

# Protected Disclosures Procedures



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### Document Control

<b>Policy</b>	Protected Disclosures Procedures	<b>Policy Number</b>	TBA
<b>Author/Reviewer</b>	Executive Director Corporate & Community	<b>Review Period and Date</b>	Reviewed within 12 months of election/4 yearly - September

This policy shall be reviewed: -

- This document will be reviewed within 12 months of an election, and thereafter at four yearly intervals, or as otherwise determined by Council. This will include the issue of a new Modal Plan by the NSW Ombudsman.
- This policy commences as from the last date of adoption by Council as listed in the document history and replaces all previous versions.

### Document History

Date	Status	Version	Resolution	Description
24 May 2017	Draft	0.1		Presented to Council for endorsement, public exhibition 28 days
24 May 2017	Draft	0.2	17/109	Placed on public exhibition for 28 days
23 June 2017	Final	1.0	17/109	Adopted



## Introduction

Under section 6D of the Public Interest Disclosures Act 1994 (the PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with protected disclosures. The definition of public authorities includes Councils.

The procedures in this document have been developed from the Model Internal Reporting Policy issued in June 2014 by the NSW Ombudsman, to ensure Hilltops Council's compliance with and commitment to the legislation.

### 1. Purpose and context of the procedures

The purpose of this document is to set out the procedures for an internal reporting system for staff and councillors to report wrongdoing without fear of reprisal. The document sets out who you can report wrongdoing to in Hilltops Council, what can be reported and how reports of wrongdoing will be dealt with by Hilltops Council.

The internal reporting system is not intended to be used for staff grievances. If a staff member makes a report which is substantially a grievance, the matter will be referred to Council's Human Resources staff to be dealt with in accordance with the Grievance Policy.

### 2. Organisational commitment

Hilltops Council is strongly committed to the principles underpinning the Public Interest Disclosures Act (1994) and commits itself to providing adequate resources, both financial and human, to:

- encourage reports of wrongdoing
- protect and support those who make them
- provide training for key personnel
- investigate allegations
- properly manage any workplace issues that the allegations identify or create
- correct any problem that is identified
- reassess / review the document every four years to ensure it is still relevant and effective.

This commitment is mirrored by the elected Councillors and by its General Manager and remains incumbent on all Councillors and staff in respect to compliance.

### 3. Who does this document apply to?

This document applies to:

- both council staff and councillors
- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for the Council
- employees of contractors providing services to the Council
- other people who perform council official functions whose conduct and activities could be investigated by an investigating authority, including volunteers.

Council's policy and procedures also apply to public officials of another council or public authority who report wrongdoing relating to Hilltops Council.



## 4. Roles and responsibilities

### 4.1 The role of council staff and councillors

Staff and councillors play an important role in contributing to a workplace where known or suspected wrongdoing is reported and dealt with appropriately. All council staff and councillors are obliged to:

- report all known or suspected wrongdoing and support those who have made reports of wrongdoing
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of any person the subject of reports.

### 4.2 The role of the Hilltops Council

Hilltops Council will assess all reports of wrongdoing it receives from staff and councillors and deal with them appropriately.

Council must report on its obligations under the PID Act and statistical information about public interest disclosures in its annual report and to the NSW Ombudsman every six months.

To ensure Hilltops Council complies with the PID Act and deals with all reports of wrongdoing properly, all staff and councillors with roles outlined below and elsewhere in this document will receive training on their responsibilities.

### 4.3 Roles of key positions

#### 4.3.1 General Manager

The General Manager has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture, and ensuring Hilltops Council complies with the PID Act. The General Manager can receive reports from staff and councillors and has a responsibility to:

- assess reports received by or referred to them, to determine whether or not the report should be treated as a public interest disclosure, and to decide how the report will be dealt with
- deal with reports made under the council's Code of Conduct in accordance with the council's adopted Code of Conduct procedures
- ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- make decisions following any investigation or appoint an appropriate decision-maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

#### 4.3.2 Disclosures Coordinator

The Disclosures Coordinator has a central role in Council's internal reporting system. The disclosures coordinator can receive and assess reports, and is the primary point of contact in the Council for the reporter. The Disclosures Coordinator has a responsibility to:

- assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with (either under delegation or in consultation with the general manager)



- deal with reports made under the council's code of conduct in accordance with the council's adopted code of conduct procedures
- coordinate the Council's response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- where required, provide or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report
- ensure the council complies with the PID Act
- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

### 4.3.3 Disclosures Officers

Disclosures Officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy and procedures, receive reports of wrongdoing and assist staff and councillors to make reports.

