

BACKGROUND

Members of the public and members of staff are entitled to make complaints or allegations about their treatment or events or matters happening in Council's workplace. Complaints and allegations can range from the minor and easy to resolve to the extremely serious, which may involve formal disciplinary action. It is up to Council management and other responsible supervisory roles to decide whether action should be taken in response to these complaints and, if so, what sort of action is required. This may include formal investigation of these complaints or allegations.

OBJECTIVE

The objective of this policy is to ensure that all investigations of employees against whom allegations have been made are carried out in a fair, objective and impartial manner with due regard for confidentiality, procedural fairness, natural justice and the interests of the employee, persons involved and Council. This policy seeks to promote good investigative practice by providing a standard on the manner in which Wollongong City Council receives, assesses and investigates reports of alleged maladministration, corrupt conduct, serious and substantial waste, pecuniary interest contraventions, breaches of the *Government Information (Public Access) (GIPA) Act*, and breaches of Wollongong City Council's Code of Conduct.

POLICY STATEMENT

Wollongong City Council receives considerable public funds in rates and charges, which they have a duty to spend wisely, effectively and to the benefit of the community. Council is committed to ensuring that those funds are properly expended and that complaints and alleged breaches are properly investigated in adherence with the principles of independence, transparency, objectivity, and with regard to the rules of evidence, natural justice and the rights of all concerned.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

STATEMENT OF PROCEDURES

1 Policy Definitions

In this policy, except in so far as the context or subject matter otherwise indicates or requires:

Council	means Wollongong City Council.
Expert	means any person appropriately qualified in a particular area and available to provide advice to the Professional Conduct Coordinator as required.
General Manager	means the General Manager of Wollongong City Council.
Divisional Manager	means the manager responsible for the Division.
Manager	means staff holding supervisory role and responsibilities.
Professional Conduct Coordinator	means the Office of the Professional Conduct Coordinator and includes any personnel conducting activities associated with, or on behalf of, the Professional Conduct Coordinator.
Lord Mayor	means the elected Lord Mayor of Wollongong City Council.
Corrupt Conduct	<p>i Any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or</p> <p>ii Any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or</p> <p>iii Any conduct of a public official or former public official that constitutes or involves a breach of public trust; or</p> <p>iv Any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.</p> <p>v Any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:</p> <ul style="list-style-type: none"> • official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition); • bribery; • blackmail; • obtaining or offering secret commissions; • fraud; • theft; • perverting the course of justice; • embezzlement; • election bribery; • election funding offences; • election fraud; • treating; • tax or revenue evasion; • currency violations; • illegal drug dealings;

	<ul style="list-style-type: none"> • illegal gambling; • obtaining financial benefit by vice engaged in by others; • bankruptcy and company violations; • harbouring criminals; • forgery; • treason or other offences against the Sovereign; • homicide or violence; • matters of the same or a similar nature to any listed above; and • any conspiracy or attempt in relation to any of the above. <p>vi Any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:</p> <ul style="list-style-type: none"> • collusive tendering, • fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources, • dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage, • defrauding the public revenue, • fraudulently obtaining or retaining employment or appointment as a public official.
Staff	<p>Where used in this policy, the term Staff refers to:</p> <ul style="list-style-type: none"> ▪ Both Council employees and Councillors; ▪ Permanent employees, whether full time or part time; ▪ Temporary or casual employees; ▪ Consultants; ▪ Individual contractors working for Council; ▪ Volunteers; and ▪ Any other people or persons who perform public official functions and their conduct and activities could be investigated by an investigating authority.

2 Responsibilities

The General Manager is responsible for authorising all investigations relating to this policy and ensuring that external persons or bodies, such as the Independent Commission Against Corruption (ICAC), are appropriately notified.

The General Manager will appoint a suitably qualified person to the position of the Professional Conduct Coordinator. That person shall have delegated authority to carry out the functions described in Section (3) of these procedures.

