. ensures that Preliminary Assessments and investigations are not carried out by any person directly employed by Council;
5. undertakes additional training of Council staff as to the recording, triage, preliminary assessment, investigation and resolution stages of handling Code of Conduct complaints;
6. provides a structured process through which Council staff can make a Code of Conduct complaint, including anonymously;
7. reinforces the obligation of Councillor's and Council staff to not engage in inappropriate interactions in relation to Council business (including complaint handling); and
8. where inappropriate interactions are reported, deal with those matters as alleged serious breaches of Council's Code of Conduct.

2. Background

Dubbo Regional Council was formed from the amalgamation of Dubbo Council and Wellington Council. There are 10 Councillors. The last Council elections occurred in 2017. New elections are to be held in September 2021. The administration of Council is undertaken by a Chief Executive Officer (*alt. "General Manager" as defined in the Local Government Act and Procedures*)^{1 2 3}

The Dubbo Regional Council Code of Conduct aligns with the Model Code of Conduct for Local Councils in NSW ('Code of Conduct') in accordance with section 440 of the *Local Government Act*. Council has also adopted the Procedures for the Administration of the Dubbo Regional Council Code of Conduct ('Procedures') which align with the Model Code Procedures provided for at section 440AA of the *Local Government Act* and the Regulation.

Council directly employs an 'Internal Ombudsman' whose Key Accountabilities/Duties includes *"Impartially and objectively manage and conduct high level and in-depth investigations, in accordance with best practice and the principles of procedural fairness."*

On the 15 June, at an Extraordinary Council Meeting, Dubbo Regional Council resolved to engage Pinnacle Integrity to:

"...audit past code of conduct complaints over the term of council to ascertain that the processes adopted complied with the relevant code of conduct processes; and

"...interview all councillors, all directors and other staff and community members as they see fit, and prepare a report...addressing whether council is and has been over the term of council compliant with its legal and regulatory obligations and to report on any systemic issues arising from the investigations such as might require possible reforms to council policies."

3. Methodology

The following information was considered as part of the inquiry:

- 18 Code of Conduct complaints received and dealt with by Council between 2017 and 2021;
- Dubbo Regional Council Internal Ombudsman Position Description;
- Dubbo Regional Council Organisational Chart;
- Dubbo Regional Council Code of Conduct;

¹ Local Government Act 1993 Sect. 334

² Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW – 2020 pp.7

³ The terms 'General Manager', Chief Executive, and CEO are used interchangeably throughout this report and have the same meaning.

- Dubbo Regional Council Procedures for the Administration of the Dubbo Regional Council Code of Conduct;
- Dubbo Regional Council Complaints Management Policy;
- Dubbo Regional Council Internal Ombudsman Policy.
- Dubbo Regional Council Policy for the provision of Information to, and interaction between, Councillors and Staff.
- Dubbo Regional Council Unreasonable Complainant Conduct Policy.

When examining the 18 Code of Conduct complaints, a Complaints Checklist was developed and utilised by Pinnacle Integrity.

Interview process

Between Monday 28 June and Friday 2 July 2021, 26 current and former Councillors, Council Staff and members of the community were interviewed by either audio/visual link or telephone. Interviews were semi-structured, assisted by an introduction as to the purpose of the inquiry and 6 prepared questions to guide discussions.

All participants were invited to comment on complaint handling procedures adopted by Council from their own experience, and discussions were wide ranging.

The 6 questions used to guide the interviews are provided at **Annexure A**.

The questions were materially consistent for each participant. Where greater clarification was required, further questions were asked of participants to gain an in-depth understanding of the issues arising during interview.

Participants were highly receptive to the process and welcomed the opportunity to provide feedback relating to their experiences. The inquiry considered that the responses provided were detailed, forthright and candid. The responses of participants have been collated and examined to identify trends and points of concordance. Whilst many responses have not been referenced in this report, key and consistent themes were identified throughout the interviews which provided insight into, and evidence of, workplace practices. It is on that basis that conclusions contained in this report are drawn.

It should be noted that participant responses did reveal a high level of consistency which support the validity of the main conclusions drawn from this inquiry. Observations contained within this report are based on a synthesis of views, experiences, and opinions of participants, together with the 'background' material supplied.

