

# Complaints Procedure

September 2011



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# Complaints Procedure – Waverley Council

## 1. Aim & Purpose

The aim of this procedure is to define complaints and the system for dealing with complaints submitted or referred to Waverley Council.

The purpose of this procedure is to:

- Ensure complaints are received, recorded and resolved in an appropriate manner.
- Clearly show the process Waverley Council will follow when dealing with complaints.
- Ensure complaints are dealt with in a fair, open and impartial manner.
- Allow Council to use complaints to as a means to improve its service quality, policies and procedures.
- Demonstrate Council's commitment to dealing with complaints in a positive manner, and
- Allow complaints to be dealt with in a timely manner.

This procedure ensures that a complaint is dealt with fairly and impartially and strives to resolve disputes between the Council and complainants without the need for the complainant to make representations directly to external agencies such as the NSW Ombudsman, the Minister for Local Government or the Independent Commission Against Corruption (ICAC). Referral to an external agency is viewed as an action of last resort.

Nothing in this procedure overrides the General Manager's obligation to report under Section 11 of the Independent Commission Against Corruption Act 1988.

Complaints and (accolades) are welcome feedback to be received by Council to assist in the planning process and the improvement of Council's systems, procedures and policies.

## 2. What is a General Complaint?

A general complaint is ***an expression of dissatisfaction with the Council's level and quality of service or policies or procedures.*** Dissatisfaction may arise from the service provided by Council staff, councillors, contractors and systems or from the impact of a particular policy or procedure

**A complaint for the purposes of Waverley Council's Complaints Policy is any expression of dissatisfaction with Council's:**

### **Policies and procedures**

***Complaints about policies and procedures are usually related to dissatisfaction with service charges, policy decisions or an agreed practice covered by a policy or procedure.***

### **Employees, Delegates and Volunteers**

***Complaints about employee, delegates and volunteers are generally about dissatisfaction with the behaviour of a Council employee.***

### Quality of service

***Complaints about quality of service are generally related to the quality of the finished job (eg. not up to an expected standard, poor workmanship) or the length of time taken to complete the job/provide the service (eg. outside our service standards).***

#### **A General Complaint is NOT...**

- a request for services,
- a request for information or explanation of policies or procedures,
- an expression concerning the general direction and the performance of Council or its elected representatives,
- a report of damaged or faulty infrastructure, or
- a report about neighbours, noise, dogs, unauthorised building work or similar issues that fall into the regulatory aspect of our service.
- An objection to a development application

Many of the issues above are called 'complaints' when a customer contacts us but in reality they are a 'request for service'. They are called complaints because a customer is unhappy about the situation and wants something done.

The actions we take to resolve these 'requests for service' are an everyday part of organisational life for Waverley Council due to the nature of services we provide. This terminology does not reduce the importance of the issue, nor does it change the actions we will take. However it does help us differentiate between a **complaint** and a **request for service** so that we can register the issue appropriately on our customer tracking system (Service Desk).

Each complaint received will be assessed on its merit. If staff receiving a complaint have any doubt about the category of complaint or the actions required, they must seek advice from their supervisor.

### **3. Lodging a Complaint**

Complaints may be lodged with Council via the following methods:

- In person
- Telephone
- Facsimile
- E-mail
- Letter

The complaint should detail the name, address and contact phone number(s) of the complainant together with a brief description of the problem.

All complaints should be entered into Council's Complaints Register via Service Desk.

Any staff member may receive a complaint and must follow the processes set out in this procedure.

Any Councillor in receipt of a complaint should (preferably in writing) refer the matter directly to the General Manager, relevant Director or Public Officer for action.

#### **4. Standards for Managing Complaints**

In dealing with complaints we will be courteous, respectful and professional in our response.

The person dealing with the complaint will provide their name and contact details.

We will provide accurate information and advice about a customer's obligations and entitlements.

We will respect the privacy and confidentiality of information received as much as we can, however due to our statutory obligations and other requirements, confidentiality cannot be guaranteed.

We will deal with all complaints in a timely manner. This procedure contains information about our response time when dealing with various types of complaints

#### **5. The Public Officer**

Council's Public Officer is charged under the Local Government Act 1993 with the responsibility of dealing with complaints from the public concerning Council's affairs.

#### **6. Complaints that will not be investigated**

The Public Officer may determine that a complaint will not be investigated where that complaint:

- Is considered **unreasonable** or not made in good faith or concerns a trivial matter. (See Section 7 regarding unreasonable complaints)
- Involves a matter where an adequate remedy or right of appeal already exists, whether or not the complainant use the remedy or right of appeal
- Relates to a decision of Council
- Relates to conduct before a court, coroner or tribunal
- Relates to matters under investigation by the Minister for Local Government, ICAC, the NSW Ombudsman's Office, a Minister of the Crown or government department or the NSW Police Service
- Relates to the appointment or dismissal of any employee or an industrial or disciplinary issue
- Relates to a matter outside of the jurisdictional responsibility of the Council
- Relates to a decision, recommendation, act or omission which is more than one year old
- Relates to a matter awaiting determination by Council
- Relates to the actions or conduct of private individuals
- Relates to a matter where there is insufficient information available, or involves a matter where the complainant declines or refuses to provide further information and/or there are threats made against Council

Should the Public Officer determine that a complaint will not be investigated, the complainant will be advised of the reason for this decision.

#### **7. Unreasonable Complaints**

The Council's Complaints Procedure exists for the benefit of service users to provide a process which is both transparent and fair in dealing with expressions of dissatisfaction. However, in certain instances it is apparent that some complaints are unlikely to be concluded due to their unreasonable nature.

Complaints are deemed **unreasonable** if:

- The complaint lacks substance or merit
- The complaint is outside the Council's jurisdictional responsibility
- The conduct of the complainant is unreasonable, unacceptable or uncooperative

There are a number of factors which can indicate when a complainant is being unreasonable. These are:

- Constant complaints against one person or body whether about the same or different issues;
- Seeking to revisit the same issue after an initial investigation and subsequent review, when no new evidence or material is produced;
- Making repetitive complaints and then withdrawing them;
- Using complaints about another person as an attempt to divert attention from the complainant's own situation;
- Making a complaint based on false statements of fact;
- An unwillingness by the complainant to co-operate with Council to resolve the complaint;
- Making on-going complaints about something which would be considered trivial;
- Constant complaints by a person who does not have a sufficient direct interest in the matter.

