

CITY OF RYDE



**PROTECTED DISCLOSURES –
INTERNAL REPORTING SYSTEM
POLICY**

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PROTECTED DISCLOSURES
INTERNAL REPORTING SYSTEM POLICY

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Annexure A – Internal Reporting Procedure

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1.0 Support for persons who make disclosures

The City of Ryde Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

The City of Ryde is committed to the aims and objectives of the *Protected Disclosures Act*. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff or councillors which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

The City of Ryde will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

2.0 Purpose of the policy

This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by the City of Ryde, its staff, and councillors. The system enables such internal disclosures to be made to the Disclosure Co-ordinator, the General Manager, or in some instances the Mayor.

This policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate human resource matters, at any time, with their supervisors, but where necessary, staff have the option of making a protected disclosure in accordance with this policy.

3.0 Object of the Act

The *Protected Disclosures Act* commenced operation on 1 March 1995. The purpose of the Act is to ensure that public officials (which includes councillors and council staff) who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

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The Act aims to encourage and facilitate the disclosure — in the public interest — of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

4.0 Definitions

Three key concepts in the internal reporting system are *'corrupt conduct'*, *'maladministration'* and *'serious and substantial waste of public money'*. Definitions of these concepts are outlined below.

4.1 Corrupt conduct

'Corrupt conduct' is defined in the *Independent Commission Against Corruption Act* (s.8 and 9). The definition used in the Act is intentionally quite broad — corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms, i.e. taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

4.2 Maladministration

'Maladministration' is defined in the *Protected Disclosures Act* as conduct that involves action or inaction of a **serious nature** that is:

- **contrary to law**, for example:
 - decisions or actions contrary to law
 - decisions or actions *ultra vires* (i.e. the decision-maker had no power to make the decision or to do the act)
 - decisions or actions contrary to lawful and reasonable orders from persons or body's with authority to make or give such orders
 - breach of natural justice/procedural fairness

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- improper exercise of a delegated power (e.g. decisions or actions not authorised by delegation or acting under the direction of another)
- unauthorised disclosure of confidential information
- decisions or actions induced or affected by fraud
- **unreasonable**, for example:
 - decisions or actions inconsistent with adopted guidelines or policy, inconsistent with other decisions or actions which involve similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (i.e. irrational)
 - arbitrary, partial, unfair or inequitable decisions or actions
 - policy applied inflexibly without regard to the merits of individual cases
 - relevant considerations not adequately taken into account or irrelevant considerations taken into account
 - serious delay in making decisions or taking action
 - failure to give notice of rights
 - wrong, inaccurate or misleading advice leading to detriment
 - failure to apply the law
 - failure to rectify identified mistakes, errors, oversights or improprieties
 - decisions or actions based on incorrect or misinterpreted information
 - failure to properly investigate
- **unjust**, for example:
 - decisions or actions not justified by any evidence, so unreasonable that no reasonable person could so decide or act
 - partial, unfair, inequitable or unconscionable decisions or actions
- **oppressive**, for example:
 - unconscionable decisions or actions
 - means used not reasonably proportional to ends to be achieved
 - abuse of power, intimidation or harassment
- **improperly discriminatory**, for example:
 - inconsistent application of laws, policies or practices when there is no reasonable, justifiable or appropriate reason to do so.
 - distinctions applied not authorised by law, or failure to make a distinction which is authorised or required by law

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- **based wholly or partly on improper motives**, for example:
 - decisions or actions for a purpose other than that for which the power was conferred (i.e. in order to achieve a particular outcome)
 - conflicts of interest
 - bad faith or dishonesty
 - seeking or accepting gifts or benefits in connection with performance of official duties
 - misuse of public property, official services or facilities.

4.3 Serious and substantial waste

The term `serious and substantial waste` is not defined in the *Protected Disclosures Act*. The Auditor-General provides the following working definition:

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste.

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities

Types:

Absolute *Serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$500,000*

Systemic *The waste indicates a pattern which results from a system weakness within public authorities*

Material *The serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to effect a public authority's capacity to perform its primary functions*

Material By Nature Not Amount

The serious and substantial waste may not be material in financial terms but may be significant by nature. That is, it may be improper or inappropriate.