Several participants provided specific examples of issues, behaviours or concerns. Many of those responses are unique to the participant experience and, where relevant, those experiences have

been considered in this inquiry. However, some of the experiences shared with this inquiry fell outside the scope of this inquiry and, accordingly, have not been referenced in the report.

4. Limitations of inquiry

The purpose of this inquiry is limited to the Terms of Reference as resolved by Council on 15 June 2021.

[REDACTED]

[REDACTED]

This inquiry ought not, and cannot, circumvent the legislative and procedural obligations required of Council in the administration of complaints related to alleged breaches of the Code of Conduct (as it relates to Councillors and the General Manager/CEO). To do so could jeopardise the integrity of Council and may well result in intervention by the Office of Local Government.

[REDACTED]

[REDACTED]

[REDACTED]

Having said that, this does not restrict referral of matters, where appropriate, to State regulatory bodies with jurisdictional oversight of government organisations/agencies (including Local Government). Pinnacle Integrity has made such recommendations, where there are matters that ought properly to be subject of such a referral.

5. Disclaimer

The contents of this report including any findings, opinion and recommendations have been provided based on available evidence and information reasonably known and provided to this inquiry at the time of writing. Any opinion is qualified based on the limitation of information available and/or provided to investigators. Any recommendations should be assessed by management and the governing body of Council, as to their appropriateness in the context of the organisation's strategic, operational, and commercial impact prior to implementation. This report is not intended to be relied upon as legal advice. Where legal action is contemplated or intended, as a consequence of information or opinions contained in this report, Pinnacle Integrity recommends seeking qualified legal advice.

6. Overview of inquiry

As mentioned, the purpose of this inquiry was not to reinvestigate Code of Conduct complaints. The inquiry has no power to do so. Rather, this inquiry is confined to questions of whether the *Procedures* have been complied with and, where not, make recommendations for improvement to policy or processes.

5.1 The complaint 'triage' stage (Part 5 of the *Procedures*).

The *Procedures* outline a number of considerations during the initial triage of a complaint. These are set out in Part 5 of the *Procedures* which provides guidance as to how Code of Conduct complaints are to be managed.

This includes, but is not limited to,

- considering such matters as to whether the complaint, assuming it to be true, would amount to a Code of Conduct complaint;
- who can deal with the complaint (which depends upon who, within Council, the complaint refers to);
- whether the complaint is one that requires immediate referral to the Office of Local Government (OLG);
- whether the complaint is frivolous or vexatious;
- whether the complaint is one which might be dealt with by alternative means; or
- whether the complaint needs to be referred to a Conduct Reviewer for Preliminary Assessment.

The *Procedures* require all complaints about Councillors and the General Manager that are not declined or informally resolved at the outset, to be referred to an independent Conduct Reviewer for Preliminary Assessment and, where appropriate, investigation. Part 5 provides for the initial

triaging of a complaint. If a matter is a Code of Conduct complaint, then it may be dealt with under Part 5. If a decision is made to resolve the complaint by alternative means, this decision must be made *on the face of the complaint* (at the outset), assisted by any holdings Council may have. Inquiries which would form part of a Preliminary Assessment and/or investigation cannot be undertaken at this stage to determine if the complaint can be dealt with under Part 5. To do so frustrates the intent of the *Procedures*, where such inquiries, in accordance with Part 6, ought to be carried out by an independent and impartial person against whom a claim of actual or perceived bias is less likely to be made.

There should be no 'blurring of the lines' between the 'triage' stage at Part 5 and the conduct of a Preliminary Assessment in accordance with Part 6 of the *Procedures*, or an investigation in accordance with Part 7. [REDACTED]

An examination of a selection of Code of Conduct complaints received and handled by Council between 2017 and 2021 revealed inconsistent approaches. [REDACTED]

Many of the complaint examined were finalised at the triage (Part 5) stage. That is, they did not proceed to Preliminary Assessment or investigation. There were matters for which [REDACTED]

[REDACTED] Council failed to refer matters to an independent Conduct Reviewer in circumstances where they were legally and procedurally required to do so.

