



Office of  
Local Government

Office of Local Government

# **Managing Complaints and Feedback About the Office of Local Government Policy and Procedures**

Strengthening local government



May 2018

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## Purpose

This policy and procedures are intended to ensure that we handle complaints fairly, efficiently and effectively.

Our complaint management system is intended to:

- enable us to respond to issues raised by people making complaints about us in a timely and cost-effective way,
- boost public confidence in our administrative process, and
- provide information that can be used by us to deliver quality improvements in our services, staff and complaint handling.

This policy provides guidance to our staff, and people who wish to make a complaint, on the key principles and concepts of our complaint management system.

## Guiding Principles

We are committed to providing services of the highest quality. Key to meeting this commitment is using feedback, in particular complaints, about our services or staff as opportunities to improve the quality of the services we provide. In dealing with complaints we will:

### Facilitate complaints

- *People focussed* – we are committed to seeking and receiving feedback and complaints about our services, systems, practices, procedures, and complaint handling.
- *No detriment to people making complaints* – we will take all reasonable steps to ensure that people making complaints are not adversely affected because a complaint has been made.
- *Anonymous complaints* – we accept anonymous complaints and examine the issues raised where there is enough information provided.
- *Accessibility* – we will ensure that information about how and where complaints may be made to or about us is publicised. We will ensure that our system to manage complaints is easily understood and accessible to everyone, particularly people who may require assistance. We will communicate with complainants through their representative if this is their wish. Anyone may represent a person wishing to make a complaint with their consent.
- *No charge* – complaining to us is free.

### Respond to complaints

- *Early resolution* – where possible, complaints will be resolved at first contact with us.
- *Responsiveness* – we will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. We are

committed to managing people's expectations, and will inform them of the progress of the complaint and, if there is any delay, we will provide a reason. We will advise people as soon as possible when we are unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed.

- *Objectivity and fairness* – we will address each complaint with integrity and in an equitable, objective, professional and unbiased manner. We will ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about. Conflicts of interests, whether actual or perceived, will be managed responsibly. In particular, internal reviews of how a complaint was managed will be conducted by a person other than the original decision maker.
- *Responding flexibly* – we will adopt flexible approaches to responding promptly and appropriately to complaints.
- *Confidentiality* – we will protect the identity of people making complaints where this is practical and appropriate. Complaints are managed confidentially wherever possible. Government information is subject to the provisions of the *Government Information (Public Access) Act 2009*. Personal information that identifies individuals will only be disclosed or used by us as permitted under the relevant privacy laws and any relevant confidentiality obligations.

#### Manage the parties to a complaint

- Managing unreasonable conduct by people making complaints – we are committed to being accessible and responsive to all people who approach us with feedback or complaints. At the same time our success depends on:
  - our ability to do our work and perform our functions in the most effective and efficient way possible; and
  - the health, safety and security of our staff.

When people behave unreasonably in their dealings with us, their conduct can significantly affect the progress and efficiency of our work. As a result, we will take proactive and decisive action to manage any conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with the *Procedures for Managing Unreasonable Complainant Conduct* contained in the *OLG Policy and Procedures for Managing Complaints About Local Councils*.

#### Use complaints to improve systems

- Improvement – we will use complaints to identify areas of OLG's operations where we can take action to improve our performance and our practices.
- High standards – we will handle complaints using procedures that are in line with the NSW Ombudsman's *Effective Complaint Handling Guidelines (2017)*; our staff roles and responsibilities are clearly specified; we will

keep accurate records and complaint data will be stored as required under the *State Records Act 1998*.

## Scope

This Policy applies to complaints relating to the Office of Local Government (OLG) and our services. This includes, for example, complaints about:

- decisions made by staff;
- the conduct of staff;
- the practices, policies and procedures of OLG.

This Policy does not apply to:

- applications made under the *Government Information (Public Access) Act 2009*,
- policies or decisions made by the Minister or other political office-holders, and
- decisions made by Courts and Tribunals.

Complaints made by staff of OLG are to be dealt with in accordance with the OLG's *Managing Misconduct and Serious Misconduct Policy and Procedures*.

Disclosures made by staff under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the OLG's *Internal Reporting Policy – Public Interest Disclosures*.

## Organisational Commitment

OLG expects all staff to be committed to fair, effective and efficient complaint handling. The following outlines the nature of the commitment expected from staff and the way that commitment should be implemented.