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;

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- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- personnel being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest price is not obtained for comparable goods or services.

5.0 What disclosures are protected under the Act

5.1 What disclosures are protected?

Disclosures are protected under the Act if they:

- are made:
 - in accordance with this Internal Reporting **System**; or
 - to one of the investigating authorities nominated in the Act; **and**
- show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money by the City of Ryde or any of its staff; **and**
- are made voluntarily.

5.2 What disclosures are not protected

A disclosure is not protected under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- are **made** frivolously or vexatiously;
- primarily question the merits of government policy; or

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- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

It is an offence to wilfully make a false or misleading statement when making a disclosure.

6.0 Reporting under the internal reporting system

The persons or positions to whom internal disclosures can be made in accordance with this policy are:

- the Disclosure Co-ordinator Roy Newsome, Level 2, Civic Centre
(phone) Extn 8011 or 9952 8011 (mobile) 0417 498 919 and
- the General Manager (phone) Extn 8050 or 9952 8050; or
- the Mayor (if the disclosure concerns or involves the General Manager or a councillor).

Where persons contemplating making a disclosure are concerned about publicly approaching any of the above, they can ring the relevant person and request a meeting in a discreet location away from the workplace.

The following guidance is provided to staff and Councillors;

- A council officer who wishes to make a protected disclosure which involves a councillor may do so to the General Manager, Mayor, or an investigating authority (i.e. the ICAC, NSW Ombudsman).
- A councillor who wishes to make a protected disclosure which involves another councillor may do so to the Mayor, the General Manager, or an investigating authority (i.e. the ICAC, NSW Ombudsman).
- If the Mayor wishes to make a protected disclosure he or she may do so to the General Manager or an investigating authority (i.e. the ICAC or NSW Ombudsman).
- The Department of Local Government is not an investigating authority under the Act, however, the ICAC, the NSW Ombudsman or a council may refer a protected disclosure to the Department for investigation, and in such a circumstance any protection conferred under the Act is maintained.

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7.0 Roles and responsibilities

This Internal Reporting Policy places responsibilities upon people at all levels within the Council. A summary of the Disclosure Procedure is set out in **Annexure A**.

7.1 Employees

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All employees of the City of Ryde have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

Employees should note that while they can clarify matters with their Supervisor, Manager or Group Manager, to ensure their disclosure is protected they are required to follow the Internal Reporting procedure as detailed in **Annexure A**. Other human resource matters or issues that staff have, should follow the normal process of directing them to their Supervisor, Manager or Group Manager.

7.2 Disclosure Co-ordinator

The Disclosure Co-ordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Co-ordinator will:

- provide an alternative internal reporting channel to Nominated Disclosure Officers and to the General Manager;
- impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
 - the appropriate action to be taken in relation to the disclosure, for example:
 - no action/decline;
 - the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter

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concerns corrupt conduct).

- consult with the General Manager;
- be responsible for carrying out or co-ordinating any internal investigation arising out of a disclosure, subject to the direction of the General Manager in carrying out his/her functions;
- report to the General Manager on the findings of any investigation and recommended remedial action;
- take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and persons the subject of the disclosures, are kept confidential;
- support persons who make disclosures and actively protect them from victimisation, harassment or any other form of reprisal; and
- report actual or suspected corrupt conduct to the General Manager in a timely manner to enable that officer to comply with the *ICAC Act*.

7.4 General Manager

Disclosures may be made direct to the General Manager, rather than by way of the Internal Reporting System established under this Policy. The General Manager will:

- impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act;
 - the appropriate action to be taken in relation to the disclosure, for example:
 - no action/decline;
 - the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
- receive reports from the Disclosure Co-ordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;
- take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept

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confidential;

- have primary responsibility for protecting staff who make disclosures, or provide information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- report criminal offences to the Police and actual or suspected corrupt conduct to ICAC (under s.11 of the *ICAC Act*).