[REDACTED]

There also appears a failure by those handling complaints to consider antecedents. [REDACTED]

[REDACTED]

A complaint should be first triaged by asking the question, *"If this complaint is true, does it amount to a Code of Conduct complaint?"* At the triage stage, it is inappropriate to make inquiries to establish the validity of the complaint to determine how it should be dealt with, apart from an examination of Council's records or other material that may be relevant to the complaint. To go past this triage stage infringes into the areas of Preliminary Assessment and/or Investigation, which can only occur after the complaint has been referred by the Complaints Coordinator to a Conduct Reviewer. The allocation of the complaint to a Conduct Reviewer is necessary to ensure the independence of the Preliminary Assessment and/or investigation stages.

[REDACTED]

[REDACTED] If a complaint is referred to a Conduct Reviewer, the CEO plays no part in how the Conduct Reviewer deals with the matter. A recommendation as to how the complaint is to be dealt with is made independently and impartially, based upon the available evidence.

[REDACTED]

The inquiry also found that potentially irrelevant matters were being considered at the triage stage.

[REDACTED]

[REDACTED]

[REDACTED]

There is a risk in taking irrelevant material into consideration at the triage stage that complaints, which should proceed to the Preliminary Assessment stage of the complaint handling process, are finalised prematurely. Only the criteria referred to in Part 5 of the *Procedures* should be considered at the triage stage. To assist in this, the Dubbo Regional Council should provide the Internal Ombudsman/CEO with a checklist.

Recommendation 1:

That Dubbo Regional Council adopts a checklist for the initial triage of Code of Conduct complaints – (A suggested checklist has been provided at Annexure B).

5.2 Code of Conduct complaints should only be dealt with by authorised persons

The Internal Ombudsman is also the Complaints Coordinator for Dubbo Regional Council.

Clause 3.21 of the *Procedures* sets out that the role of a Complaints Coordinator is to:

- (a) coordinate the management of complaints made under the Council's Code of Conduct;
- (b) liaise with and provide administrative support to a conduct reviewer;
- (c) liaise with the Office (OLG); and
- (d) arrange the annual reporting of Code of Conduct complaint statistics.

That is, the role of the Complaints Coordinator is administrative only.

The Dubbo Regional Council Internal Ombudsman Fact Sheet sets out that the role of the Internal Ombudsman includes investigating:

- any failure to comply with Council's Code of Conduct, policies or procedures.

To conduct either a Preliminary Assessment or an investigation of a Code of Conduct complaint, a person must be included in Council's Panel of Conduct Reviewers. Therefore, to do this, the Internal Ombudsman must also be included in Council's Panel .

Clause 3.6(d) of the *Procedures* sets out that a person is not eligible to be a Conduct Reviewer (and therefore not able to undertake Preliminary Assessments and/or investigations of Code of Conduct matters) if they are an employee of Council.

An Internal Ombudsman, despite clause 3.6(d), may be appointed to the panel of Council's Conduct Reviewer's, with the consent of the OLG. That person may also act in the position of Complaints Coordinator. If appointed to the panel of Conduct Reviewers with the consent of the OLG, the Internal Ombudsman may undertake Preliminary Assessments and investigations.

The inquiry has been informed that the Internal Ombudsman has not been appointed to Council's Panel of Conduct Reviewers, and therefore has no authority to act as a Conduct Reviewer.

The inquiry has also been informed there is no instrument of delegation from the CEO to the Internal Ombudsman in respect of the duties of the CEO in accordance with the *Procedures*.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A Preliminary Assessment can only be conducted by a Conduct Reviewer. [REDACTED]

[REDACTED]

- | [REDACTED]
- | [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The complaints examined did not provide evidence of a system or procedure to identify whether any actual or perceived conflicts of interest existed. The failure to identify and mitigate conflicts of interest undermines the integrity in the administration of the *Procedures*.

Clause 6.4(d) of the *Procedures* outlines that a member of a panel of legal service providers appointed by the Council must not accept the referral of a Code of Conduct complaint. When reviewing past Code of Conduct matters, it was evident that Council had referred Code of Conduct complaints to legal firms by for the purpose of conducting a Preliminary Assessment.

[REDACTED]

There was evidence within the files examined, that an external Conduct Reviewer had determined that there had been a breach of the Code of Conduct at the Preliminary Assessment stage of the complaint handling process. This is inappropriate. The only determination available is whether the matter should be investigated or dealt with by alternative means, referred to the OLG, or that no action be taken.