Disclosures Officers have a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out preliminary assessment and forward reports to the Disclosures Coordinator or General Manager for full assessment.

### 4.3.4 Mayor or Administrator

The Mayor or Administrator can receive reports from staff and councillors about the General Manager. Where the Mayor or Administrator receives such reports, he/she has a responsibility to:

- assess the reports to determine whether or not they should be treated as a public interest disclosure, and to decide how they will be dealt with
- deal with reports made under the council's Code of Conduct in accordance with the council's adopted Code of Conduct procedures
- refer reports to an investigating authority, where appropriate
- liaise with the Disclosures Coordinator to ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- refer actual or suspected corrupt conduct to the ICAC
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

### 4.3.5 Supervisors and line managers

Supervisors and line managers play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors and line managers should be aware of the internal reporting policy and procedures, and are responsible for creating a local work environment where staff are comfortable and confident about reporting wrongdoing. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do





### Mayor or Administrator (for reports about the General Manager only)

- There is currently no Mayor. The **Administrator** is Wendy Tuckerman and her contact details are:

phone: 6380 1200

email: wendy.tuckerman@hilltops.nsw.gov.au

### Disclosures Coordinator

- The **Disclosures Coordinator** is Lee Furness and her contact details are:

phone: 6380 1200

email: lee.furness@hilltops.nsw.gov.au

## 8. Who can receive a report outside of the Hilltops Council?

Staff and councillors are encouraged to report wrongdoing within the Council but internal reporting is not your only option. You can also make a public interest disclosure to:

- An investigating authority.
- A Member of Parliament or a journalist, but only in the limited circumstances outlined below.

### 8.1 Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff and councillors can report wrongdoing to and the type of wrongdoing each authority can deal with. In certain circumstances, it may be preferable to make a report of wrongdoing to an investigating authority, for example a report about either the General Manager or the Mayor.

The relevant investigating authorities for the Hilltops Council are:

- the Independent Commission Against Corruption (ICAC) — for reports about corrupt conduct
- the Ombudsman — for reports about maladministration
- the Information Commissioner — for disclosures about a breach of the GIPA Act
- the Office of Local Government— for disclosures about local councils.

You should contact the relevant investigating authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this document.

You should be aware that the investigating authority may well discuss any such reports with the Hilltops Council. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff or councillors who report wrongdoing to an investigating authority, if we are made aware that this has occurred.

### 8.2 Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager
- a person nominated in these procedures, including the Mayor for reports about the General Manager
- an investigating authority.

Also, Hilltops Council or the investigating authority that received your initial report must have either:



- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true (see section 19).

### 8.3 Other external reporting

If you report wrongdoing to a person or authority that is not listed above, or make a report to an MP or journalist without following the steps outlined above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the Council, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this document.

## 9. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. Council's Internal Reporting Form is also available for staff or councillors to use to make a report.

If a report is made verbally, the person receiving the report will make a comprehensive record of the report and ask the person making the report to sign this record. The reporter should keep a copy of this record.

## 10. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by the Council, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about what action is to be taken or has been taken to deal with the issues raised in the report, or the outcome of any investigation.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of the report or your colleagues. If we do not know who made the report, it is very difficult for us to prevent any reprisal should others identify you.

## 11. Feedback to staff who report wrongdoing

Staff and councillors who report wrongdoing will be told what is happening in response to their report.

### 11.1 Acknowledgement

When you make a report, Council will contact you to confirm that your report has been received and to advise:

- the timeframe within which you will receive further updates
- the name and contact details of the people who can tell you what is happening or handle any concerns you may have.
- After a decision is made about how your report will be dealt with, Council will send you an acknowledgment letter, providing:



- information about the action that will be taken in response to your report
- the likely timeframes for any investigation or other action
- information about the internal and external resources or services available that you can access for support.

We will provide this information to you within ten working days from the date you make your report. We will also advise you if we decide to treat your report as a public interest disclosure and provide you with a copy of council's policy at that time, as required by the PID Act.

Please note, if you make a report which meets the requirements of the PID Act but the report was made under a statutory or legal obligation or incidental to the performance of your day to day functions, you will not receive an acknowledgement letter or a copy of council's policy.