**Chief Executive** is responsible for:

Commitment	Responsibility
<ul style="list-style-type: none"><li>• Promote a culture that values complaints and their effective resolution</li></ul>	<ul style="list-style-type: none"><li>• approving the Policy and Procedures</li><li>• escalating a complaint to an external agency such as the ICAC or the NSW Ombudsman where appropriate</li><li>• reporting publicly on OLG's complaint handling</li><li>• encouraging all staff to be alert to complaints</li></ul>

**Director Business Improvement** is responsible for:

Commitment	Responsibility
<ul style="list-style-type: none"> <li>• Manage the complaint management system</li> </ul>	<ul style="list-style-type: none"> <li>• coordinating the implementation of the Policy and Procedures</li> <li>• conducting regular reviews of the Policy and Procedures</li> <li>• regularly reviewing reports about complaint trends and issues arising from complaints</li> <li>• maintaining the central register of complaints received about OLG</li> <li>• acting as the designated public interest disclosure coordinator.</li> </ul>

**Directors, Managers and Leaders** are responsible for:

Commitment	Responsibility
<ul style="list-style-type: none"> <li>• Implement the complaint management system</li> <li>• Demonstrate exemplary complaint handling practices</li> </ul>	<ul style="list-style-type: none"> <li>• participating in the review of this Policy and Procedures as required</li> <li>• ensuring complaints are effectively managed and responded to in accordance with this Policy and Procedures</li> <li>• working in a constructive manner to address and identify opportunities to resolve complaints as promptly as possible and to avoid their escalation</li> <li>• ensuring appropriate records are created and retained as required</li> </ul>

**All Staff** are responsible for:

Commitment	Responsibility
<ul style="list-style-type: none"> <li>• Understand and comply with OLG's complaint handling practices</li> </ul>	<ul style="list-style-type: none"> <li>• complying with this policy and procedures</li> <li>• providing feedback to management on issues arising from complaints</li> <li>• dealing with all complaints professionally, promptly and courteously; providing assistance and information to complainants where appropriate</li> </ul>

## **Terms and Definitions**

### **Complaint**

A complaint is considered to be any expression of dissatisfaction about OLG, including our decisions, our staff and our practices, policies and procedures where a response or resolution is explicitly or implicitly expected or legally required.

A complaint must include sufficient information, such as a clear allegation that it is the improper conduct of a member of staff that has led to OLG making a decision that, in the opinion of the dissatisfied person, is wrong or unsatisfactory.

Examples of possible complaints about OLG or staff are:

- delay
- rudeness
- inaccurate information being provided
- conflict of interest or bias
- failing to follow up or to do something that was promised
- failing to comply with OLG's code of conduct
- information not being provided in an accessible format.

### **What is not a complaint**

The following complaints are not covered by this Policy and Procedures:

- OLG staff grievances (where an individual staff member makes a complaint/grievance about another staff member or a work related problem – see our Managing Misconduct and Serious Misconduct Policy and Procedures)
- public interest disclosures made by our staff (see our Internal Reporting Policy)
- code of conduct complaints made by our staff (see our code of conduct)
- responses to requests for feedback about the standard of our service provision (see feedback below)
- reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response (see feedback below)
- requests for information.

In terms of OLG's handling of complaints about local councils, a complaint is not:

- a disagreement about an assessment of facts, or
- a disagreement about an evaluation of evidence.

## Complainant

A complainant is a person, or organisation, who has made a complaint about OLG.

## Feedback

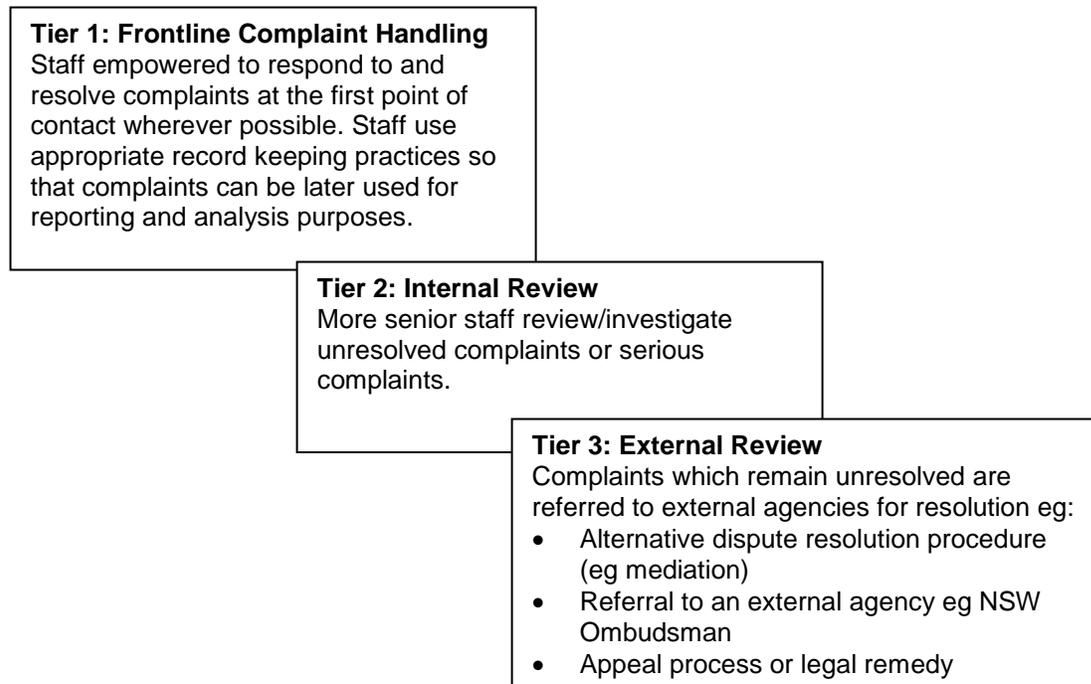
Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.