Clause 6.19 of the *Procedures* sets out that the resolution of a complaint by alternative means is not to be taken as a determination that there has been a breach of Council's Code of Conduct. No finding of a breach of the Code of Conduct can be made until procedural fairness has been provided to the respondent.

Recommendation 2:

That Dubbo Regional Council ensures Code of Conduct complaints are dealt with only by authorised persons.

Recommendation 3:

That Dubbo Regional Council limits the role of the Internal Ombudsman to that permitted by the *Procedures*.

5.3 Preliminary Assessments and Investigations should not be carried out by a person directly employed by Council.

The tenor of the *Procedures* is that Preliminary Assessments and investigations are undertaken by a person or persons independent of Council. That is the intent of establishing panels of Conduct Reviewers by Councils. This is, in part, to demonstrate to those impacted by a complaint, and the broader community, that Preliminary Assessments and investigations are carried out in an impartial manner, and to maintain the integrity of investigations and Council. An Internal Ombudsman may be appointed to Council's panel of Conduct Reviewers if approval is first obtained from the OLG. An Internal Ombudsman, like all Conduct Reviewers, must not agree to undertake a Preliminary Assessment or Investigation if an actual or perceived conflict of interest exists. Given circumstances where an Internal Ombudsman is employed by Council, this gives rise to an ongoing and irrevocable conflict of interest, that would be almost impossible to mitigate. Consideration ought to be given as to whether, going forward, an Internal Ombudsman directly employed by Council best serves the procedural and legislative interests of Council.

[REDACTED]

[REDACTED]

[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Council employees should not undertake the role of a Conduct Reviewer. Doing so may give rise to actual and perceived conflicts of interest. For example, a perceived conflict of interest may arise when a Council employee, such as an Internal Ombudsman, inappropriately acts as a Conduct Reviewer or investigator of a complaint against a work colleague. The conflict of interest in such circumstances may arise due to a perceived lack of impartiality in the management of the complaint. In such circumstances it is imperative, for trust to be engendered in Council's complaint handling process, that the conflict of interest is acknowledged, recorded and mitigated.

A way in which such an actual or perceived conflict of interest may be mitigated, indeed eliminated, is for Council to abide by the *Procedures* and not permit Council staff to inappropriately undertake the role of Conduct Reviewer. At the present time, no person directly employed by Dubbo Regional Council has approval to act as a Conduct Reviewer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendation 4

That Dubbo Regional Council ensures that Preliminary Assessments and investigations are not carried out by any person directly employed by Council.

5.4 Awareness of the methodology of handling Code of Conduct Complaints

The interviews conducted as part of this inquiry indicated a significant lack of detailed knowledge as to how Code of Conduct complaints are handled by Council. This lack of knowledge was particularly evident in the majority of Council staff who were interviewed. Corresponding to this lack of knowledge was a perception that complaints were not dealt with in an impartial and transparent manner.

When asked whether they were aware of the processes adopted by Council in relation to dealing with Code of Conduct complaints, the answers which represented the majority of responses were:

- "Pretty familiar"
- "Not particularly"
- "Vaguely"
- "I feel I have a good handle on it"
- "I've never had any involvement"
- "Yes, but not in fine detail"
- "I don't have a thorough knowledge"

Several interview participants said that they had undergone Code of Conduct training, but further discussions with them revealed that they did not understand the *processes* involved in Code of Conduct complaint handling.

It is suggested that a thorough understanding of the processes which will be adopted by Council in handling Code of Conduct complaints may assist in engendering trust that Code of Conduct complaints will be impartially and ethically dealt with.

A thorough understanding of the processes adopted by Council might also encourage staff to report breaches of the Code of Conduct.

Recommendation 5

That Dubbo Regional Council undertakes additional training of Council staff as to the recording, triage, preliminary assessment, investigation and resolution stages of handling Code of Conduct complaints.

5.5 Council staff making Code of Conduct complaints

Systemic issues arising from interviews conducted with current and former staff as part of this inquiry included, but were not limited to:

- a belief that, on occasions, Councillors conducted themselves very poorly by:
 - attempting to become involved in, or find out about, operational matters (including the handling of complaints); and
 - leaking confidential information regarding complaints; and
- a belief that if they, as a staff member, made a Code of Conduct complaint, it would not remain confidential and that they may be subject to some form of reprisal.