The Professional Conduct Coordinator shall report directly to the General Manager on the outcome of internal/external investigations. The exception to this is when the General Manager has a conflict of interest – in such circumstance, the Professional Conduct Coordinator shall report directly to the Lord Mayor on the outcome of investigations. Where both are deemed to have a conflict of interest, the Professional Conduct Coordinator will make alternate arrangements deemed suitable by that officer, for appropriate reporting on the outcomes of the investigation.

The Professional Conduct Coordinator will ensure that Council has adopted recognised best practice standards for conducting investigations, in accordance with the guidelines established by the NSW Ombudsman¹.

¹NSW Ombudsman (2004), Investigating Complaints: A Manual for Investigators

The responsibility for the conduct, management and coordination of investigations within Wollongong City Council lies with the Professional Conduct Coordinator, who will report regularly to the Professional Conduct Assessment Committee (PCAC) on matters arising in the course of investigations. Composition and membership of the PCAC will be decided by the General Manager.

The role of the PCAC is to provide advice and executive oversight in regard to matters arising in the course of investigations. The PCAC role should not be compromised by having the committee (as a whole) directing investigations by quorum. The Committee's responsibilities should be free from prejudices associated with advocacy.

The PCAC will also consider recommendations arising from investigations, to ensure the management of identified fraud and corruption risks within Council. This may include referring matters to the Audit and Governance Committees and Council's Executive Management Committee (where appropriate) for action.

2.1 Reporting

Staff are obliged to report all incidents of wrongdoing that they become aware of.

In the first instance, staff should make an assessment of their concern/complaint and determine whether or not it is a matter that should be reported to the Professional Conduct Coordinator, such as a corruption matter or breach of the Code of Conduct. If so, staff should be encouraged to report such a matter either directly to the Professional Conduct Coordinator, to the General Manager, or to their Director. Any non-Professional Conduct matters should be raised by staff with their Supervisor or Manager. If in doubt, staff are encouraged to discuss their concerns in the first instance with the Professional Conduct Coordinator.

Any matter that relates to the following five categories of wrongdoing may constitute a Public Interest Disclosure (PID) and should be reported directly to the Professional Conduct Coordinator, to be dealt with in accordance with Council's Internal Reporting (Public Interest Disclosures) Policy:

- a corrupt conduct;
- b maladministration;
- c serious and substantial waste of public money;
- d government information contravention; and
- e local government pecuniary interest contravention.

Council officers who cover up, or fail to report or act upon information of actual or suspected wrongdoing or corrupt conduct without reasonable explanation will be subject to disciplinary action which may result in termination of employment.

3 Jurisdiction

The Professional Conduct Coordinator may, on receiving a complaint in accordance with this policy, or on the Professional Conduct Coordinator's own initiative, investigate:

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

The Professional Conduct Coordinator 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. No simultaneous or parallel investigations are to be conducted into matters being investigated by the Professional Conduct Coordinator.

In the case of complaints made against specific Council officers, the Professional Conduct Coordinator will inform them of the nature of the allegations (at a time appropriate to the objectives of the investigation) and give such person an opportunity to answer any allegations. The only circumstance where staff will not be informed of allegations against them is if such allegations have been found to be unsubstantiated. Nothing in this policy prevents staff from accessing their lawful rights to appeal under relevant legislation.

4 Assessing a Complaint

Not every complaint requires investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level or through other processes, such as mediation. In determining whether a complaint requires investigation it is necessary to consider a range of factors:

- Are the issues raised by the complaint serious or trivial?
- Is there a more appropriate mechanism for dealing with the complaint?
- What significance does the complaint have for Council?
- Does the complaint indicate the existence of a systemic problem or a serious abuse of power?
- What are the monetary amounts or other benefits involved?
- How many staff are alleged to be involved?

Complaints sometimes are tainted by emotive language or suggestions that they may be malicious or motivated by vindictiveness or a desire for vengeance. Careful analysis of such complaints should be made to isolate the basic information sources, which should then be assessed on their merits.