## Complaint Handling Model

A complaint handling model aims to provide a mechanism for us to respond to, record, report and use complaints to improve our service delivery.

Such a model is used to guide us in managing the complaints which we receive about us. The model includes this Policy and Procedures to guide staff in the management and resolution of any complaints. It provides us with an organised way of using complaint information to assist in meeting our corporate goal to ensure that OLG resources are optimised.

The following outlines our approach to complaint handling which aims at resolving the majority of complaints at the front line or first tier.



### Why people do and do not complain

Generally, people make complaints because they are unhappy with a decision, the level of service or the behaviour of staff. Many complaints are a result of poor communication. Finding out what precisely is making the complainant dissatisfied can be helpful in resolving the complaint.

When people complain they generally want five essential things:

- they want to be heard
- they want to be understood
- they want an explanation
- they want an apology
- they want action as soon as possible.

Even if you are unable to do exactly what the complainant wants, they will usually be reasonably happy if you can satisfy some of their needs.

### Benefits of an internal complaints system

When used properly, an internal complaints system:

- creates a second chance to provide service and satisfaction to dissatisfied people, particularly those who have originally complained to us about another agency
- helps to identify areas for improvement and helps to achieve that improvement
- improves our accountability — people's dissatisfaction is on the record
- provides opportunities to strengthen public support for OLG, or at least limits the amount of 'bad press' that dissatisfied people can generate
- assists in planning and allocation of resources
- assists in meeting the needs of social justice groups, and
- helps us to identify if customer service training is required for our staff.

By and large, complaints about our work are specific and actionable. We aim to resolve the specific complaint if at all possible. An important second step is to record data about the nature of each complaint so that we can see what we are doing that makes people complain. The conclusions that we can draw from this include:

- what specific work practices and policies seem to work and what seem to cause dissatisfaction
- whether expectations of service levels in certain areas exceed what we can reasonably deliver — we may need to arrange for better publicity or explain more clearly our service standards and priorities so that people's expectations are realistic.

We have aimed to make our internal complaints system simple and worthwhile for stakeholders to give us feedback.

## **Procedures for Managing Complaints and Feedback**

This Policy is supported by Procedures in relation to:

- managing complaints about OLG
- managing internal investigations.

The Procedures provide information on general complaint handling processes, timeframes for responding to complaints, business rules and key responsibilities.

The Procedures have been divided into two sections.

*Section One – Managing Complaints About OLG* applies to complaints received by the Minister or OLG about OLG’s staff, decisions, policies or procedures and provides information on:

- procedures for complaint handling
- analysing & reporting on complaints
- key responsibilities
- business rules & forms

*Section Two – Managing Internal Investigations* – applies to conducting internal investigations and provides information on:

- principles of natural justice and procedural fairness;
- authority to initiate internal investigations;
- confidentiality;
- scope of investigation;
- conduct of investigations;
- recording and reporting requirements;
- key responsibilities; and
- disciplinary processes.

Adhering to these Procedures will ensure consistency is achieved during the:

- registration of complaints;
- management of complaints;
- conducting enquiries and investigations; and
- reporting requirements.

## Section 1

# Procedures for Managing Complaints and Feedback about OLG

## **Section One –Procedures for Managing Complaints and Feedback about OLG**

### *What is a complaint about us?*

A complaint about us includes:

- any allegation of impropriety or misconduct on the part of a staff member
- any clearly articulated grievance about the handling of a matter, our policies, procedures or service.

### *How we receive complaints about us*

Complaints can be made in writing, by telephone, by email or in person.

Complaints can be made anonymously, but we would generally only investigate if the matter was relatively serious and there is sufficient information in the complaint to enable an investigation to be conducted. Where possible, and if you are contacted by a complainant who wishes to remain anonymous, you should advise them that you may not be able to resolve their specific concerns or tell them how OLG has responded to the complaint.

You should offer help if a person needs any assistance to make a complaint, including a written complaint. This may include making a record of the conversation and arranging for them to sign it, either through a personal interview or mailing it to them. It may include using an interpreter or TTY service, or encouraging the person to use an advocate. You may need to explain to the person how to make a complaint. You should only request that a complaint be put in writing if it raises more serious matters.

You should keep file notes and/or relevant records of any interaction with a person making a complaint and of interactions with other persons associated with the complaint. File notes should be a factual record of what was discussed or what occurred and should outline any advice provided by the OLG officer. File notes should not contain inappropriate personal views or reflections of the OLG officer. File notes are subject to the provisions of the *Government Information (Public Access) Act 2009*.

If the complaint is made by telephone, then a complaint/compliment form (Annexure 3) should be completed and provided to your supervisor.

### *Complaints raising serious matters should be in writing*

If you think the complaint raises serious matters, including allegations of serious misconduct or corruption, ask the complainant to set out full details of his or her complaint in writing to the Chief Executive. Tell the complainant that the concerns

will be reported to the supervisor but the matter will not be investigated until the complaint is received in writing.

