



Code of Conduct Procedure for Staff, Delegates & Volunteers

LINKS TO COMMUNITY STRATEGIC PLAN & DELIVERY PROGRAM

Direction G1 – Council's decision making processes are open, transparent, corruption resistant and based on sound integrated planning

Strategy G1a – Develop and maintain a framework of plans and policies that ensures open and transparent Council operations

Strategy G1b – Embed corruption prevention practices in Council operations

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History of Revisions

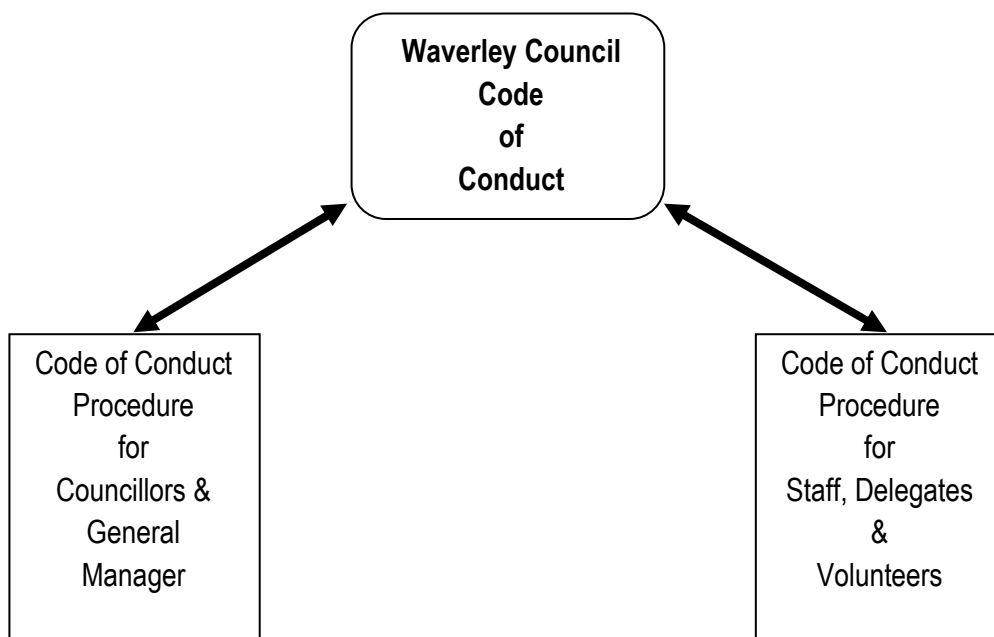
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1. Introduction

These procedures are based upon the Model Code Procedures as released by the Division of Local Government in December 2012 (DLG Circular 12-45 19 December 2012) and are prescribed for the purposes of the administration of Waverley Council's Code of Conduct. Council's *Code of Conduct* and *Code of Conduct Procedures* conform to the provisions of the Model Code and Procedure developed by the Division of Local Government which were made under sections 440 and 440AA respectively of the *Local Government Act 1993* ("the Act") and the *Local Government (General) Regulation 2005* ("the Regulation").

Sections 440 and 440AA of the Act require every council to adopt a Code of Conduct and Procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively. The Division of Local Government notes that in adopting procedures for the administration of their adopted codes of conduct, "*councils may supplement the Model Code Procedures. However provisions of a council's adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.*"

Waverley Council has developed a *Code of Conduct Procedure for Councillors & General Manager* and a *Code of Conduct Procedure for Staff, Delegates and Volunteers* to assist with the operation of its Code of Conduct.



This Procedure sets out the process Waverley Council will employ to deal with code of conduct complaints relating to staff (other than the General Manager), delegates and volunteers.