Complaints should never be written off simply because they are made anonymously, or because the complainant later withdraws the complaint. Although in both these situations it will not be possible to rely on the complainant for evidence, the allegations should still be tested by way of other avenues where it is reasonable to do so.

4.1 Refusal to Investigate

The Professional Conduct Coordinator may refuse to investigate, or will cease to investigate a matter where:

- a a remedy or right of appeal, deemed adequate by the Professional Conduct Coordinator, already exists, whether or not the complainant uses the remedy or right of appeal;
- b the complaint, in the opinion of the Professional Conduct Coordinator, is frivolous, vexatious or not made in good faith, or concerns a trivial matter;
- c the complaint relates to a decision of elected Council;
- d the complaint relates to actions or conduct of the General Manager or Lord Mayor;
- e the complaint relates to decisions of a standing Committee or a sub-Committee of Council;
- f the complaint pertains to conduct relating to a matter before a court, Coroner, Tribunal, or the Industrial Relations Commission;
- g the complaint relates to matters under investigation by the:
 - i Office of Local Government (NSW);
 - ii Independent Commission Against Corruption (ICAC);
 - iii New South Wales Ombudsman;
 - iv a Minister of the Crown or Government Department, or New South Wales Police Service; or
 - v The complaint relates to the appointment or dismissal of an employee for any industrial or disciplinary issue;
- h the complaint relates to a matter awaiting determination by Council (conduct in dealing with the matter can be investigated);
- i a complaint relates to the actions or conduct of private individuals, unless such persons were Council officers at the time such conduct was alleged;
- j resources are not available or the matter is of a low priority;
- 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 a member of staff.

4.2 Report of Decision Not to Investigate

Where the Professional Conduct Coordinator decides not to investigate, or to cease to investigate a complaint, the Professional Conduct Coordinator shall, in writing, inform the complainant and any other interested person (as deemed by the Professional Conduct Coordinator) of the decision and shall state the reason for the decision.

5 Determining the Nature of an Investigation

Once a complaint has been assessed as warranting investigation, it must be clearly determined whether the investigation relates to policies, procedures and practices OR the conduct of individuals. Determining the nature of the investigation at the outset has important bearing on issues such as the powers necessary (and in some cases available) to investigate the complaint, the resources that will be needed, the authorisation necessary to undertake the investigation, and the nature of the possible outcome of the investigation.

5.1 Authority to Commence an Investigation

Every investigation will have one person authorised to take charge and assume ultimate responsibility for the conduct of the investigation. This will normally be the Professional Conduct Coordinator.

The level of authorisation required to commence an investigation will depend on the nature of the investigation. If the investigation is in the nature of a statutory/disciplinary inquiry within Council, authorisation will be required from the General Manager or his/her delegate.

If an inquiry arises out of a protected disclosure, authorisation will be required from Council's Disclosures Coordinator (normally the Professional Conduct Coordinator) or the General Manager. Where this issue is in doubt, the matter should be referred to the General Manager for a decision.

5.2 Prioritisation

Investigations undertaken by Council will be prioritised commensurate with the risks to the organisation, seriousness of the incident and available resources. Matters of a 'serious nature' will be investigated through the Office of the Professional Conduct Coordinator, whilst 'less serious matters' may be investigated by the effected business unit (normally the Manager of the Unit) under referral from the office of the Professional Conduct Coordinator. The Professional Conduct Coordinator will review each complaint with a view towards assessing its 'seriousness'. In this context, the term 'serious' will denote the following:

- threat to life or threat of serious injury;
- threat posing significant financial or reputational injury to Council;
- threat posing significant legislative non-compliance; and/or
- threat exposing significant systemic deficiencies within business processes and/or implementation.