For the integrity of the Code of Conduct, it is imperative that Council staff feel they can make a Code of Conduct complaint without fear of reprisal. This must include the ability for them to make a complaint anonymously.

Dubbo Regional Council already has an on-line facility for a Code of Conduct complaint to be lodged.

However, the on-line system first requires that a person provide their name and postal or email address. The Dubbo Regional Council should create an 'in-house' facility for Council staff to lodge a Code of Conduct complaint which provides the option for the complainant (reporter) to remain anonymous.

Council should ensure that their procedure for 'capturing' all Code of Conduct complaints is failsafe. They should ensure that all issues identified to Council are assessed as to whether they amount to a Code of Conduct complaint. For example, Council may receive a complaint relating to alleged inappropriate conduct in the determination of a 'GIPA' application. Although not submitted to Council specifically as a Code of Conduct complaint, it should be assessed to determine if the alleged conduct amounts to an alleged breach of the Code of Conduct. Similarly, Council might receive a claim for compensation for bullying and harassment. Such a claim should also be assessed as to whether or not the conduct alleged in the compensation claim amounts to an alleged breach of the Code of Conduct.

Recommendation 6

That Dubbo Regional Council provides a structured process through which Council staff can make a Code of Conduct complaint, including anonymously

5.6 The need for separation of responsibilities and accountabilities between Councillor's and Council staff

A common thread throughout the interviews conducted as part of this inquiry was the view expressed by Council staff that Councillors continually 'overstepped the line' by making inquiries about, or attempting to become directly involved in, Council's administrative business. This included Code of Conduct complaints management.

[REDACTED]

[REDACTED]

[REDACTED] If the CEO is unable to deal with the complaint *at the outset* in accordance with Part 5 of the *Procedures* (on the face of the complaint, together with any relevant Council holdings), he *must* provide the complaint to the Complaints Coordinator for allocation to an independent Conduct Reviewer in order a Preliminary Assessment may be undertaken.

[REDACTED]

[REDACTED] The CEO has no authority, under the *Procedures*, to investigate a complaint himself and then deal with that complaint.

During interviews for the purpose of this inquiry, Council staff reported that a Councillor might make a Code of Conduct complaint on behalf of a constituent. The Councillor would then continue to press for how the matter should be handled, or continue to make inquiries as to how the matter was being handled. Lodging a complaint on behalf of a constituent does not mean a Councillor becomes the complainant. The constituent on whose behalf the complaint has been made, and who is the 'source' of the matter, remains the complainant. Council staff said that, on a number of occasions during the term of the current Council, they had difficulty in explaining this concept to Councillors.

Council staff reported that the situation was exacerbated when a Councillor was the complainant.

[REDACTED]

Dubbo Regional Council's Policy for the provision of information to, and interaction between, Councillors and Staff, provides that Councillors are not to contact staff below the level of the Executive Leadership Team (which includes the Chief Executive Officer, Directors, Executive Manager of People, Culture and Safety, and the Executive Manager of Governance and Internal Control). Council staff have indicated that this provision is regularly breached.

Inappropriate actions

The Policy describes inappropriate interactions which include, but are not limited to:

- Councillors approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues;
- Councillors being overbearing or threatening to Council staff; and
- Councillors directing or pressuring Council staff in the performance of their work, or recommendations they should make.

Recommendation 7

That Dubbo Regional Council reinforces the obligation of Councillor's and Council staff to not engage in inappropriate interactions in relation to Council business (including complaint handling).

Recommendation 8

Where inappropriate interactions are reported, deal with those matters as alleged serious breaches of Council's Code of Conduct.

7. Conclusion

This inquiry has sought to answer the following questions:

1. *Have Code of Conduct Complaints been appropriately managed in accordance with the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW and Dubbo Regional Council's internal policies and procedures?*

There is evidence that a number of Code of Conduct complaints have not been appropriately managed in accordance with Procedures. The following issues have been identified.

- A failure by Council to properly assess (triage) complaints in accordance with Part 5 of the *Procedures*.
- Council staff inappropriately and without authority, undertaking actions which amount to Preliminary Assessments and/or investigations of certain complaints.
- Such actions are provided for at Part 6 and Part 7 of the *Procedures* and can only be undertaken by an independent Conduct Reviewer.
- Council staff making determinations as to the resolution of complaints when not authorised to do so.
- [REDACTED]

[REDACTED]

Further issues identified included the following.