2. Definitions

For the purposes of the Procedure, the following definitions apply:

<i>the Act</i>	the <i>Local Government Act 1993</i>
<i>administrator</i>	an administrator of a council appointed under the Act other than an administrator appointed under section 66
<i>code of conduct</i>	a code of conduct adopted under section 440 of the Act
<i>code of conduct complaint</i>	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct
<i>complainant</i>	a person who makes a code of conduct complaint
<i>complainant councillor</i>	a councillor who makes a code of conduct complaint
<i>complaints coordinator</i>	a person appointed by the general manager under these procedures as a complaints coordinator
<i>conduct reviewer</i>	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
<i>council committee</i>	a committee established by resolution of council
<i>council committee member</i>	a person other than a councillor or member of staff of a council who is a member of a council committee
<i>councillor</i>	a person elected or appointed to civic office and includes a Mayor
<i>council official</i>	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers, delegates of council and volunteers
<i>delegate of council</i>	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated
<i>the Division</i>	the Division of Local Government, Department of Premier and Cabinet
<i>investigator</i>	a conduct reviewer or conduct review committee
<i>the Regulation</i>	the <i>Local Government (General) Regulation 2005</i>

subject person

a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

volunteer

A person who carries out work for council but does not receive remuneration or token remuneration from Council, including members of the public appointed by Council to a Council committee or other group, but not including Precinct Committee members

3. Standards of Conduct

Council officials* play a vital role in serving local communities. To do this effectively you will want to uphold the highest standards of behaviour to ensure the public has trust and confidence in local government.

What are the expected standards of behaviour?

The following standards of behaviour are expected of council officials. You must:

- Not conduct yourself in a manner that is likely to bring the council into disrepute
- Act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions
- Treat others with respect at all times
- Consider issues consistently, promptly and fairly
- Not harass, discriminate against, or support others who do so
- Ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly
- Not participate in *binding* caucus votes except for nominations
- Disclose and appropriately manage any conflict of interests, including from reportable political donations
- Not accept money or gifts of value and avoid situations that give rise to the appearance of securing favourable treatment
- In the case of councillors, not direct council staff or influence staff in the exercise of their role
- In the case of staff, ensure efficient and effective operation of the council's organisation and implementation of the decisions of the council without delay
- Use and secure information appropriately and do not disclose confidential information
- Use council resources ethically, effectively, efficiently and carefully in the course of official duties
- Not make complaints improperly, take detrimental action in response to complaints about standards of behaviour or disclose information about code of conduct matters.

These standards are outlined in detail in the *Waverley Council Code of Conduct* which is based upon the *Model Code of Conduct for Local Councils in NSW*. This Code is a legal document that all officials are obliged to understand and follow as the Model Code forms the basis of each council's own code of conduct.

What happens if the standards are not met?

Where council officials fail to follow this Code, this will be dealt with in accordance with the procedure for administration of the Model Code which forms the basis of Waverley Council's

- *Code of Conduct Procedure for Councillors and*
- *Code of Conduct Procedure for Staff, Delegates and Volunteers*

Complaints about a breach of these standards by anyone other than the General Manager are to be made at first instance to the General Manager. Complaints about the General Manager are to be made to the Mayor. Where the complaint is serious and cannot be resolved informally, a complaint may be formally investigated by an independent conduct reviewer.

Breaches of these standards by delegates, volunteers or council committee members may result in the following action:

- Censure
- Requirement of apology
- Prosecution
- Removal or restriction of delegation.

Breaches by council staff may result in disciplinary action, termination or, in the case of non-senior staff, such other penalty permitted under the relevant industrial award.

Breaches by the General Manager may result in the following action:

- Requirement for training
- Counselling
- Requirement for apology
- Findings of inappropriate conduct made public
- Action under the general manager's contract.

Breaches by councillors may result in the following action:

- Requirement for training
- Counselling
- Requirement for apology
- Findings of inappropriate conduct made public

- Censure
- Referral to the Division of Local Government for disciplinary action including but not limited to suspension for up to 3 months
- Referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension of up to 6 months or disqualification from holding civic office.

Requirements for Volunteers

Waverley Council recognises that members of the community contribute a great deal to the work of Council as volunteers. Many volunteers assist in Council activities, or by serving as a member of the public appointed to a Council committee or other group.