5.3 Referral by Elected Council

Elected Council may refer a matter that is before Council for consideration to the Professional Conduct Coordinator (via the General Manager) for investigation. The Professional Conduct Coordinator shall, subject to any special directions of Council, investigate the matter, as far as it is possible within the jurisdiction established, and report to Council.

Complaints about a breach of the Code of Conduct by the General Manager, the Lord Mayor, or a Councillor will be subject to the provisions of the Code of Conduct and may be referred to a Conduct Reviewer in accordance with those provisions.

5.4 Notifying Management

An investigation involves a preliminary fact finding process to determine, amongst other issues, the veracity of any allegation/s and involvement of other individual/s. These initial inquiries will be undertaken discreetly for these reasons.

The investigator or person acting under the direction of the Professional Conduct Coordinator has authority to approach employees and make inquiries with those employees to obtain information to assist in the 'fact finding' phase of an investigation. Managers will not necessarily be informed of approaches to employees during the 'fact finding' phase of an investigation.

Managers should be aware that their role is one of independence and they should not attempt to influence an investigation. Criminal, fraudulent and corruption investigations are specialised undertakings and require independence to operate impartially and effectively.

6 The Role of Investigator

In all cases, the role of the investigator is to ascertain all relevant facts pertaining to a complaint and at the conclusion of the fact-finding exercise, to report his or her findings and, if appropriate, make relevant recommendations. This task must be conducted in an impartial, independent and objective manner.

The success of an investigation will often come down to the integrity and ability of the person conducting it. An investigator must be neutral in relation to the protagonists to a dispute, but must also be aware of any power imbalance between the parties.

An investigation is an inquisitorial rather than an adversarial process. The investigator has no stake in the complaint itself, or in the outcome of the investigation.

Only staff from the Office of the Professional Conduct Coordinator, or persons acting under their direction or approval will conduct interviews with employees against whom serious allegations of criminal, fraudulent or corrupt conduct have been made.

The nature of any allegation will clearly be enunciated to staff at the commencement of the interview. Although investigations are dynamic and require a flexible approach, they will be conducted within legislative requirements and the principles of procedural fairness.

6.1 Choosing an Investigator

Depending on the nature of the complaint, the resources of Council and any relevant legislative prescriptions, the investigation may be conducted internally or referred to an external agency or contract investigator. The choice of investigator will be guided by the nature of the complaint, and any relevant legislative prescriptions.

Where at all possible, an investigation should not be conducted by anyone with direct involvement with the person or matter the subject of the complaint.

All investigations must be conducted without bias, in an impartial and objective manner. No one with an actual or reasonably perceived conflict of interest should be appointed or remain as an investigator.

6.2 Investigation Skills

Criminal, fraudulent and corruption investigations involving serious allegations will only be conducted by personnel with the appropriate skills, qualifications and training or by those acting under the direction or approval of the Professional Conduct Coordinator. Investigations into allegations of a minor nature will usually be carried out by the relevant line Manager in consultation with the Professional Conduct Coordinator.

6.3 Powers of Investigation

The effectiveness of an investigation will be influenced by the available powers of investigation. At the outset of any investigation, an investigator must be aware of his or her power to require witnesses to talk, to obtain information from people about policies, procedures and practices, and to access relevant records.

Where a lack of powers will prevent an investigator from properly conducting an effective investigation into a complaint, the investigator should consider referring the matter to some other person or body with the necessary powers, for example, an appropriate external agency.

6.4 Referring Matters for External Investigation

Except for the circumstances outlined in this section, complaints should generally be investigated internally by the Professional Conduct Coordinator. Matters should generally be referred to an appropriate external agency for investigation or other action if:

- a complaint concerns criminal conduct or serious corruption and Council is unlikely to have adequate powers or resources to investigate;
- a matter is particularly complex or sensitive, or
- the subject of a complaint is the General Manager or Lord Mayor, or a Councillor accused of a breach of pecuniary interest provisions of the Local Government Act.