Fill out a compliment/complaint form (Annexure 3) to inform your supervisor what you have done. Your supervisor should report these matters to the relevant Director.

Your supervisor should telephone the complainant to follow up the matter if OLG has not received the complaint in writing within two weeks.

#### *Unreasonable complainant conduct*

If a complainant complains about OLG in person or on the telephone and becomes angry, aggressive or threatening in any way, if it is safe to do so, allow the person to vent their frustration without interruption. When they have finished advise them in a calm way of the steps you will take to assist them to resolve their complaint. Notify your supervisor who will assist you in managing the complaint. (See *Procedures for Managing Unreasonable Complainant Conduct contained in 'OLG Policy and Procedures for Managing Complaints About Local Councils'*)

#### *Complainants will not be treated detrimentally for complaining*

Members of the public and other people who we have professional dealings with OLG are welcome to complain about any aspect of our service. All complaints will be dealt with confidentially. No person will suffer reprisals as a result of complaining about us.

The Chief Executive will manage any complaints that allege a person has suffered reprisal as a result of complaining about OLG or its staff.

#### *How we handle complaints received in writing*

Supervisors are responsible for assessing all written complaints. The supervisor will:

- ensure that the complaint is recorded
- assess the seriousness of the complaint, and
- either deal with it directly or refer it to an appropriate person for action.

Where the matters involve general customer service issues they will usually refer the matter to the staff member most immediately concerned.

When a complaint has been dealt with, details of the outcome are to be completed in the central complaint register.

Generally all written correspondence enters OLG via the Client Services Team. When a complaint is received in writing by the Client Services Team, all written complaints must be referred by members of that Team to the Leader Client Services or Director Business Improvement in the Leader's absence.

**Note:** In order to maintain confidentiality all written complaints received via the Client Services Team must not be scanned into the objective system until instructed to do so by a supervisor.

### Categorising complaint issues

The category of the issues raised by a complaint should be recorded in the complaint register for each Team. The categories of issues are:

1. Bias/unfair treatment/tone
2. Confidentiality/privacy related
3. Delays
4. Denial of natural justice
5. Failure to deal appropriately with complaint
6. Lack of feedback/response
7. Limits to jurisdiction
8. Faulty procedures
9. Inaccurate information/wrong decision
10. Poor customer service
11. Corruption/conflict of interest
12. Other

### Telling a member of staff about complaints concerning him or her

If a complaint is made about the conduct of a specific member of staff, he or she is likely to be among the first to know about the complaint. If this is not the case, the staff member dealing with the complaint should make every effort to get the subject's side of the story before deciding what further enquiries, if any, are required.

If the matter is serious or involves allegations of corrupt conduct, the relevant Director or Chief Executive should be informed, and it may be necessary to carry out some enquiries and notify the matter to the ICAC before informing the subject of the complaint. In such circumstances the subject should not be informed until the ICAC has responded advising what action it proposes to take.

For further details of undertaking enquiries or internal investigations into complaints see *Section 2 – Managing Internal Investigations*. Following these

procedures will ensure that the principles of natural justice and procedural fairness are adhered to.

You should advise both the complainant and subject of the complaint of the outcome of the complaint.

If you are the subject of a complaint and you are unhappy with the way the complaint is handled, you can lodge a grievance in accordance with OLG's Managing Misconduct and Serious Misconduct Policy and Procedures.

#### Time-frames for dealing with complaints

Generally a speedy response to the complaint will be well received and the complainant will be more open to resolution. Sometimes, however, delaying a final response for a short time can play an important role in resolving a complaint. It may allow tempers to cool, advice to be obtained, and alternatives to be investigated and considered. You will need to use your discretion in each case but the following time-frames should be used as guidance:

Frontline complaints received by phone or in person should be dealt with immediately and wherever possible finalised on the same day, but otherwise within two days of receipt. Please tell your supervisor if you cannot achieve this.

Matters referred to supervisors for informal resolution should be dealt with as soon as possible and usually within 5 days of receiving the complaint.

Written complaints should be enquired into or investigated and responded to within 2 weeks.

#### Centrally recording complaint information

Managers and Leaders are responsible for managing the complaints system within each Team.

Managers and Leaders are responsible for ensuring that central records of complaint information are kept for each Team in physical and/or electronic files. (See annexure 1 for the register to be used.) Caveated files should be used where complaints are about individual staff conduct.

Any complaint concerning serious misconduct, including corrupt or criminal activities, will generally be investigated by the relevant Director or Chief Executive and the documents placed on a caveated register in OLG's records management system.

### Compliments and suggestions

It is good to get feedback about the things we do well, as well as feedback on how we could do things better, so we also need to register compliments and suggestions. Positive feedback helps us evaluate how effective we have been in our work.

Managers and Leaders are responsible for keeping central records of compliments and suggestions in accordance with these Procedures.

Incoming mail, including emails, containing compliments and suggestions should be identified by the person assessing the mail and photocopied. The compliment or suggestion can be highlighted on the photocopy for easy identification. The letter should then be referred to the Manager, who is to keep a central record of compliments for their Team, and includes a copy of the most relevant extract of the compliment or suggestion.