If you are a volunteer involved in Council activities it is important that you understand that the same requirements in respect of behaviour which apply to Waverley Council staff also apply to you. In particular, while working with Council you should familiarise yourself with the relevant parts of Council's Code of Conduct relating to:

- Standards of Conduct (Part 3)
- General Conduct Obligations (Part 4)
- Conflict of Interests (Part 5)
- Personal Benefit (Part 7)
- Relationship between Council Officials (Part 8)
- Access to Information (Part 9)
- Use of Council Resources (Part 10)
- Maintaining the Integrity of the Code (Part 11)

As a volunteer, you represent Council, and therefore you should follow the same high ethical standards we require of all staff. If you breach this Code, Council may remove you, or ask you to resign, from your volunteer work with Council.

Council thanks you for volunteering and greatly values the contribution you make. With your help, we are able to increase the range and quality of services we can provide to our community.

Workplace Safety

In accordance with the WHS Act 2011, workers and others operating within a workplace are responsible for taking reasonable care of their own health and safety and ensuring their conduct does not adversely affect the health and safety of other people, they must comply with training and any reasonable instruction and must comply with all notified policies and procedures.

As detailed in the Work Health and Safety (WHS) Policy, Waverley Council is committed to ensuring the health and safety of its employees and the community. Appropriate consultation is necessary: to ensure hazards are identified and any potential risks are assessed; when making decisions about ways to eliminate or minimise those risks; when proposing changes that may affect worker health and safety; and when making decisions about procedures for resolving health and safety issues.

Workplace Safety Officers and Health and Safety Committee Representatives have been established across all Departments, ensuring safety is a priority and continuously communicated within our teams to achieve our goal of zero harm. Their details including important contacts, useful information and resources can be found on notice boards at all council sites. Council's online Safety Management System and its detailed information including policies and procedure can be accessed in Controlled Docs > WH&S

* **Council officials** include councillors, members of staff of council, administrators, members of council committees, conduct reviewers and delegates of council.

4. How may Code of Conduct Complaints be made?

What is a “code of conduct complaint”?

- 4.1 For the purpose of these procedures, a code of conduct complaint is ***a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct.***
- 4.2 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a “code of conduct complaint” are to be dealt with under council’s routine complaints management processes.

When must a code of conduct complaint be made?

- 4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after 3 months may only be accepted if the General Manager, or, in the case of a complaint about the General Manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

How may a code of conduct complaint about a council official other than the General Manager be made?

- 4.5 All code of conduct complaints other than those relating to the General Manager are to be made to the General Manager in writing.
- 4.6 Where a code of conduct complaint about a council official other than the General Manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.7 In making a code of conduct complaint about a council official other than the General Manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The General Manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant’s preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding clauses 4.5 and 4.6, where the General Manager becomes aware of a possible breach of the council’s code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

5. How are Code of Conduct Complaints about Staff, Delegates and Volunteers to be managed?

How are code of conduct complaints about staff (other than the General Manager) to be dealt with?

- 5.1 The General Manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.
- 5.2 Where the General Manager decides not to make enquiries into a code of conduct complaint about a member of staff, the General Manager must give the complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the General Manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council, volunteers and council committee members to be dealt with?

- 5.6 The General Manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council, volunteers and council committee members and for determining the outcome of such complaints.
- 5.7 Where the General Manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the General Manager must give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the General Manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council, volunteers and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
 - (a) censure,
 - (b) requiring the person to apologise to any person or organisation adversely affected by the breach,
 - (c) prosecution for any breach of the law,

- (d) removing or restricting the person's delegation, or
 - (e) removing the person from membership of the relevant council committee.
- 5.10 Prior to imposing a sanction against a delegate of council, volunteer or a council committee member under clause 5.9, the General Manager or any person making enquiries on behalf of the General Manager must comply with the requirements of procedural fairness. In particular:
- (a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
 - (b) the person must be given an opportunity to respond to the allegation, and
 - (c) the General Manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

Referral of code of conduct complaints to external agencies

- 5.11 The General Manager, Mayor or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the Division, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.
- 5.12 Where the General Manager, Mayor, conduct reviewer or conduct review committee refers a complaint to an external agency or body under clause 5.11, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 5.13 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

- 5.14 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- (a) the complainant consents in writing to the disclosure, or
 - (b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - (c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - (d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - (e) it is otherwise in the public interest to do so.
- 5.15 Clause 5.14 does not apply to code of conduct complaints made by councillors about other councillors or the General Manager.