If a matter is to be referred to an external agency for action the choice will generally be one of four agencies, which are either investigating authorities for the purpose of the *Protected Disclosures Act 1994*, relevant review authorities or the police. These bodies are –

- a the ICAC for corrupt conduct, normally involving the dishonest exercise of official functions by public officials.
- b the Office of Local Government (**OLG**) for matters involving serious and substantial waste, general Council management and breaches of the Local Government Act and related Acts.
- c the NSW Ombudsman for maladministration, misconduct by police, or allegations of child abuse concerning the staff of designated government and non-government agencies.

- d the NSW Audit Office for allegations of serious and substantial waste.
- e NSW Police for criminal conduct².

The Professional Conduct Coordinator may also choose to refer a matter to an external investigator who sits on the Professional Conduct Investigation Panel, to be constituted by way of Expression of Interest every 3 years.

6.5 Referral to a Business Unit

Where a matter is assessed as *'less than serious'* but still worthy of investigation, that matter will be registered through Council's Record Management system by the office of the Professional Conduct Coordinator and may be referred to the relevant Divisional Manager for investigation and action. In such circumstances, the Divisional Manager will be identified as the complaint owner by notation in Council's Record Management system and in advice to the complainant.

The Divisional Manager cannot be mentioned in, or subject of the complaint. If this is the case, then the matter will be referred to the relevant Director for investigation and resolution. At a minimum, the Divisional Manager will contact the complainant (within 10 days) and then take all action necessary to resolve the complaint (if possible) including meeting with the complainant to explain regulations, council processes, requirements or legislation.

At any time during the complaint investigation, the Divisional Manager can seek advice from, or discuss any matter related to the investigation with the Professional Conduct Coordinator.

At any time during the complaint investigation, should the Divisional Manager identify any issues, which he/she regards as serious or corrupt, they will refer the matter back to the Professional Conduct Coordinator for further attention. At the conclusion of the complaint handling process, the Divisional Manager will have the responsibility for advising the complainant on the outcome of their complaint before closing the matter on TRIM.

In circumstances where subsequent complaints are received by the Office of the Professional Conduct Coordinator in relation to:

- a the adequacy of the response from the Divisional Manager;
- b the accuracy of information received or any inconsistencies with the regulatory interpretation relied upon; or
- c any other reasonable and relevant matters impacting the management or investigation of the complaint;

then the matter will be referred to the relevant Director for investigation and resolution.

7 The Investigation

7.1 Terms of Reference

It is important to establish a focus and set limits on an investigation. This can be achieved by clearly spelling out, at the beginning, the investigation objectives and by drawing up terms of reference for the investigation. Objectives must be relevant, realistic, achievable and within jurisdiction. The terms of reference effectively set out the boundaries for an investigation and the investigation can be concluded when the terms of reference have been fulfilled.

Setting the terms of reference requires the key issues arising out of the complaint to be clarified. In drafting the terms of reference for an investigation, the findings that might logically or conceivably be reached by the investigation should be considered, though pre-judgment should be avoided in doing so. The person who authorised the investigation (normally the Professional Conduct Coordinator) should formally approve the terms of reference. This procedure obviates any subsequent appeals against the decision to investigate or the ambit of the investigation.

7.2 Developing an Investigation Plan

The first step in preparing an investigation plan is to clarify exactly what is being alleged in the complaint. It is critical to define what it is that is the subject of the investigation. A single complaint may contain a number of separate allegations. Each allegation needs to be individually dealt with.

7.3 Maintaining Confidentiality

Confidentiality will, to the extent that it is lawful and the investigative process allows, be maintained during inquiries. Employees and contractors have a right to expect that information provided will be treated in confidence. As a rule, information will only be provided on a 'need to know' basis.

Investigators must abide by any confidentiality requirements applying to the investigation. Maintaining confidentiality:

- minimises the risk of harm to the parties to a complaint;
- is the most effective protection available to a whistle-blower;
- reduces the opportunities for evidence to become contaminated;
- encourages witnesses to be forthcoming in their evidence; and
- protects the investigator from the possibility of an action in defamation.