Compliments and suggestions made over the phone or in person should be recorded on the compliment/complaint form and given to your supervisor. (See annexure 2 for the register to be used.)

### Monitoring and review of complaint and compliment data

The complaints and compliments data will be reviewed and analysed at least every twelve months as part of OLG's annual planning process. The outcomes from the review and analysis will be used to assist with continuous improvement and inform OLG's policy and planning.

## Our internal complaints system

Our internal complaints system comprises three tiers:

1. Frontline complaint handling
2. Internal review
3. External review

### 1. Frontline complaint handling

A staff member may receive the complaint by telephone or be referred a written complaint by their supervisor. The staff member who receives the complaint is to deal with it in the first instance.

If you feel you can resolve a complaint made directly to you, or referred to you by your supervisor, you are expected to do so. You should ask your supervisor for guidance if necessary.

After dealing with the complaint (if an oral complaint) you should complete a compliment/complaint form and give it to your supervisor. The form is available electronically on OLG's intranet site.

When responding to any complaint you should:

- be courteous — tell them your own name and ask how you can assist them
- listen to what they have to say — seriously aggrieved complainants may feel angry over what has happened, so give them time to tell their story without interruption
- seek clarification of any points that are not clear in a non-judgmental way — use open-ended questions to do this. Good starting words are: how? when? where? who? what?
- provide any relevant information that will assist the complainant to better understand the decision or action that they are aggrieved about
- clarify the application of any relevant policies or procedures governing the way their matter has been dealt with
- make it clear you understand the complaint, summarise the main points made and ask whether you have got it right
- ask the complainant how they would like their dissatisfaction to be addressed
- try to meet any reasonable requests that would resolve the matter
- acknowledge their sense of grievance, justified or not

- agree on the appropriate course to adopt. If you cannot come to any agreement you may decide to discuss the matter further with your supervisor and explore further options
- take the action decided and inform the complainant
- take any action you can to prevent similar complaints in the future.

It will not always be possible to satisfy a complainant. Common sense will dictate whether you have achieved everything that the complainant could reasonably expect from OLG. The complainant should be told in clear terms what you (and OLG) can and cannot do. A matter does not need to be referred for an internal review if it is unlikely to achieve any additional outcomes.

If the complaint is about your own conduct and you are not confident you can deal with the matter fairly or you feel that the complainant will perceive you as not capable of dealing with it fairly you can refer the complaint to your supervisor.

Certain complaints, including those raising more serious concerns or allegations, are to be automatically referred to the next stage (*see below – which complaints should you refer; and internal review*).

#### *Options to address people's complaints*

Each complaint is unique and you will need to find a solution that addresses the complainant's particular concerns. Here are some ideas for what you might be able to offer a complainant:

- an expression of empathy or regret that the complainant has suffered some form of detriment without admitting fault
- offering an apology where it is apparent that we were at fault and some other form of remedial action
- providing explanations and giving reasons for decisions
- undertaking some action e.g. send correspondence that someone failed to send earlier
- giving higher priority to a matter that has been delayed
- correcting records that are incomplete, incorrect, out of date or misleading
- undertaking to make requests for review or recommendations that policy or procedures be changed, or cases be reconsidered.

#### *What information do I need to record about a complaint?*

You must record the details of every complaint that you receive in accordance with these Procedures. You should also record any actions that you have taken to resolve the complaint and any systemic issues that the complaint may raise. This will make it possible for OLG to properly analyse complaint information.

Managers and Leaders are responsible for keeping central records of complaint information in accordance with these Procedures.

Using the compliment/complaint form attached to these Procedures, the following information about each oral complaint received should be recorded:

- personal details about the complainant (e.g. name, address, phone number) and the Objective identification number of any relevant documentation or correspondence
- how the complaint was made (eg telephone)
- any member of staff and/or team of OLG that is the subject of the complaint
- an issue number corresponding to the nature of the complaint (see *Categorising Complaint Issues* above)
- the details of the complaint (i.e. the nature of their issue, who was involved, when did it occur)
- any specific requests the complainant has made
- any specific options for resolving the complaint that you offered, including if it was referred to someone else
- an outcome, being:
  - (i) Resolved — covers all matters where the complaint is dealt with by way of an apology, action requested carried out, or otherwise resolved
  - (ii) Sustained — covers matters where a complaint is found to be substantially proved but for whatever reason, the matter is not able to be conciliated or resolved
  - (iii) Unjustified — covers matters where the complaint is found to lack substance and no apology or remedy needs to be made apart from a courteous explanation or clarification of our action or procedures
- any procedural or broader issues raised by the complaint
- any remedial action taken.

*Which complaints should you refer to your supervisor or Director or Chief Executive for an internal review?*

You should automatically refer complaints to your supervisor:

- if the complaint is about your own conduct and you are not confident you can deal with the matter fairly or you feel that the complainant will perceive you as not capable of dealing with it fairly
- if the complainant requests someone else deals with the complaint
- when the problem is clearly outside your delegation or area of expertise
- if you have a conflict of interests
- when there are established internal or external referral procedures eg ICAC notifications.