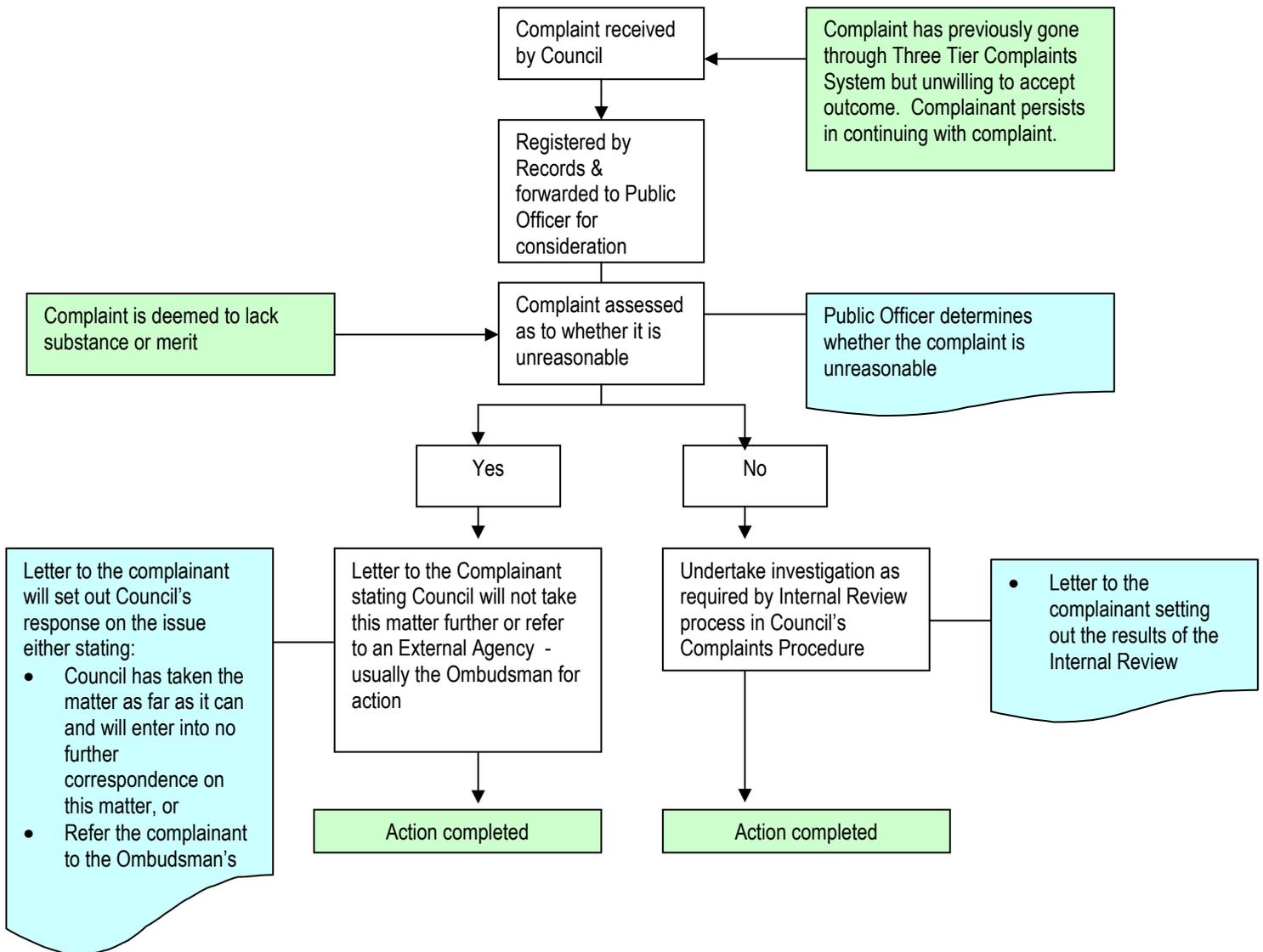
The Public Officer needs to exercise caution when determining whether a complaint is unreasonable. It is unlikely that such a determination could be made without some initial investigation of the complaint.

In the vast majority of instances a complaint will reach a resolution through Council's Three Tier system. However, if a complaint has been handled through the Council's Complaints System and the complainant is still not satisfied with the outcome, the Public Officer can:

1. Inform the Complainant that the issue has been dealt with through the Council's Complaints System and the matter has been taken as far as it can and that it will not enter into any further correspondence on this, or
2. It can refer the Complainant to the Ombudsman's Office, since they would have dealt with the matter at the Tier 3 External Review level.

The Public Officer can advise the complainant that all future correspondence should be directed to there.

## Dealing with an Unreasonable Complaint



## 8. Anonymous Complaints

Council will record anonymous complaints. However, we will only act on them where the matter is relatively serious and there is sufficient information in the complaint to enable an investigation to be undertaken.

Anonymous complaints should always be referred to the relevant Director.

Complaints about hazards and public safety concerns should be referred to the Safety Manager.

Generally only anonymous complaints about staff involving the following serious matters will be investigated:

- hazards involving possible risks and public liability,
- corrupt conduct,
- illegal activities eg: illegal work/buildings, and
- public safety concerns eg: child protection.

## 9. Competitive Neutrality Complaints

Competitive Neutrality is based on the concept of a 'level playing field' for all competitors in the market place regardless of the business they operate. Council is required to operate without net competitive advantage over businesses that might otherwise flow as a result of their public ownership.

A competitive neutrality complaint is:

- A complaint that Council has not met its requirements under the National Competition Policy.
- A complaint about Council's pricing and costing of its Category 1 and Category 2 businesses as identified in its Annual Report. These businesses are:
  - Council's Property Portfolio
  - Trade Waste
  - Cemetery Unit
- A complaint that Council has not established an effective complaints handling mechanism, and
- A complaint that Council has not abided by the spirit of competitive neutrality in the conduct of its business activities.

Competitive Neutrality Complaints against Waverley Council can be made to either the Division of Local Government or to the General Manager.

All Competitive Neutrality complaints are to be in writing and will be acknowledged by the Council. Council will treat the complaint in the same manner in which it deals with a complaint made under the "Protected Disclosures Act" and Council's internal reporting system.

Council will deal with all complaints promptly and aim to respond to the complainant within **4 weeks** of receipt of the letter.