- 5.15 Where a councillor makes a code of conduct complaint about another councillor or the General Manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.16 A request made by a complainant councillor under clause 5.15 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.17 The General Manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.15 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.
- 5.18 Where a complainant councillor makes a request under clause 5.15, the General Manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

- 5.19 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.20 For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.21 Where a councillor makes a code of conduct complaint about another councillor or the General Manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.22 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.21, the General Manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

- 5.23 The General Manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.24 Where the Division receives a request under clause 5.23, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
 - (a) Imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or

- (b) Impeded or disrupted the effective administration by the council of its code of conduct, or
 - (c) Impeded or disrupted the effective functioning of the council.
- 5.25 A special complaints management arrangement must be in writing and must specify the following:
 - (a) The code of conduct complaints the arrangement relates to, and
 - (b) The period that the arrangement will be in force.
- 5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.26 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.27 below.
- 5.27 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.28 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the General Manager, review the arrangement to determine whether it should be renewed or amended.
- 5.29 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.28.

6. Complaints Assessment

Complaints assessment criteria

6.27 In undertaking the preliminary assessment of a complaint about staff, delegates or volunteers, the General Manager may have regard to the following considerations:

- (a) Whether the complaint is a “code of conduct complaint”,
- (b) Whether the complaint is trivial, frivolous, vexatious or not made in good faith,
- (c) Whether the complaint discloses prima facie evidence of a breach of the code,
- (d) Whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
- (e) Whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
- (f) Whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
- (g) Whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- (h) Whether the conduct complained of forms part of a pattern of conduct,
- (i) Whether there were mitigating circumstances giving rise to the conduct complained of,
- (j) The seriousness of the alleged conduct,
- (k) The significance of the conduct or the impact of the conduct for the council,
- (l) How much time has passed since the alleged conduct occurred, or
- (m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

Procedural Fairness

In conducting enquiries into complaints about staff, delegates or volunteers the General Manager or person engaged to undertake the enquiry will follow the rules of procedural fairness and must:

- Provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- Provide the person the subject of the complaint with an opportunity to place before the General Manager or person undertaking the enquiry any information the person considers relevant to the enquiry
- Provide the person the subject of the complaint with an opportunity to address the General Manager or person undertaking the enquiry, in person

- Hear all parties to a matter and consider submissions before deciding the substance of any complaint
- Make reasonable enquiries before making any recommendations
- Act fairly and without prejudice or bias
- Ensure that no person decides a case in which they have a conflict of interests
- Conduct the enquiries without undue delay.

Refer to NSW Ombudsman, *Investigating complaints, A manual for investigators*, June 2004.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the General Manager or person undertaking the enquiry should proceed to finalise the matter.

7. Staff Misconduct

In addition to complaint handling procedures, Council also has procedures to deal with staff misconduct.

7.1 General misconduct includes, but is not limited to:

- absence without permission
- persistent lateness
- unsafe work practices
- refusing to follow instructions without a proper reason
- harassment and bullying
- bringing Council into disrepute
- victimising a person who makes a complaint
- making false, vexatious or frivolous complaints or accusations
- breach of this Code or other Council policies.

7.2 Council may follow a progressive system, that is, a series of progressive responses to disciplinary problems, before taking disciplinary action. A progressive system may take place in this order:

- informal warning
- 1st written warning
- 2nd written warning
- 3rd and final written warning.

However, Council may take disciplinary action at or after any stage.