You should also refer a complaint to your supervisor if:

- the complainant is still dissatisfied
- you cannot do anything else to satisfy the complainant
- the complainant wants someone else to look at their complaint, and
- you believe this is a reasonable request.

Complaints should automatically be referred to the relevant Director or Chief Executive:

- when action for unsatisfactory performance is a possible outcome or when a staff member is alleged to have committed a criminal offence, acted corruptly, or engaged in other serious misconduct
- if the complaint is from another public sector agency or a member of parliament.

Unsatisfactory performance includes inappropriate behaviour, such as poor interactions and communication problems with customers or stakeholders; a series of minor issues that, when taken together, make for a difficult work environment; and breaches of work practices, procedures and guidelines. (see Public Service Commission – *Managing for Performance, Guide for Managers 2014*)

Referral of complaints to the relevant Director or Chief Executive should be done via your supervisor.

*Tell the complainant if you are going to refer their complaint*

If you are going to refer a complaint, do so quickly. Politely suggest, or agree, that it would be better for the complainant if someone else reviewed the matter and refer it to your supervisor, relevant Director or Chief Executive. You should inform the complainant that you will find out the appropriate person to deal with their complaint, and that you will refer the complaint to them. If that person is not available at the time, tell the complainant this and inform them you will arrange for the person to contact the complainant within a set time frame. Invite them to call you again if they do not hear further from the person within that time.

*Referring a complaint to your supervisor*

If you decide to refer a complaint to your supervisor, you should do so within 24 hours of making that decision. You should provide all the relevant information and the action taken to your supervisor on the compliment/complaint form (if an oral complaint).

Your supervisor may consult with the relevant Director or Chief Executive to determine who should deal with the complaint. The person dealing with the

complaint should then assess the complaint and, after discussing the complaint with anyone who originally attempted to resolve the matter:

- try to informally resolve the complaint and take corrective action where appropriate, or
- investigate the complaint and report to the relevant Director or Chief Executive.

## 2. Internal review

A supervisor is to:

- review any complaints that could not be resolved at the frontline stage, or
- deal with complaints referred from a staff member, including serious complaints and complaints about the referring staff member.

The relevant Director or Chief Executive should be automatically informed of, and will deal directly with, complaints:

- alleging criminal or corrupt conduct, where there seems to be evidence supporting the allegations
- from a public sector agency
- from a member of parliament.

The relevant Director or Chief Executive may advise the complainant to complain to another agency or to seek resolution of their concerns using other avenues of appeal or review (eg legal system).

Referral of complaints to the relevant Director or Chief Executive should be done via your supervisor.

The relevant Director or Chief Executive is responsible for directing initial enquiries into these kinds of complaints and reporting on the matter.

The Chief Executive may decide that the complaint must be referred to ICAC (for corrupt conduct), or the police (in criminal matters). The Chief Executive will also decide whether additional investigation or other action is required.

If there is a possibility of action for unsatisfactory performance the relevant Director or Chief Executive will need to conduct a preliminary enquiry in accordance with the relevant provisions of the *Government Sector Employment Act 2013*, *Government Sector Employment Regulation 2014* and the *Government Sector Employment (General) Rules 2014*. Consideration should also be given to the *Public Service Commission Guideline 2014-004, Performance Development Framework* and supporting guides. (see *Section 2 Procedures for Managing Internal Investigations*)

### *Resolution of complaints referred for an internal review*

Complaints about unsatisfactory service, especially rudeness or delay, are often more conducive to informal resolution or conciliation. This may be done by telephone or in some instances meeting with the complainant. The supervisor allows the complainant to tell their story without interruption and if appropriate, offers an apology on behalf of OLG and undertakes to prevent a similar occurrence in future. The principal aim is to prevent the complaint from escalating into a larger and more time-consuming dispute.

Informal resolution or conciliation is less effective when:

- the complaint is complex
- the facts are likely to be in dispute and an investigation may be needed
- action for unsatisfactory performance is a possible outcome
- the outcome the complainant is demanding cannot be provided by the more senior officer
- questions of precedent for OLG may be involved.

In these circumstances, the matter may need to be formally investigated and a report provided to the Chief Executive making a finding and/or recommendations.

### 3. External review

OLG, like any other NSW government agency, is subject to the scrutiny of other state watchdog bodies. Sometimes, such as where OLG cannot resolve the complainant's concerns, it is more appropriate to refer a dissatisfied complainant to an agency such as the Independent Commission Against Corruption, the Auditor-General, the Ombudsman, or the Anti-Discrimination Board.

Sometimes we cannot resolve a complaint despite our best efforts. When the complaint is serious and the complainant's demands continue to impact on the time and resources of staff, the complainant should be referred to an appropriate external source of review or appeal.

In these circumstances the Chief Executive is responsible for referring complaints to external agencies for resolution.