- Council staff expressed a lack of knowledge as to how Code of Conduct complaints are dealt with through the reporting, triage, Preliminary Assessment, investigation & resolution stages, and they may benefit from more training on this subject.
- Council staff could benefit from a simple way of reporting a Code of Conduct breach, including making such a complaint anonymously.
- Council staff reported inappropriate interactions by Councillors with Council staff as common.

2. *Is there evidence of the misuse of Code of Conduct complaints and, if so, what might be done to remedy this?*

Misuse of Code of Conduct complaints may include, but not be limited to, using the *Procedures* as an attempt to bring discredit upon a person, rather than the proper motivation to bring a possible breach of the Code of Conduct to the attention of Council. Code of Conduct complaints should never be utilised as a 'vendetta' against any person, nor should Council be put in the position where such a claim might be made against it.

Earlier this year, Dubbo Regional Council made a public call for people to come forward if they had any concerns about Council-related conduct. Complaints can highlight a problem which Council can then remedy, therefore they can be a valuable management tool. However, there are several issues which should be considered before a 'call for complaints' is made. The questions which should be answered include, but are not limited to;

- (a) What is the true reason for calling for complaints? Is the reason altruistic?
- (b) What expectations is the organisation creating with complainants?
- (c) What obligations are being created for the organisation?
- (d) Can the organisation meet those obligations, e.g. does the organisation have the ability to handle the complaints within statutory timeframes and meet complainant satisfaction?
- (e) Calling for Code of Conduct complaints against Councillors or staff members (if that was part of the intention of Council), risks providing an avenue for persons to lodge a complaint for an improper purpose. That is not the intention of either the Code of Conduct or the *Procedures*. In fact, it is specifically prohibited by Part 9 of the Code of Conduct.

Further, calling for complaints may, albeit unintentionally, be seen to be an allegation that breaches of the Code of Conduct have occurred. This is also prohibited at Part 9 of the Code of Conduct.

It is suggested, for the abovementioned reasons, that neither the Code of Conduct nor the *Procedures* appears to support the solicitation of complaints.

A far better way to utilise complaints to assist management is to:

- (a) Ensure all complaints are captured.
- (b) Ensure the reasons for the lodgement of each complaint is recorded.
- (c) Regularly analyse complaints for trends.

3. *Are their recommendations for changes or amendments to Council policies and/or procedures for handling Code of Conduct complaints?*

Although Council's Complaints Management Policy and Internal Ombudsman Policy do not appear to contain incorrect information, Council may wish to consider revisiting both policies to ensure they

completely correlate with each other and with the *Procedures*. The policies should include clear guidelines that:

- The Internal Ombudsman, when managing Code of Conduct complaints concerning Councillors, may only undertake the role of Complaints Coordinator.
- Council staff, including the Internal Ombudsman, CEO and Mayor may only undertake those roles identified for them in the *Procedures*.

8. Matters Arising

Seeking to change behaviours

It was raised throughout the inquiry by participants that if complaints are always dealt with 'the same way', and this does not change behaviour, then there is a need to do something different. An example of this is, where complaints are continually finalised at the triage stage, and this does not result in a change of inappropriate behaviour by a respondent, then perhaps Preliminary Assessments and investigations should be utilised more frequently in order a broader range of sanctions might be considered.

The need to increase confidence, internally and externally

Several participants said that Dubbo Regional Council had lost its sense of service to the community. They felt that by developing a service culture, more attention would be given to customer needs which would, in turn, increase public confidence in, and satisfaction with, Dubbo Regional Council. It was suggested that this, in turn, might contribute to reducing the number of complaints.

Need to be more transparent

Many of those interviewed suggested that Council needed to be more transparent in the way Council handled Code of Conduct complaints. Several persons suggested that complainants be provided with a 'map' (diagram) of the complaint process. Others suggested that deidentified outcomes could be published in order for members of the public to have more confidence that complaints are properly finalised.

The need to consider the independence of the role of the Internal Ombudsman

As has been highlighted in this report, the Internal Ombudsman's role appears to have encroached into the area of a Conduct Reviewer and the responsibilities of the CEO. The Internal Ombudsman is an employee of Council and, as such, taking such an intrusive role into the resolution of Code of Conduct matters not only risks breaching the *Procedures*, but also brings with it the risk of claims of actual and perceived conflicts of interest.