Investigators must also impress upon all witnesses their obligation to keep details of the investigation confidential.

7.4 Procedural Fairness

Due process must be observed in every investigation. Any decision affecting an individual that has been made without affording that individual procedural fairness is liable to be challenged and set aside. Procedural fairness requires an investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them;
- provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- hear all parties to a matter and consider submissions;
- make reasonable inquiries or investigations before making a decision;
- ensure that no person decides a case in which they have a direct interest; and
- act fairly and without bias, and conduct the investigation without undue delay.

There are limited circumstances where there may be an overriding public interest in short-circuiting certain procedural fairness requirements. These occasions are very rare, and will normally involve serious risks to personal safety or to substantial amounts of public funds. The obligation to provide procedural fairness should not be viewed as an impediment to conducting a smooth investigation.

7.5 Natural Justice

All investigations of employees against whom allegations have been made will be carried out in a fair, objective and impartial manner with due regard for the interests of the employee, persons involved and Council. The person against whom an allegation is made should be given the right to respond.

7.6 Meetings and Right to be Heard

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

7.7 Right to Silence

An investigator asking a question of an employee is not a prosecuting authority. Rather, they are seeking to understand what has occurred in relation to employment activities, and make decisions as to whether a particular employee is performing those tasks adequately, or understands them, or needs assistance, or alternatively, needs to be removed from employment. In some circumstances, that relationship can consist not only of contractual rights and obligations, but involve fiduciary obligations as well.

Councillors and staff have a right to remain silent during investigations being conducted by the Professional Conduct Coordinator. If it is reasonable, under the circumstances, for the Councillor or staff member to remain silent then no adverse inference may be drawn by the Professional Conduct Coordinator. However, it must be stressed to the subject of any investigation that if they choose not to answer a question put to them, the outcome of the investigation may not fully reflect their account of the matter, as the Professional Conduct Coordinator can only make a determination based on the information they are provided with.

Whilst an individual is not bound to answer any question or produce any document or thing if that material would have a tendency to expose that person to conviction for a crime (commonly referred to as the privilege against self-incrimination), employees are under an obligation to answer questions in an employment context honestly, and failure to answer at all would constitute a disciplinary matter.

7.8 Criminal Caution

During the course of an investigation, evidence may be obtained which establishes a prima facie case for a criminal offence against a person being interviewed. If this happens, then a caution should be administered advising the person that he or she does not have to say or do anything, but anything that is said or done may be used in evidence. Evidence that is obtained in the absence of a caution is taken to be evidence that has been improperly obtained, and it can be expected that such evidence will, as a rule, be excluded from proceedings in a court.

7.9 Standards of Proof

In disciplinary and administrative investigations, allegations must be proved according to the balance of probabilities. This standard of proof requires that it must be more probable than not that the allegations are made out. The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved.

The standard of proof for criminal matters is *beyond reasonable doubt*. The term connotes that evidence establishes a particular point to a moral certainty and that it is beyond dispute that any reasonable alternative is possible.

8 Gathering Evidence

8.1 Categories of Evidence

The main categories of evidence available to an investigator are oral evidence, documentary evidence, expert evidence and site inspections. Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration (ie the strengthening of evidence in a material particular) is desirable. If the allegations ultimately become the subject of legal proceedings, the evidence collected during the investigation may take on the character of forensic evidence. Forensic evidence refers to evidence used in, or connected with, a court of law.

Care needs to be taken during the course of the investigation to ensure that evidence gathered will not be ruled inadmissible, in accordance with the rules of evidence. The rules of evidence will not apply to the majority of administrative or disciplinary investigations. Nevertheless, an understanding of the basic rules of evidence is useful for an investigator to ensure that the evidence obtained is the best available, and will be admissible should there be a likelihood of subsequent legal proceedings.