## Annexure 1 – Central Register of Complaints Received

No	Objective id.	Complainant Name Position if applicable	Agency/council /organisation (if applicable)	Staff member the subject of complaint (if applicable)	Details of Complaint	Date received	Refer to (person or agency dealing with complaint)	Issue No.	Action required	Date and outcome	Finding	Remedial action taken & date
1.	<i>Example</i> A19579	Ms James HR Manager	Blacktown Council	Bea Bloom	Bea was rude.	25/3/04	N/A	10	Apology	25/3/04	Resolved	Apology offered and accepted. 29/4/04

## Annexure 2 – Central register of compliments and suggestions received

No.	Objective id	Who gave the compliment Name (and position if applicable)	Agency/council /organisation (If applicable)	Staff member complimented (if applicable)	Date received	Details
1.	<i>Example</i> A19687	<i>Ms Bloggs - DDG</i>	<i>Dept of Housing</i>	<i>Bea Bloom</i>	<i>14/3/04</i>	<i>I wanted to express my gratitude for your endeavours on my behalf and for the happy outcome you achieved. I really was at my wits end, so I really do appreciate the fact that the Division does exist and that you took an interest in my dilemma.</i>

### Annexure 3 – Complaint/Compliment Form

<input type="checkbox"/> <b>Complaint</b>	<input type="checkbox"/> <b>Compliment</b>	<b>Contact made via:</b> Phone <input type="checkbox"/> Letter <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> In person <input type="checkbox"/>	
<b>Details taken by:</b>		<b>Date:</b>	<b>Time:</b>
<b>Complainant name:</b>		<b>Phone number:</b>	
<b>Complainant address:</b>			
<b>Subject of complaint:</b>		<b>Objective Id:</b>	
<b>Issue number/s</b> 1. Bias/unfair treatment/tone 2. Confidentiality/privacy related 3. Delays 4. Denial of natural justice		5. Failure to deal appropriately with complaint 6. Lack of feedback/response 7. Limits to jurisdiction 8. Faulty procedures 9. Inaccurate information/wrong decision 10. Poor customer service 11. Corruption/conflict of interest 12. Other	
<b>Relates to:</b>	<input type="checkbox"/> Finance and Business Services <input type="checkbox"/> Program Delivery <input type="checkbox"/> Sydney Office	<input type="checkbox"/> Executive/Executive Support <input type="checkbox"/> Investigations <input type="checkbox"/> Performance <input type="checkbox"/> Client Services	<input type="checkbox"/> Policy <input type="checkbox"/> Development <input type="checkbox"/> Council Governance <input type="checkbox"/> Legal <input type="checkbox"/> ICT
<b>Details of complaint/compliment</b>			
<b>Action/ outcome requested by complainant:</b>			
<b>Action/options offered:</b>			
<b>Referred to:</b>	<b>Finding:</b> <input type="checkbox"/> Resolved <input type="checkbox"/> Sustained <input type="checkbox"/> Unjustified		
<b>Comments:</b>			
<b>Any procedural/ broader issues raised:</b>			
<b>Any remedial action taken:</b>			
<b>Checked by manager:</b>			<b>Date:</b>

## Section 2

# Procedures for Managing Internal Investigations

## Section Two – Procedures for Managing Internal Investigations

### Overview

The procedures in this section are summarised from the following documents:

- *Government Sector Employment Act 2013*;
- *Government Sector Employment Regulation 2014*;
- *Government Sector Employment (General) Rules 2014*;
- *NSW Ombudsman Investigating complaints 2004*;
- *ICAC Fact-finder, A 20-step guide to conducting an inquiry in your organisation 2002*;
- *Public Service Commission, Guideline 2014-004, Performance Development Framework and supporting guides.*

The information below is a general outline of investigative procedures that should be referred to in assessing and dealing with complaints that warrant investigation. Should the matter be one where it is suspected that misconduct has occurred (see definition provided in section 69 of the *Government Sector Employment Act 2013*), then Part 8 of the *Government Sector Employment (General) Rules 2014* must be observed.

When assessing and dealing with complaints where unsatisfactory performance may have occurred that may require action, then regard is to be given to Part 7 of the *Government Sector Employment (General) Rules 2014*.

### Assessing a complaint for investigation

An assessment of the complaint should be made to determine the nature of the complaint. Not every complaint requires investigation. Complaints and allegations can range from the very minor and easy to resolve to the extremely serious, which may involve action for unsatisfactory performance or misconduct. The following factors should be considering when assessing a complaint and determining whether an investigation is warranted:

- whether the issues raised are serious or trivial
- whether there is an alternative and satisfactory means of redress, such as apology or mediation
- the significance of the complaint for the organisation
- whether there is an indication of a systemic problem or a serious abuse of power
- whether the complaint is one of a series, indicating a pattern of conduct or a widespread problem
- the amount of money or other benefits involved

- the number of staff alleged to be involved
- how much time has elapsed since the events the subject of the complaint took place
- whether another investigative body is more appropriate to deal with the matter.

### Determining the nature of an investigation

Once a complaint has been assessed as warranting investigation, it should be determined whether the investigation relates to policies, procedures and practices OR the conduct of individuals. Determining the nature of the investigation is important to correctly identify the powers necessary to investigate the complaint, the resources that will be required, the authorisation necessary to undertake the investigation, and the nature of the possible outcome of the investigation (for example, whether action for unsatisfactory performance may be an outcome).