As indicated in this report, it is recommended that Council's Internal Ombudsman only undertakes the duties permitted by the *Procedures* in relation to Code of Conduct complaints. That is, the administrative procedures of a Complaints Coordinator only.

An additional approach Council might consider is that, when a matter is referred to the Internal Ombudsman/Complaints Coordinator, and a conflict of issue arises, the matter may be redirected to be dealt with independently by an Internal Ombudsman/Complaints Coordinator of another Council. Council might consider entering into a memorandum of understanding with one or more Council's for that purpose.

Alternatively, Council might revisit the necessity to employ a Conduct Reviewer as an additional role of the Complaints Coordinator.

9. Annexures**Annexure A****List of questions utilised during the semi-structured interview process**

- 1. Are you aware of the processes adopted by Council in regard to dealing with Code of Conduct complaints?**
- 2. Do you believe that complaints received by Council, in the current term of Council, have been appropriately assessed and handled in accordance with Council's Complaint's Management Policy and the Procedures for the Administration of the Dubbo Regional Council Code of Conduct?**
- 3. Are there any matters in particular you might wish to bring to our attention that you believe may not have been appropriately assessed and/or handled by Council?**
- 4. Do you believe there are any systemic or other issues affecting the proper handling of Code of Conduct complaints by Dubbo Regional Council?**
- 5. Do you have any suggestions for process improvements or any better practice recommendations in relation to the handling of Code of Conduct complaints by Council?**
- 6. Is there anything else you would like to say which may be of assistance to our inquiry?**

Annexure B
Dubbo Regional Council
Complaint triage checklist

Complaint no:

Date received:

Relative to:

Complainant:

Consideration	Yes/No	Comment
Delegation		
Do I have the appropriate authority/delegation to deal with this complaint?		
Is there a risk that a person who may become a respondent, deal with this complaint?		
Whether a 'code of conduct' matter		
Does the complaint amount to an allegation of a breach of the code of conduct?		Note: At this stage assume the complaint is true – for triage purposes only.
Antecedents		
Is the record of complaints against this person available?		Note: A record of similar complaints may indicate that past actions of Council to resolve those complaints have not been effective. This may be a consideration for the triage of the current complaint.
Consideration of complaints handled by general manager/mayor.		
Has the General Manager (CEO) or Mayor addressed the complaint assessment criteria outlined at clause 6.31 of the <i>Procedures</i> considered?		
Declining a complaint at the outset		

Has the assessment guideline for declining a complaint, as set out at clause 5.3 of the <i>Procedures</i> been addressed?		
Complaints concerning staff members (other than the General Manager/CEO)		
Does the complaint allege a breach of pecuniary interest (as per Part 4 of the Code of Conduct)?		Note: If so, the complaint must be referred to the OLG in accordance with clause 5.5 of the <i>procedures</i>.
Is this a matter where the CEO has determined to take no action in relation to the complaint? clause 5.7 of the <i>Procedures</i> ?		Note: If so, the complainant must be provided reasons in writing in accordance with clause 5.7
Has consideration of the relevant industrial agreements or employment contracts been considered when dealing with this complaint? (clause 5.8)		Note: This is compulsory for complaints against staff. Provision must be made for procedural fairness, including the right of an employee to be represented by their union.
What sanctions might be considered if this matter is investigated and found to be true. Are those sanctions proportionate and can they be determined in accordance with industrial agreements or employment contracts? (clause 5.9)		
Complaints about delegates of council, council advisors, committee members		
Does the complaint allege a breach of pecuniary interest (as per Part 4 of the Code of Conduct)?		Note: If so, the matter must be referred to the OLG in accordance with clause 5.11.
Has the general manager determined to take no action in relation to the complaint? (clause 5.12)		Note: If so, the complainant must be advised of the reasons in writing in accordance with clause 5.13.
Does the general manager seek to resolve the complaint by alternative means? (clause 5.14)		Note: If so, the complainant must be advised in writing of the steps taken to resolve the complaint in accordance with clause 5.15.
Is there a possibility that, if the complaint is proven to be true, a determination might be made to impose a sanction? (clause 5.16)		
If so, how will the person be provided proper procedural		