### **11.2 Progress updates**

While your report is being dealt with, such as by investigation or making other enquiries, you will be given:

- information about the progress of the investigation or other enquiries and reasons for any delay
- advice of any decision by the Council not to proceed with the matter
- advice if your identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this beforehand.

### **11.3 Feedback**

Once the matter has been finalised you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.

## **12. Maintaining confidentiality**

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. This will include the Disclosures Coordinator and the General Manager, or in the case of a report about the General Manager, the Disclosures Coordinator and the Mayor (or Administrator). The fewer people who know about your report, before and after you make it, the more likely it will be that we can protect you from any reprisal.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from reprisal in consultation with you.

Any staff or councillors involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

## **13. Managing the risk of reprisal and workplace conflict**

When a staff member or councillor reports wrongdoing, Council will undertake a thorough risk assessment to identify the risk to you of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, Council may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace



- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will only be taken in consultation with the reporter.

## 14. Protection against reprisals

Hilltops Council will not tolerate any reprisal against staff or councillors who report wrongdoing or are believed to have reported wrongdoing.

The PID Act provides protection for staff and councillors who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines, and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also a breach of the council's code of conduct which may result in disciplinary action. In the case of councillors, such disciplinary action may be taken under the misconduct provisions of the Local Government Act 1993 and may include suspension or disqualification from civic office.

It is important for staff and councillors to understand the nature and limitations of the protection provided by the PID Act. The PID Act protects reporters from detrimental action being taken against them because they have made, or are believed to have made, a public interest disclosure. It does not protect reporters from disciplinary or other management action where the Council has reasonable grounds to take such action.

### 14.1 Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, you can alternatively report this to the Mayor or Administrator.

All supervisors must notify the Disclosures Coordinator or the General Manager if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them. In the case of an allegation of reprisal by the General Manager, the Mayor can alternatively be notified.

If the Council] becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, Council] will:



- assess the allegation of reprisal to decide whether the report should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced member of staff
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any breach of Part 8 of the council's code of conduct (reprisal action) by a councillor or the General Manager to the Office of Local Government.
- refer any evidence of an offence under section 20 of the PID Act to the ICAC or NSW Police Force.

If you allege reprisal, you will be kept informed of the progress and outcome of any investigation or other action taken in response to your allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively, contact the Office of Local Government, the Ombudsman or the ICAC (depending on the type of wrongdoing you reported). Contact details for these investigating authorities are included at the end of this document.

## **14.2 Protection against legal action**

If you make a public interest disclosure in accordance with the PID Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the public interest disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

## **15. Support for those reporting wrongdoing**

Hilltops Council will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management or counselling services.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the Disclosures Coordinator.

Council provides an Employee Assistance Program (EAP) for anyone who may need it. The Human Resource Officer is able to provide information regarding the scheme and its operation.

All supervisors must notify the Disclosures Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

## **16. Sanctions for making false or misleading statements**

It is important all staff and councillors are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. The Hilltops Council will not support staff or councillors who wilfully make false or misleading reports. Such conduct may also be a breach of the Code of Conduct resulting in disciplinary action. In the case of councillors, disciplinary action may be



taken under the misconduct provisions of the Local Government Act 1993 and may include suspension or disqualification from civic office.

### **17. The rights of persons the subject of a report**

Council is committed to ensuring staff or councillors who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time, you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the relevant related policies and procedures
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