After proper investigation all complaints will be reported to Council and state the outcomes and validity of the complaint. Council will advise the complainant of the remedy available and these could include:

- To provide more information to the complainant for a more accurate understanding of competition policy;

- To investigate/review Council's business activities if a legitimate complaint is made;
- To change Council's business practice where a complaint is justified.

If the complainant is not satisfied with the above they will be directed to the Division of Local Government, the NSW Ombudsman or the Independent Commission Against Corruption to pursue the matter further, depending upon the nature of the complaint.

If the matter relates to the application of the Trade Practices Act 1974 involving local government, they will be directed to the Australian Competition and Consumer Commission (ACCC).

### **10. Serious Complaints**

All complaints, including those received verbally or anonymously, alleging corrupt conduct, pecuniary interest breaches, improper use of position, criminal action maladministration or breaches of access to information are to be registered as detailed in Page 8 of the Complaints Policy and referred to the Public Officer or General Manager. If the allegation relates to the General Manager, the matter must be reported to the Public Officer or Mayor. If the allegation relates to the Public Officer, the matter must be reported to the General Manager.

Complaints of this nature will be dealt with in accordance with Council's separate policies such as the Code of Conduct and Internal Reporting System under the Public Interest Disclosures Act 1994.

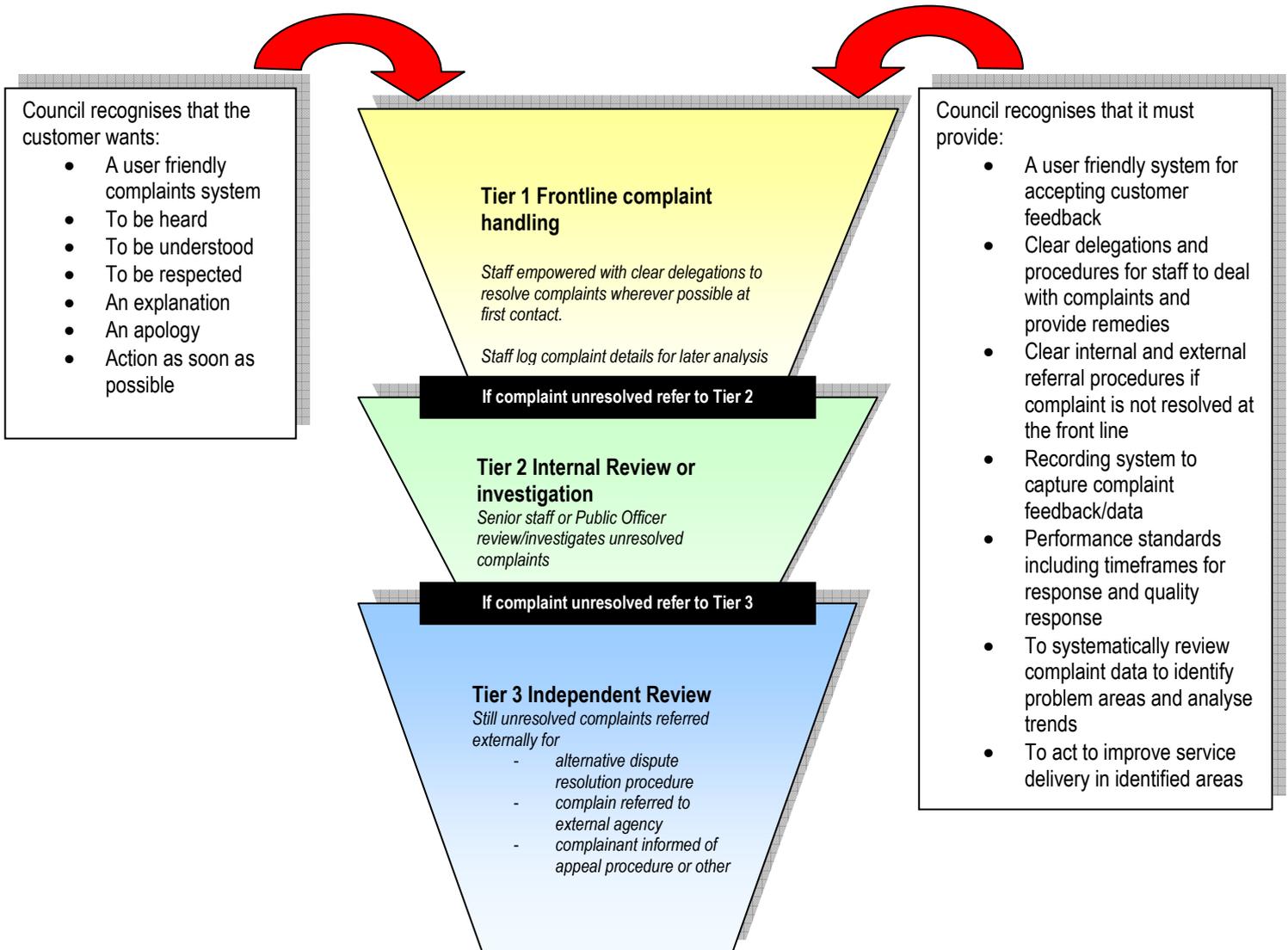
### **11. Confidentiality**

Council will not disclose the identity of a complainant should the complainant request their details remain confidential.

### **12. Complaint Handling System**

Council recognises that an effective complaints system is an essential part of the provision of quality public sector service. To achieve this Council has adopted the following model to handle its complaints:

## Waverley Council's Model for Complaint Handling



Council has in place a three tier complaint handling system which involves the following:

### **Tier 1 Frontline Complaint Handling**

Staff members are empowered with clear delegations to resolve complaints wherever possible at first point of contact. Staff are to register all complaints within Service Desk and to outline the resolution/action taken.