The most fundamental consideration applying to any evidence is relevance. There must be a minimal logical connection between the evidence and the facts in issue. Other important evidentiary considerations of which the investigator should be aware are the rule against hearsay, the rule on opinion evidence, and the issue of cautioning.

8.2 Electronic Recording of Interviews

In all instances, the interview of employees against whom serious allegations of criminal, fraudulent or corrupt conduct have been made will be undertaken by way of electronic recording unless the employee objects, in which case contemporaneous notes will be taken by the interviewer. If an electronic recording of interview is made, the employee will be provided with a copy of the transcript once it is received by the Professional Conduct Coordinator. The employee may be provided with an electronic copy of the interview on request.

8.3 Third Party Observers

Witnesses and interviewees should generally be permitted the presence of a third party during an interview. Having a person of their choice present can make the witness feel more comfortable and this will make the interview easier to conduct. An investigator must ensure that any third party permitted to be present:

- understands that they are an observer, and may not take part in the discussion or interview;
- understands that they must not act as an advocate;
- is not a potential witness;
- has not agreed to assist any other witnesses to the investigation; and
- undertakes to respect the confidentiality of the issues discussed in the interview.

8.4 Expert Evidence

Depending on the nature of the matters under investigation, an investigator may require the services of a professional expert, such as a document examiner, a handwriting expert, an accountant, a valuer or an engineer. An investigator should ensure that any expert statement prepared suitably qualifies the maker of the statement, by specifying the things that make the person an expert. This is particularly important if there is any likelihood of the expert evidence being used in formal proceedings.

8.5 Access to Information

The Professional Conduct Coordinator has a delegated authority to receive and obtain information, documentation, and other materials from any person within Council, and in any lawful manner that the Professional Conduct Coordinator considers appropriate.

8.6 Securing Documentary Evidence

Documentary evidence is an important and usually reliable source of information available to an investigator. One of the first steps an investigator should take is to secure originals of any relevant documentary evidence. This will preserve the evidence and prevent any attempts at tampering with the documents. A receipt should be left, and the originals should be securely stored, and photocopies used for the investigation. A clear record should also be kept on the investigation file noting when, where and how documents were obtained.

8.7 Site Inspections

Sometimes a proper understanding of the issues will require a site inspection. In many circumstances, site inspections can provide visual information and context to a complaint. The Professional Conduct Coordinator (or an investigator under that person's delegation) may:

- a at a reasonable time enter, remain on and inspect premises owned or occupied by Council;
- b converse in private with any person on the premises and otherwise investigate matters within the jurisdiction of the Professional Conduct Coordinator;
- c require a person to furnish information, or produce a document, or thing in the person's possession or control that relates to an investigation at a time and place specified by the Professional Conduct Coordinator, whether or not the document or thing is in the custody or under the control of Council; and
- d make copies of a document produced under this section.

During any site inspection, employees retain the right to have a support person, (mutually agreed with the Professional Conduct Coordinator) present during any conversation with the Professional Conduct Coordinator.

8.8 Recording and Storing Information

A central investigation file must be maintained by the Professional Conduct Coordinator. The file should be a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. The file must be securely stored to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

8.9 Granting Access to Documents

An investigator must be aware of any statutory rights of access that the person the subject of the complaint may have (eg under the Government Information (Public Access) Act 2009 and similar legislation), as well as any statutory exemptions that apply. Where no statutory guidance is available, an investigator must make a careful judgment based on the following competing interests:

- the right of the person the subject of the complaint to know the case against him or her;
- the wish of any third party (especially whistle-blowers) to have their identity remain confidential; and
- the general interest in ensuring the integrity of the investigation.