7.3 Council may request that staff attend counselling meetings with supervisors or senior management in between any of these stages.

7.4 Council can take any disciplinary actions in its discretion, such as immediate suspension or dismissal without using a progressive system. Normally this will be if Council believes that the misconduct is serious and wilful. Some of these situations are:

- stealing Council property
- intentionally damaging Council property
- assaulting a member of staff or customer or instigating an assault
- refusing to follow instructions without a lawful reason
- violating safety rules
- possessing weapons at work
- possessing illegal drugs
- conducting illegal activities at work
- harassing or bullying staff or customers

- intentionally releasing confidential information.
- 7.5 In conducting enquiries, the decision maker should follow the rules of procedural fairness as outlined in Part 6 of this Procedure.
- The decision should also be made considering:
- the nature and seriousness of the misconduct
 - the relevance of the misconduct to the staff member's duties and the reputation of Council
 - the circumstances of the misconduct
 - mitigating or extenuating circumstances
 - the staff member's employment history and prior general conduct
- 7.6 Where Council requires investigation of the alleged misconduct, the staff member may be suspended with or without pay until a decision is made. If the staff member is suspended without pay, and no disciplinary action is decided which involves suspension without pay or dismissal, Council will adjust the staff member's next pay for the full amount of the period of suspension.
- 7.7 Staff members should not expect Council to release information or documents that Council believes are privileged or confidential.
- 7.8 Council expects staff members to cooperate fully with the decision maker and investigators, participate in investigations as requested, and respond truthfully to any enquiries made.
- 7.9 The General Manager may decide at any time not to proceed with disciplinary action.
- 7.10 Council may take the actions set out under 'Disciplinary actions and staff rights' below.
- 7.11 All staff members will be treated fairly where there is alleged misconduct.

8. Disciplinary actions and staff rights

Disciplinary Actions

8.1 Disciplinary actions may include one or more of:

- reprimand or caution
- counselling
- demotion to a lower paid position
- suspension without pay
- termination.

8.2 One or more of the following disciplinary actions may be imposed instead of, or as well as, the disciplinary actions above:

- transfer
- change of duties
- withholding opportunities to work overtime
- issuing a performance improvement notice
- loss of privileges
- deferment of pay increments
- fines
- compensation for Council's loss.

8.3 Senior staff, including the general manager and directors, will be subject to the terms of their contracts of employment.

8.4 If there is corrupt, criminal or otherwise illegal conduct, Council may:

- refer the complaint and or related information to an appropriate investigative body (for example, the Division of Local Government, the Independent Commission Against Corruption, or the NSW Ombudsman)
- refer the complaint and or related information to the Police
- commence civil prosecution for breaching the law.

Staff Rights

8.5 Members of staff are entitled:

- to access their personal files, take notes and or obtain copies of the contents of their files
- to sight, note and or respond to any information placed on their personal files, which may be regarded as adverse
- to apply to delete or amend any disciplinary or other record mentioned in their personal files which they believe is incorrect, out of date, incomplete or misleading
- to request the presence of a union representative or support person and or the involvement of their union at any stage
- to apply for accrued leave for the whole or any part of any suspension during an investigation.

9. Reporting on Complaints Statistics

- 9.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- (a) The total number of code of conduct complaints made about councillors and the General Manager under the code of conduct in the year to September,
 - (b) The number of code of conduct complaints referred to a conduct reviewer,
 - (c) The number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
 - (d) The number of code of conduct complaints investigated by a conduct reviewer,
 - (e) The number of code of conduct complaints investigated by a conduct review committee,
 - (f) Without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
 - (g) The number of matters reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and
 - (h) The total cost of dealing with code of conduct complaints made about councillors and the General Manager in the year to September, including staff costs.
- 9.2 The Council is to provide the Division with a report containing the statistics referred to in clause 9.1 within 3 months of the end of September of each year.

10. Confidentiality

- 10.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under Council's procedures.

Code of Conduct Procedure Flowchart