### **Tier 2 Internal Review**

If the complaint can not be resolved at the first point of contact then the complaint is reviewed or investigated by the Public Officer, Senior Manager or General Manager and the results of the review are reported back to the complainant

### **Tier 3 External Review**

If the complaint cannot be reviewed within the Council or the complainant does not accept the outcome of the Internal Review, the complainant is referred to an

outside agency or to some other alternative resolution procedure or, as a last resort any legal remedy

### 13. Complaint Handling Procedures

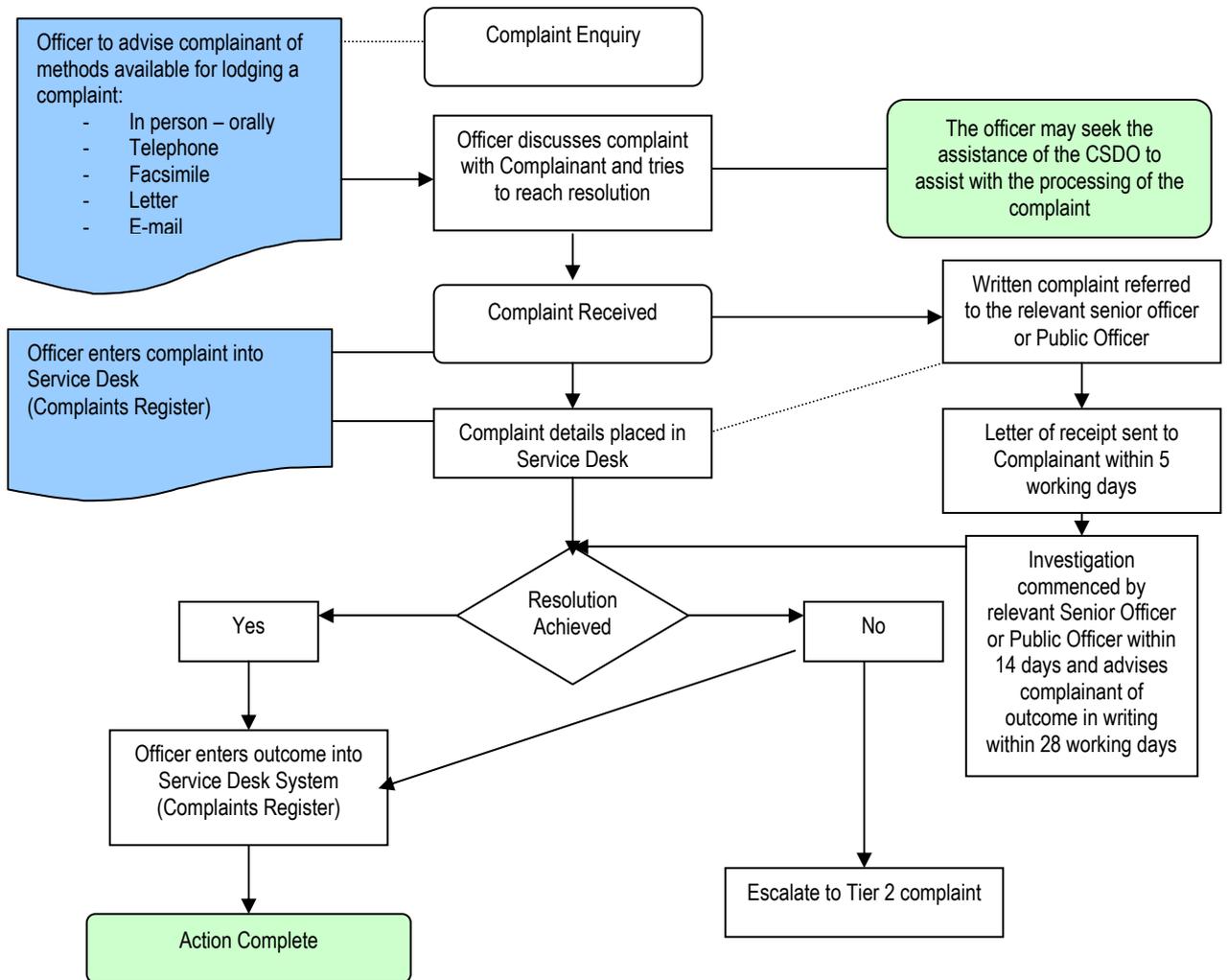
#### Tier 1 **Complaint resolved on the spot**

1. Any staff member approached by a person enquiring how to lodge a complaint must advise that person the methods available. There is no need to record the enquiry. A record is only made **when the complaint is lodged** regardless of how minor the complaint may be.
  
2. Upon receipt of a complaint, the staff member receiving the complaint must ensure that the complaint is registered in Council's Service Desk system. The staff member may be able to resolve this complaint on the spot. If this can be done then the staff member should immediately record the outcome in Service Desk. The officer may also seek the assistance of the Customer Service Duty Officer (CSDO) to assist with the resolution of the complaint
  
3. Written complaints will be referred in the first instance to the relevant senior officer for the production of a letter of acknowledgment and course of action to be taken. A letter of receipt will be sent out within **5 working days**. Depending on the nature of the complaint it may be referred to Council's Public Officer for action.

The relevant 'senior officer' may be the Manager, Divisional Manager or Director depending upon the nature of the complaint.

4. The senior officer will undertake an investigation of the complaint and advise complainant of outcome in writing within **28 working days**.