fairness prior to the sanction being implemented? (clause 5.17)		
Complaints about administrators		
Does the complaint relate to an administrator?		
If so, was the complaint referred to the OLG? (clause 5.18)		Note: It is compulsory for all complaints about administrators to be referred to the OLG.
If the complaint was notified to the OLG, was the complainant advised in writing? (clause 5.19)		
Complaints about Councillors		
Does the complaint relate to one that is the subject of special complaints management arrangements with the OLG? (clause 5.20(d))		
Does the complaint allege a code of conduct complaint of the type referred to at clause 5.20 of the <i>Procedures</i> ?		
If so, was the complaint notified to the OLG? (clause 5.20)		
If so, was the complainant advised in writing? (clause 5.1)		
Did the general manager determine to take no action in relation to the complaint? (clause 5.22)		
If so, was that determination reasonable and the reasons recorded?		
If so, was the complainant given reasons for their decision within 21 days of the receipt of the complaint? (clause 5.23)		
Did the general manager determine that the complaint should be dealt with by alternative means? (clause 5.24)		

If so, and the matter is resolved to the general manager's satisfaction, was the complainant advised in writing within 21 days of receipt of the complaint of the steps taken to deal with the matter? (clause 5.25)		
Was the complaint, if not dealt with in accordance with clause 5.20, finalised in accordance with clauses 5.23, or resolved in accordance with clause 5.24, referred to the complaints coordinator? (clause 5.26)		
Code of conduct complaints about the General Manager		
Was the complaint of a type referred in clause 5.27 of the <i>Procedures</i> ?		
If so, was the complaint referred to the OLG?		
If so, was the complainant notified of this action in writing? (clause 5.28)		
Did the mayor decide to take no further action, apart from the referral in accordance with clause 5.27? (clause 5.29)		
If 'yes', were the reasons properly recorded?		
If 'yes', was the complainant notified in writing of the reasons? (clause 5.30)		
Was the complaint resolved by alternative means? (clause 5.31)		
If so, was the complainant advised in writing of this action? (clause 5.32)		
Was the complaint, if not dealt with under clause 5.27, 5.30 or 5.31, referred to the complaints coordinator? (clause 5.33)		
Code of conduct complaints about both the CEO and the Mayor		

Was the complaint either: referred to another person (delegate/another member of staff of the Council/a person external to the organisation), or referred to the complaints coordinator in accordance with clause 5.26 or clause 5.33? (clause 5.34)		
Referral of code of conduct complaint to an external agency		
Was the complaint referred to an external agency? (clause 5.35)		
If so, were the reasons properly recorded?		
Were there reasonable grounds to suspect that the alleged conduct may have concerned corrupt conduct as described in section 8 of the ICAC Act (and not excluded by section 9)?		
If so, was the complaint referred to the ICAC? (clause 5.36)		
If the complaint was referred to an external agency, was the complainant informed or, if not, were the reasons for not informing the complainant proper and recorded? (clause 5.37)		
Was council advised by the referral agency that further work needed to be undertaken by Council in respect of the complaint? (clause 5.38)		
If so, was that work undertaken?		
Disclosure of identity of complainants		
Was the identity of the complainant disclosed?		
If so, was that disclosure in accordance with clause 5.39 or 5.40 of the <i>Procedures</i> ?		
Did a councillor (complainant) request, at the time of making the complaint, that their identity not		

be disclosed? (clause 5.41 & 5.42)		
If so, was that request considered? (clause 5.43)		
If the identity of the councillor was disclosed, was the intention to disclose notified to the councillor? (clause 5.44)		
Code of conduct complaints made as public interest disclosures		
Does the code of conduct complaint amount to a Public Interest Disclosure? (see Ombudsman Fact Sheet No. 2)		
If 'yes', and the complainant is a Councillor, before the matter is dealt with under the <i>Procedures</i> , was permission obtained from the complainant to disclose their identity? (clause 5.46)		
If the complainant Councillor has declined permission for their identity to be disclosed, was the matter referred to the OLG? (clause 5.47 and section 26 of the PID Act).		
Other policies/procedures		
Was there any other policy/procedure of Council which impacted upon the handling of this complaint?		
If so, was that policy/procedure properly addressed?		