7.5 The Mayor

The Mayor may receive internal disclosures from any member of staff of the council or any councillor concerning the General Manager or a councillor. The Mayor will:

- impartially assess each disclosure made to him/her about the General Manager or a councillor to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act;

Note: In making this assessment the Mayor may seek guidance from: the Disclosure Co-ordinator or General Manager (if appropriate); an investigating authority (i.e. the ICAC, or NSW Ombudsman); or the Department of Local Government.

 - the appropriate course of action to be taken in relation to the disclosure (in consultation with the General Manager, if appropriate), for example:
 - no action/decline;
 - the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
- refer disclosures to the General Manager for appropriate action if they concern the council's administration, within the day to day responsibilities of the General Manager;
- protect/maintain the confidentiality of:
 - the identity of persons who make disclosures (unless any of the criteria in s.22 of the Act apply); and

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- the identity of persons the subject of the disclosures (unless disclosure is required to enable the allegations to be investigated or otherwise appropriately dealt with).

8.0 Alternative avenues for disclosures

Alternative avenues available to staff for making a protected disclosure under the Act (**other than** by means of the internal reporting system established under this Policy for the purpose of the Act), are to one of the investigating authorities under the Act (i.e. the ICAC or NSW Ombudsman).

Disclosures made to a journalist or a Member of Parliament will **only** be protected if **certain conditions are met**:

- the person making the disclosure to a journalist or Member of Parliament must have already made substantially the same disclosure through the internal reporting system or to the General Manager or an investigating authority in accordance with the Act;
- the public official must have reasonable grounds for believing that the disclosure is substantially true and the disclosure must be substantially true; and
- the investigating authority, public authority or officer to whom the matter was originally referred has:
 - decided not to investigate the matter; or
 - decided to investigate the matter but not completed the investigation within six months of the original disclosure; or
 - investigated the matter but not recommended any action in respect of the matter; or
 - failed to notify the person making the disclosure, within six months of the disclosure, of whether the matter is to be investigated.

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9.0 Rights of persons the subject of disclosures

The rights of persons the subject of disclosures will also be protected. In this regard:

- the confidentiality of the identity of persons the subject of disclosures will be protected/maintained (where this is possible and reasonable);
- disclosures will be assessed and acted on impartially, fairly and reasonably;
- responsible officers who receive disclosures in accordance with this Policy are obliged to:
 - protect/maintain the confidentiality of the identity of persons the subject of the disclosures;
 - assess disclosures impartially; and
 - act fairly to persons the subject of disclosures;
- disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of whistleblowers and the persons the subject of disclosures.
- where investigations or other enquires do not substantiate disclosures, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the disclosures will be kept confidential, unless the persons the subject of the disclosures request otherwise;
- the persons the subject of disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of an authority, have the right to:
 - be informed as to the substance of the allegations;
 - be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
 - be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the authority, before any final decision/determination/report/memorandum/letter or the like is made;
- where the allegations in a disclosure have been investigated by or on behalf of an authority, and the person the subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised as to the outcome of the investigation, regardless of the outcome; and

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- where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person the subject of the disclosure is entitled to the support of the authority and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the authority's views that the allegations were either clearly wrong or unsubstantiated).

10.0 Protection available under the Act

10.1 Protection against reprisals

The Act provides protection by imposing penalties on a person who takes *'detrimental action'* against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. *'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; or
- disciplinary proceeding.

In any such proceedings the whistleblower only needs to show that he or she made a protected disclosure and suffered detrimental action. It then lies on the defendant to prove that the detrimental action shown to have been taken against the whistleblower was not substantially in reprisal for the person making the protected disclosure.

Any member of staff who believes that *'detrimental action'* is being taken against them substantially in reprisal for the making of an internal disclosure in accordance with this Policy should immediately bring the allegations to the attention of the General Manager or Mayor.

If a member of staff who made an **internal disclosure** feels that such reprisals are not being effectively dealt with, they should contact the ICAC or the NSW Ombudsman.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice and guidance to the person concerned.

10.2 Protection against actions

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The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

10.3 Confidentiality

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential, having regard to the principles of natural justice that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the General Manager and/or the Disclosure Co-ordinator. In all cases the person who made the disclosure will be consulted before such a decision is made.