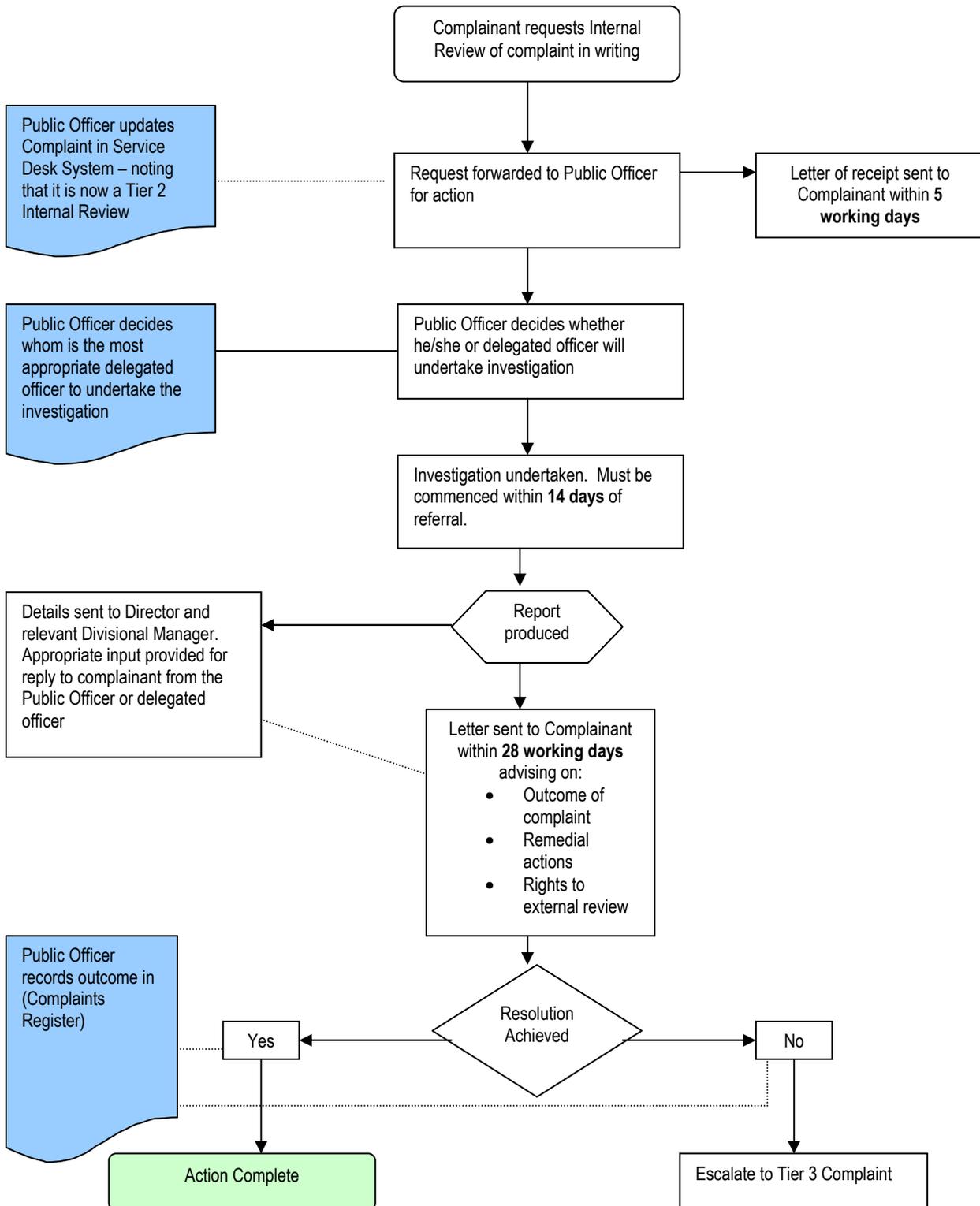
## Tier 1 Complaint Process



## **Tier 2 Unresolved Complaint referred for Internal Review**

1. Complaints that have not been resolved to the satisfaction of the complainant following the completion of a Tier 1 procedure will then be subject to an internal review to provide an alternative means of addressing the complaint. **The Complainant must request an Internal Review in writing.**
2. Unresolved complaints must be referred to the Public Officer for further action. The Public Officer will either investigate the matter or delegate to a Senior Manager to investigate on his/her behalf.
3. If the complaint is about a Councillor or the Public Officer then they **must** be referred to the General Manager.
4. The Public Officer or designated senior manager will have delegation to:
  - reconsider the original decision or remedial action afresh and take any appropriate corrective action.
  - Overturn previous decisions and apply remedies as considered necessary.
  - Apply appropriate redress in cases where the review reveals maladministration or detriment arising from the Council's dealing with the complainant.
5. The internal review must be commenced within **fourteen (14) days of referral** of the matter in writing to the Public Officer.
6. The results of the review must be communicated directly in writing to the complainant within **28 working days** with a copy being provided to the NSW Ombudsman as part of the Ombudsman's complaint referral program.
7. The Public Officer's letter must outline the result of the review, remedial action undertaken and what rights the complainant has to an external review.