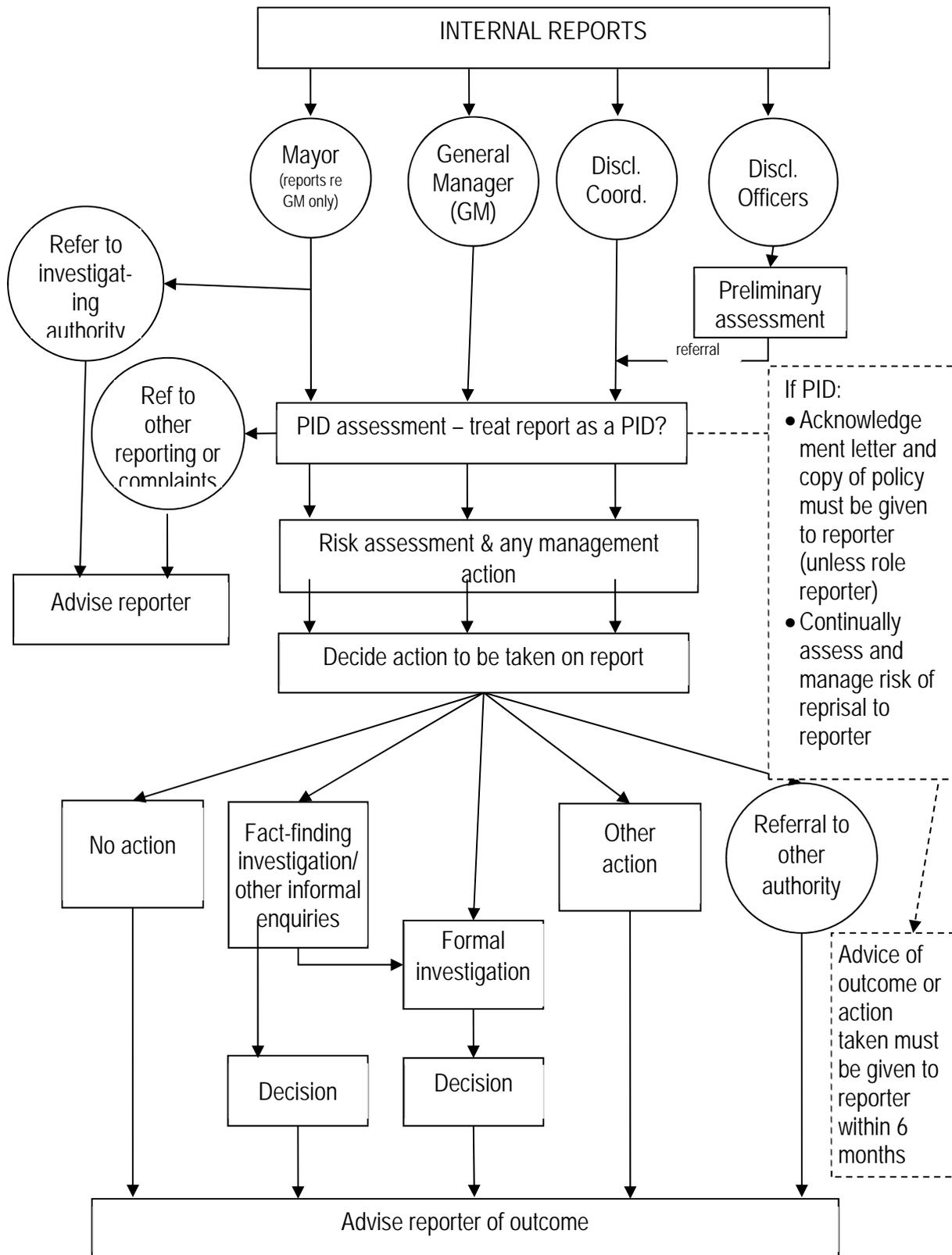
Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, the subject officer will be supported by Council. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

### **18. More information**

More information around public interest disclosures is available from the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au). Staff can also seek advice and guidance from the Disclosures Coordinator.



## 19. Flow chart of internal reporting process





## 20. Resources

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

**For disclosures about corrupt conduct:**

Independent Commission Against Corruption (ICAC)  
Phone: 02 8281 5999  
Toll free: 1800 463 909  
Tel. typewriter (TTY): 02 8281 5773  
Facsimile: 02 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 21, 133 Castlereagh Street,  
Sydney NSW 2000

**For disclosures about breaches of the GIPA Act:**

Information Commissioner  
Toll free: 1800 472 679  
Facsimile: 02 8114 3756  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
Address: Level 11, 1 Castlereagh Street, Sydney  
NSW 2000

**For disclosures about maladministration:**

NSW Ombudsman  
Phone: 02 9286 1000  
Toll free (outside Sydney metro): 1800 451 524  
Tel. typewriter (TTY): 02 9264 8050  
Facsimile: 02 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street, Sydney NSW  
2000

**For disclosures about local councils:**

Office of Local Government  
Phone: 02 4428 4100  
Tel. typewriter (TTY): 02 4428 4209  
Facsimile: 02 4428 4199  
Email: [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au)  
Web: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)  
Address: 5 O'Keefe Avenue, Nowra, NSW 2541