Note: If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority.

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10.4 Freedom of Information exemption

Under the *Freedom of Information Act*, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

11.0 Notification of action taken or proposed

A person who makes a protected disclosure must be notified, within six months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

If a disclosure is made in accordance with this Policy, the Disclosure Co-ordinator is responsible for the six month notification to the person who made the disclosure, unless this responsibility has been retained by or allocated to another officer by the General Manager.

If a disclosure is made to the Mayor under this Policy, the Mayor is responsible for such notification to the person who made the disclosure, unless he or she directs the General Manager, Disclosure Coordinator or another nominated officer to assume this responsibility.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the disclosure. **This should include a statement of the reasons for the decision made on or action taken in response to the disclosure.**

The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances listed in section 19(3)(a)–(c) of the Act (relating to disclosures to members of Parliament and journalists) apply, i.e. whether:

- a decision was made not to investigate the matter; or
- a decision was made to investigate the matter, but the investigation was not completed within six months of the original decision being made; or
- a decision was made to investigate the matter, but the investigation has not been completed within six months of the original decision being made; or
- the matter was investigated but no recommendation was made for the taking of any action in respect of the matter.

Without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an MP or journalist.

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12.0 Review

This Policy shall be reviewed periodically to ensure that it meets the object of the legislation, and facilitates the making of disclosures under the Act.

13.0 Further Information

You may confidentially discuss any aspect of the Act or a possible disclosure with Council's Disclosure Co-ordinator, Roy Newsome, who is located on the second floor of the Civic Centre, extension 8011 (or 9952 8011) or mobile 0417 498 919.

Further information if necessary can be obtained from:

The Independent Commission Against Corruption (ICAC)

(ph) 8281 5999

The Office of the NSW Ombudsman

(ph) 9286 1000

The Department of Local Government

(ph) 9793 0793

14.0 Annexures

A. Internal Reporting Procedure

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Annexure A

CITY OF RYDE

INTERNAL REPORTING PROCEDURE

You must follow this procedure to receive protection. Your disclosure will be treated with confidentiality unless the nature of the investigation requires otherwise.

Breaches of confidentiality can result in disciplinary action and dismissal.

1. A protected disclosure may be made to the nominated officer/person detailed in this Policy and in the Internal Reporting matrix (ie Disclosures Co-ordinator, General Manager, Mayor)
2. City of Ryde's nominated positions to receive protected disclosures from staff are;
 - i. Disclosures Co-ordinator – Mr Roy Newsome Group Manager, Corporate Services
 - ii. The General Manager – Mr Michael Whittaker
 - iii. The Mayor in respect of disclosures relating to the General Manager
3. Persons wishing to make a protected disclosure also have the option to lodge with the ICAC, NSW Ombudsman or Department of Local Government.
4. A person wishing to make a protected disclosure, shall make contact with any person identified in this Policy and advise that a protected disclosure is to be made. The preferred contact point is the Disclosures Coordinator.
5. The Disclosures Coordinator will meet with the person making the disclosure (Discloser) as soon as possible and document the disclosure in a report.
6. The Disclosure Co-ordinator will as soon as practicable advise the General Manager of the report. If the report is about the General Manager the Disclosure Co-ordinator shall advise the Mayor.
7. The General Manager (or Mayor as appropriate) shall examine the report and determine whether or not the disclosure is to be investigated or whether the matter should be referred to another authority.
8. The Discloser shall be advised in writing by the Disclosures Co-ordinator (or General Manager if applicable) whether or not the matter is to be investigated and what action is proposed. If the matter is to be investigated the likely time for

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completion of the investigation is to be given. If the matter is not to be investigated the reasons why shall be given. If the matter raised does not fall within the ambit of the Protected Disclosures Act the letter shall advise what other action is proposed to be taken on the matter.

9. On completion of the investigation, the Discloser shall be advised in writing by the Disclosure Co-ordinator of the findings of the investigation and what action is proposed to be taken.
10. The General Manager (or Mayor as appropriate) shall be responsible for ensuring that the appropriate action arising from the findings of the investigation is taken.