## Tier 2 Complaint Process

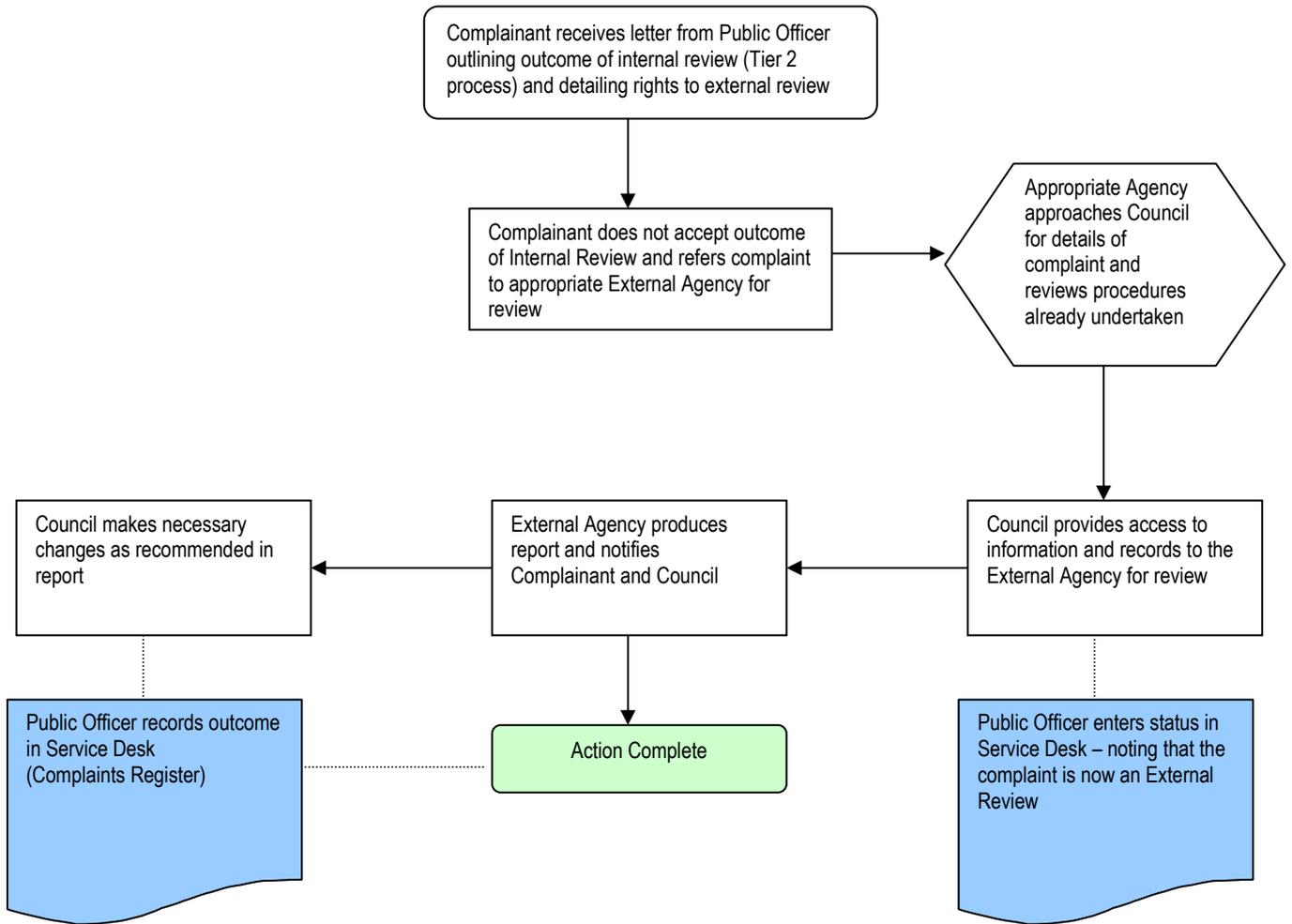


### Tier 3 Complaint referred for External Review

1. Should a complaint and subsequent review not be resolved to the satisfaction of the complainant, the Public Officer may determine to offer a dispute resolution procedure, such as mediation or conciliation. Should an appeal procedure or other legal remedy exist, the Public Officer will advise the complainant accordingly.
2. Alternatively the Public Officer will advise the complainant that the complaint may be referred to an external agency for review. Complaints, depending on their nature, can be referred to the following external agencies for an external review:

External Agency	Nature of Complaint
<b>The NSW Ombudsman</b> Level 24 580 George Street Sydney NSW 2000 Tel: 02 9286 1000 or 1800 451 524 Fax: 02 9283 2911 e-mail: omb@nswombudsman.nsw.gov.au	Matters concerning maladministration or related to child abuse
<b>NSW Division of Local Government</b> Locked Bag 3015 NOWRA NSW 2541 Tel: 02 4428 4100 Fax: 02 4428 4199 e-mail dl@dlg.nsw.gov.au	Matters concerning a serious breakdown in a Council's operations, if the Council as a whole is not operating satisfactorily or is in breach of the provisions of the Local Government Act 1993 or in respect of pecuniary interest matters
<b>The Independent Commission Against Corruption (ICAC)</b> GPO Box 500 Sydney NSW 2001 Tel: 9318 5999 or 1800 463 909 Fax: 02 9699 8067	Matters concerning corrupt conduct, which is defined as dishonest or partial exercise of any official functions by a public official. The ICAC Act requires the General Manager to report suspected cases of corrupt conduct to ICAC
<b>Anti-Discrimination Board</b> PO Box A2122 Sydney South NSW 1235 Tel: 02 9268 5555 or 1800 670 812 Fax: 02 9268 5500	Matters in relation to discrimination, disability and harassment
<b>Australian Competition &amp; Consumer Commission (ACCC)</b> Level 7 Angel Place 123 Pitt Street Sydney NSW 2000 GPO Box 3648 Sydney NSW 1044 Tel: 02 9239 9133 Fax: 02 9232 6107	Competitive neutrality complaints
<b>Privacy NSW</b> PO Box A2122 Sydney South NSW 1235 Tel: 02 9268 5588 Fax: 02 9268 5501 E-mail: privacyNSW@agd.nsw.gov.au	Breaches of the Privacy & Personal Information Act 1998
<b>Office of the Information Commissioner</b> Level 11 1 Castlereagh St. GPO Box 7011 Sydney NSW 2001 Tel: 1800 463 626 E-mail: oicinfo@oic.nsw.gov.au	Complaints about access to information

### Tier 3 Complaint Process



#### **14. Complaints against a Councillor**

A complaint against a Councillor is to be referred to the General Manager for assessment whether the complaint is considered unreasonable. The General Manager may liaise with the Mayor to undertake this assessment. A written acknowledgement of the complaint must be provided within **7 working days** of receipt.

If a complaint is against the General Manager it must be referred to the Mayor for action.

If the complaint is deemed to be unreasonable, the General Manager is to advise the complainant that it will not be investigated any further.

If the complaint is not considered to be unreasonable then the General Manager will investigate the matters raised in the complaint, requesting further information from the complainant if necessary.

Providing the complaint is not a matter required to be reported to an external agency, the Councillor concerned is to be informed of the complaint and requested to meet with the General Manager to disclose the matter(s) raised in the complaint. The Councillor is to be informed of the actions taken to date and be provided with a copy of the complaint together with any supporting documentation provided by the complainant.

The name of the complainant may be disclosed to the Councillor unless confidentiality has been requested by the complainant.