8.10 Investigation Report

At the conclusion of an investigation, an investigation report must be prepared. The report will be for the records of Council (which may well be subject to outside scrutiny) and may also be required by one of the accountability agencies or the police. The following material should be included in an investigation report:

- Executive summary or covering memorandum;
- The terms of reference of the investigation;

- The name of the investigator and details about authorisation of the investigation;
- Sources of information and methodology used;
- Relevant legislation and/or policies;
- A statement of all relevant facts and evidence;
- The conclusions or findings reached and the basis for them;
- Recommendations to overcome any actual or potential shortcomings or problems identified; and
- Any other general issues raised by the investigation should also be addressed in the investigation report (this may include recommendations for systems improvements, the introduction or alteration of policies or procedures).

A copy of the full investigation report will not be provided to the subject of an investigation as a matter of course, and should be requested by way of a *GIPA Act* application through Council's Right to Information officer.

8.11 Closing the Investigation

The end of an investigation requires all paperwork to be completed and filed. As a matter of best practice, a review process should be undertaken at the conclusion of an investigation. A range of outcomes are possible at the conclusion of an investigation. The investigation may lead to:

- disciplinary action;
- dismissal of a disciplinary charge;
- referral of a matter to an external agency for further investigation or prosecution;
- introduction of administrative procedures/policies or practices;
- changes to administrative procedures/policies or practices; and/or
- redress for the complainant.

8.12 Hinder or Resist

A staff member who wilfully and without justification:

- obstructs, hinders or resists the Professional Conduct Coordinator or any other person in the performance of the functions and duties of the Professional Conduct Coordinator under this Policy;
- fails to comply with a request of the Professional Conduct Coordinator or a delegate of the Professional Conduct Coordinator; or
- makes a false statement to, or misleads or attempts to mislead, the Professional Conduct Coordinator or any other person in the exercise or performance of the functions and duties of the Professional Conduct Coordinator under this Policy,

will be guilty of a breach of this Policy and may be subject to disciplinary action.

In the case of conduct under this section, the Professional Conduct Coordinator will report such matters to the General Manager in the final investigation report. The Professional Conduct Coordinator may make recommendations as to what action should be taken. The General Manager will consider such recommendations and make a determination as to what action is to be taken. The General Manager's determination will be in accordance with relevant HR policies.

9 Media and Publication

9.1 Defamation

Allegations made in a complaint may contain defamatory imputations. Generally speaking, however, an investigator (and a complainant) will have a defence against an action in defamation for any publication of the defamatory material that is genuinely necessary for the purpose of investigating the complaint. Depending on the circumstances of the investigation, the defence of qualified privilege may apply, or communications may have absolute privilege.

In the absence of absolute privilege, investigators (and complainants) must exercise caution when repeating allegations. The defence of qualified privilege may not extend to a 'publication' of the allegations to people with no legitimate interest in receiving that information.

9.2 Notice of Proposed Steps

Where a recommendation is made at the conclusion of an investigation, the Professional Conduct Coordinator may request the General Manager or other Council officer to notify the Professional Conduct Coordinator within a specified time of steps taken, or that are proposed, to give effect to the recommendations. If, within a reasonable time after a request is made to the General Manager, no action is taken that in the opinion of the Professional Conduct Coordinator is adequate and appropriate, the Professional Conduct Coordinator may report any inaction on the recommendations to Council.

9.3 Media Policy

The Professional Conduct Coordinator may issue media statements and make public comment on any matter relating to that Office. As required, the Communications Manager shall provide media support.

9.4 Publication of Reports

Where the Professional Conduct Coordinator considers it to be in the public interest, or in the interest of a person or the Council, the Professional Conduct Coordinator may make public a report relating generally to the performance of duties under this Policy or to a matter investigated by the Professional Conduct Coordinator, whether or not the matters in the report are the subject of a report to Council under this Policy.

SUMMARY SHEET

Responsible Division	Office of the General Manager
Date adopted by Council	30 October 2017
Date of previous adoptions	14 July 2014
Date of next review	July 2020
Responsible Manager	Professional Conduct Coordinator
Authorised by	General Manager