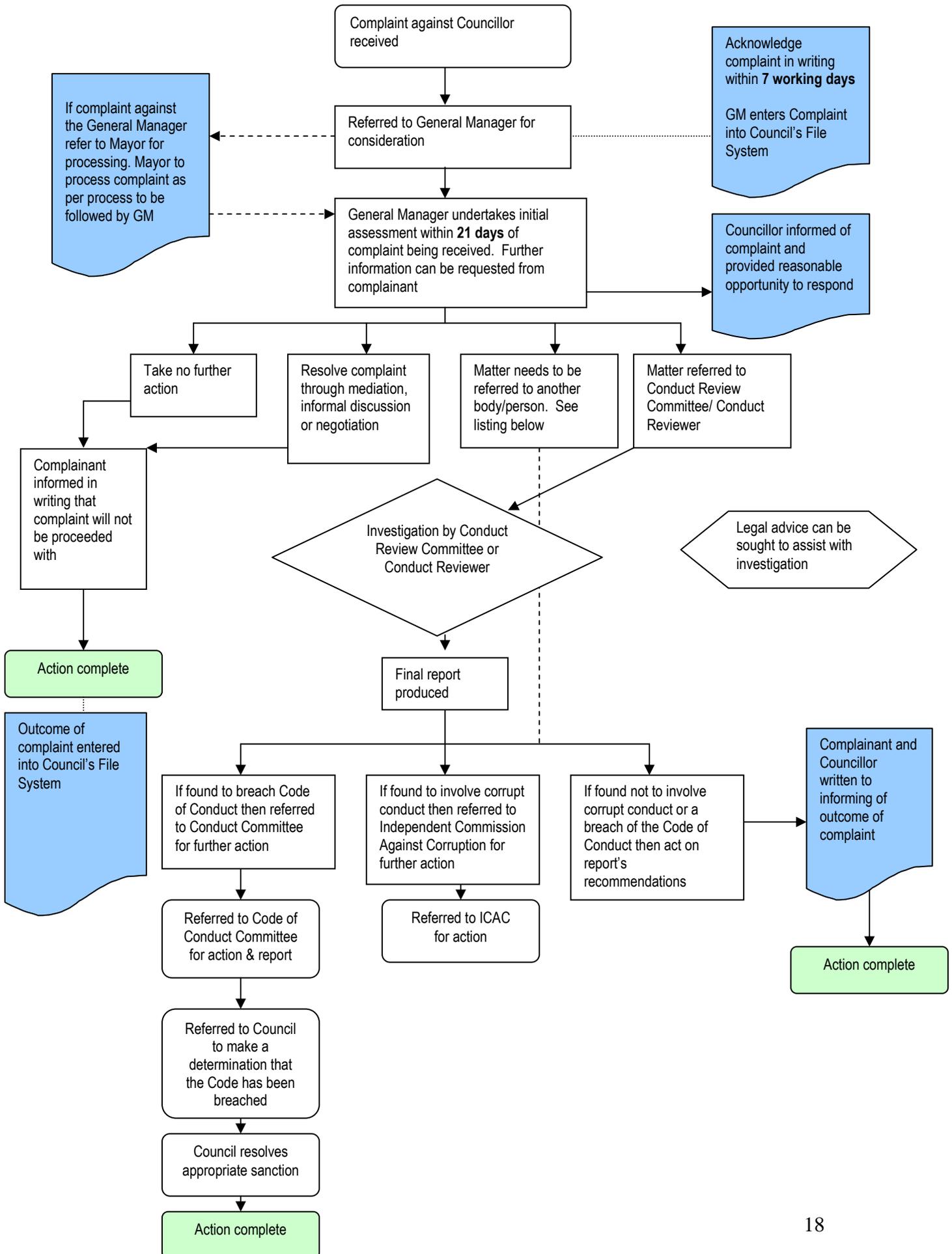
Reasonable opportunity will be allowed for the Councillor to consider the complaint and to respond to it. It is the Councillor's prerogative whether he/she need their own legal advice at their own expense in relation to that response.

The Councillor's response should be received by a date stipulated by the General Manager, who will then consider the response with the assistance of legal advice if required.

Should the General Manager consider the complaint valid, the matter should then be referred to the Council's Code of Conduct Committee. Should the nature of the complaint involve corrupt conduct, the matter must then be referred to the Independent Commission Against Corruption (ICAC).

The General Manager shall forward a written response to the complainant in relation to the outcome of the investigation.

## Complaint against a Councillor and General Manager Process



## **15. Process for handling Protected Disclosure Complaints**

Protected Disclosures are designed to deal with disclosures about serious matters in regard to public administration relating to:

- a. Corruption
- b. Maladministration
- c. Serious and substantial waste of public funds, and
- d. Failure to exercise functions properly in accordance with the Government Information Public Access Act (GIPA).

The Public Interest Disclosures Act 1994 has set up a scheme for people who work in the NSW public sector (including councils) to allow them to make disclosures about the above matters.

A disclosure is **not** covered by the Act if:

- It was made primarily to avoid dismissal or disciplinary action
- It contains intentionally false statements or is intended to mislead or attempt to mislead the recipient (these are offences under the Act).

Council has in place an Internal Reporting Policy and Reporting Process – Public Interest Disclosures Act 1994 which sets out Council's process for handling protected disclosures.

To be protected by the provisions of the Public Interest Disclosures Act 1994, a disclosure must be made by a member of staff or a councillor to:

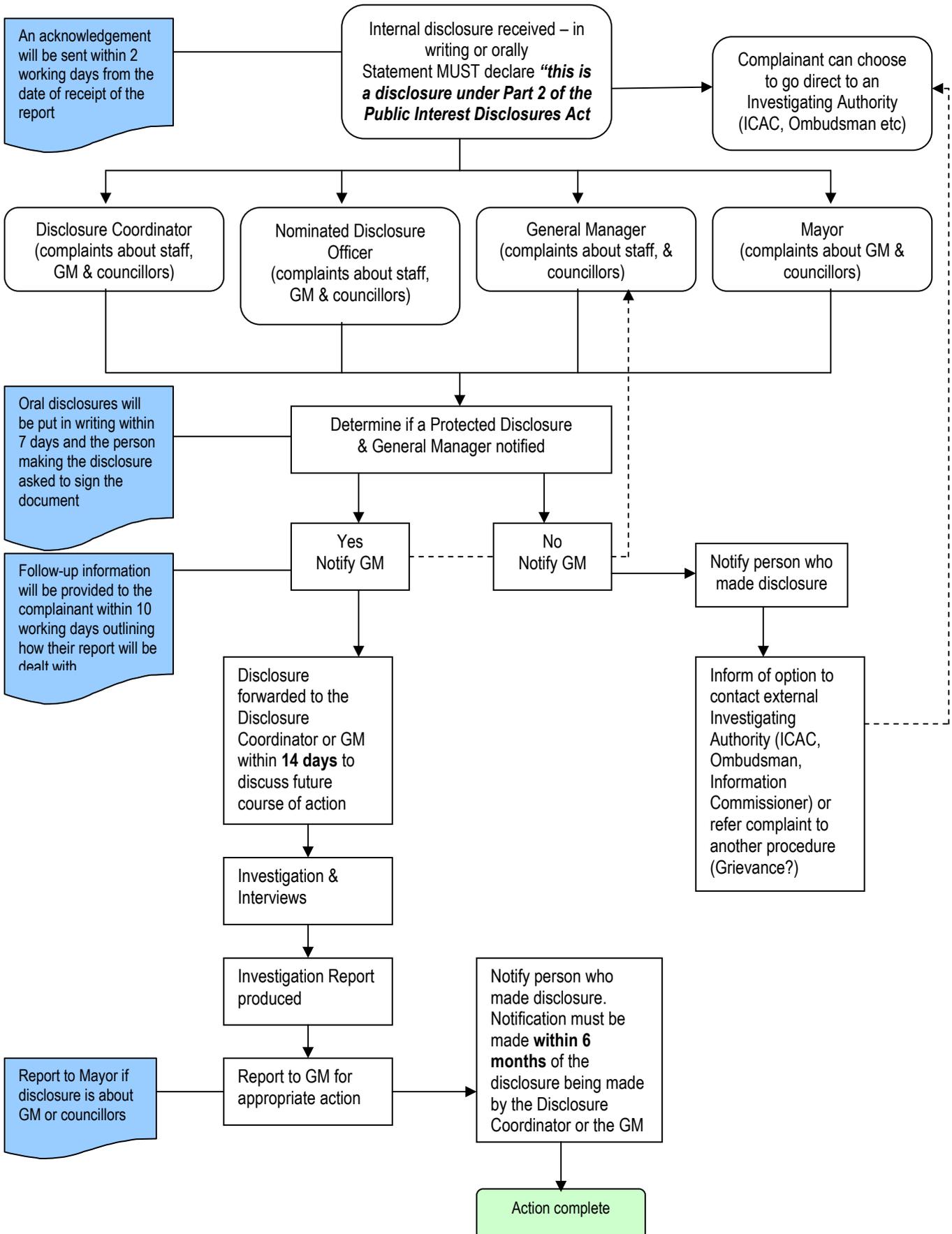
- An investigating authority (ie. NSW Ombudsman, ICAC, Division of Local Government, Information Commissioner)
- The General Manager, or
- The Disclosure Coordinator, or
- A nominated Waverley Council officer (a Disclosure Officer) in accordance with the Internal Reporting system, or
- The Mayor (if complaining against the General Manager or a councillor)

Within Waverley Council Protected Disclosure Complaints can be made to the following:

- The Disclosure Coordinator (complaints about staff, GM and councillors)
- A nominated Disclosure Officer (complaints about staff, GM and councillors)
- The General Manager (complaints about staff and councillors)
- The Mayor (complaints about the councillors and General Manager)

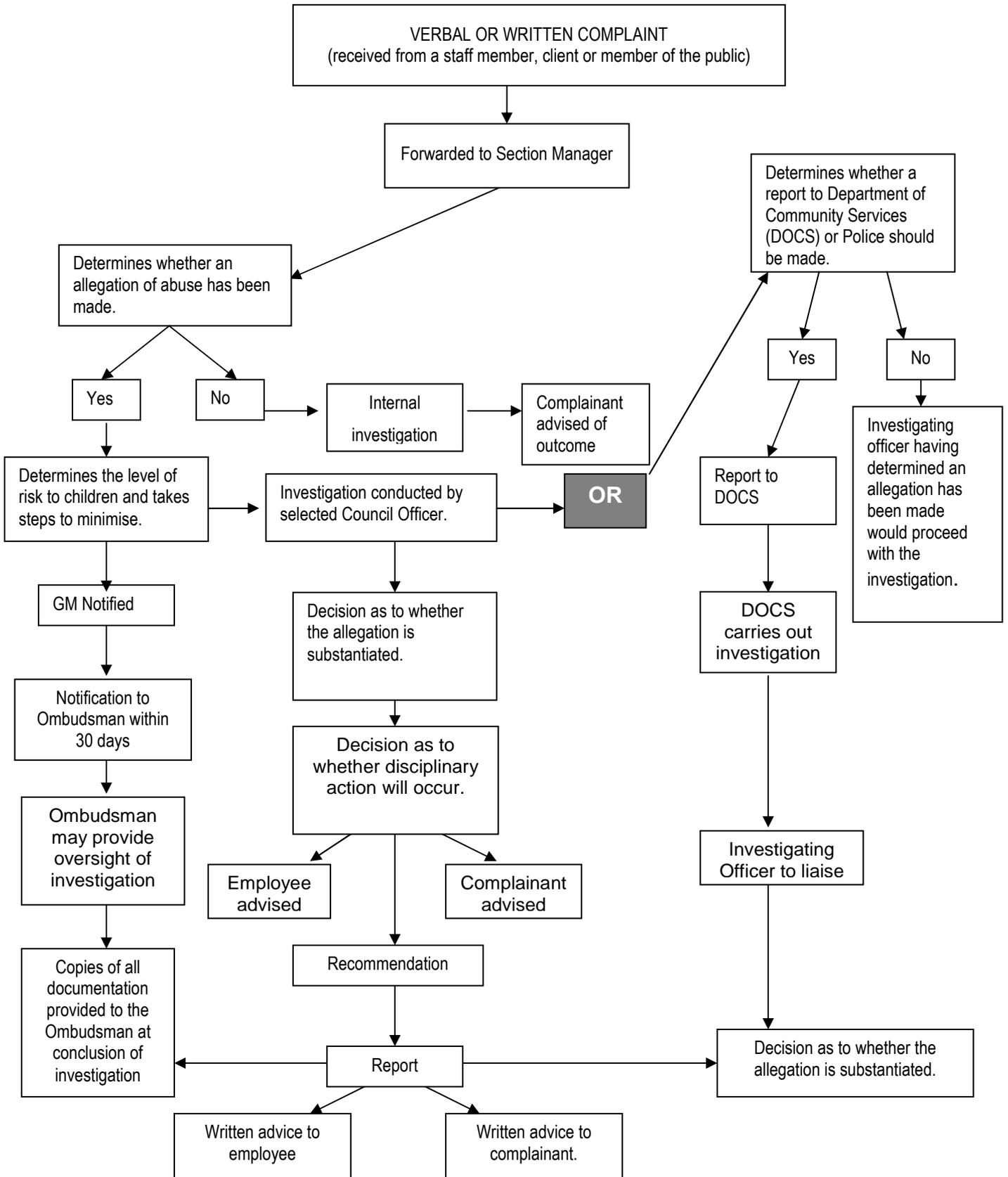
The process for dealing with Protected Disclosures is set out below:

## Making a Protected Disclosure



**16. Process for handling allegations under Child Protection and Community Services Act**

Set out below is the procedure for handling complaints under the Child Protection and Community Services Act.



## **17. Reporting of Results**

Council will maintain a Complaints Register which will provide a complete record of all complaints received and processed by Council.

The Customer Service Manager shall maintain statistics of complaints to allow performance reporting on a regular basis and within the Annual Report.

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### **Reference Resources:**

NSW Ombudsman, *Effective Complaint Handling*, June 2000  
NSW Ombudsman, *Effective Complaint Handling Guidelines – 2<sup>nd</sup> Edition*, December 2010  
Ombudsman Victoria, *Good Practice Guide, Ombudsman Victoria's guide to complaint handling for Victorian Public Sector Agencies*, April 2006

### **Associated Council Resources:**

Complaints Management Policy, June 2011  
Staff Guidelines for Handling Complaints, Waverley Council Staff Guidelines, July 2011