When considering a matter relating to the conduct of individuals, it is necessary to determine whether the investigation:

- should be in the form of a fact finding enquiry prior to determining whether a formal investigation is warranted, or
- is part of a misconduct or unsatisfactory performance enquiry in accordance with the Government Sector Employment Rules because there is sufficient information available to warrant this.

Fact finding enquiries may be undertaken by the relevant Director and the outcome reported to the Chief Executive to determine whether a formal investigation of the matter is warranted.

### Who has the authority to initiate an investigation?

Under this Policy and Procedures, serious matters

- alleging criminal or corrupt conduct, where there seems to be evidence supporting the allegations,
- from a public sector agency, or
- from a member of parliament

are automatically referred to the relevant Director or Chief Executive. The Chief Executive and may initiate an investigation of the matter having first undertaken an assessment of the complaint.

The Chief Executive will oversee investigations initiated within OLG.

### Who undertakes an investigation?

Having determined that a matter requires investigation, the Chief Executive will determine who is to conduct the investigation. The following should be considered when choosing an investigator:

- the seriousness of the matter at issue
- the complexity of the matter at issue
- the nature of the matter at issue
- the need for the investigation to be conducted without bias, in an impartial and objective matter
- the investigator should be free from any reasonably perceived conflict of interests
- the relevant legislation (in accordance with the *Government Sector Employment Act 2013* and the *PSC Guideline 2014-004, Performance Development Framework and supporting guides*)
- whether the matter can be successfully internally investigated
- whether the matter should be investigated by an external investigator
- whether specialist investigation skills are required
- what powers will be required to ensure the investigator can properly adduce evidence, such as the power to require witnesses to talk, obtain relevant records etc.

### Determining the extent of an investigation

It is important at the outset to establish a focus and set limits on an investigation. This is done by setting out an investigation's objective and terms of reference. The terms of reference set the boundaries for an investigation and the investigation can be concluded when the terms of reference have been fulfilled. Setting the terms of reference requires the key issues arising out of the complaint to be clarified. The terms of reference should be sufficiently broad to permit the investigator to make recommendations relating to the specific matter and about more systemic issues that may arise as a result of the investigation. For example, an investigation about the conduct of an individual may identify policy, procedures and process deficiencies and an investigator should be able to make recommendations to remedy these.

The framework for an investigation should be clearly outlined in an investigation plan. The investigation plan should include:

- who is authorised to undertake the investigation
- the terms of reference for the investigation
- define what is being alleged in the complaint that is to be investigated
- the key questions to be investigated for each allegation

- criteria against which these allegations are to be tested eg code of conduct standard, legislation, policy/procedures
- the facts at issue that need to be proven or established
- the means by which the facts at issue can be established
- a timeframe for conducting the investigation
- key review points for reporting on progress
- the resources required to conduct the investigation.

The investigation plan should identify whether progress reports are required and if so at what stage/s in the investigation. The investigation plan must be approved by the Chief Executive.

### Confidentiality

Confidentiality serves a number of important functions. Preserving the confidentiality of the identity of the person making the complaint and the person the subject of the complaint minimises the risk of harm to these parties.

Another important function of confidentiality is to maintain the integrity of the investigation. At the outset, it is important to emphasise to the complainant the importance of not speaking to anyone about the complaint they have made. Additionally, any witnesses interviewed in the course of the investigation should be advised not to discuss the matter with other witnesses or third parties.

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

- minimises the risk of harm to the parties to the complaint
- is the most effective protection available to persons (in the case of those persons making public interest disclosures)
- reduces the opportunity for evidence to become contaminated
- encourages witnesses to be forthcoming in their evidence, and
- protects the investigator from the possibility of action in defamation.

### Affording procedural fairness

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

Procedural fairness should be provided by:

- informing people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them

- providing people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise
- hearing all parties to a matter and considering submissions
- making reasonable enquiry or investigation before making a decision
- ensure that all relevant evidence is considered, whether supporting or exculpatory
- ensuring that no person decides a case in which they have a direct interest
- acting fairly and without bias, and
- conducting the investigation without undue delay.

There may be limited circumstances where there may be an overriding public interest in short-circuiting certain procedural fairness requirements. These occasions are rare and will normally involve serious risks to personal safety or to substantial amounts of public funds.

The obligation to provide procedural fairness should not be viewed as an impediment to conducting an effective investigation. Providing procedural fairness benefits the investigator as well as the person under investigation. This procedural aspect of an investigation enables an investigator to properly check his or her facts and to identify the major issues. The comments made by the subject of the complaint potentially expose any weaknesses in the investigation and provide advance warning of the basis on which the investigation report is likely to be subject to criticism or attack.

### Conducting an investigation

The investigator should consult the NSW Ombudsman Investigating complaints manual for specific and detailed information on conducting investigations. A summary of the main points to consider is contained in these Procedures.

The task of the investigator is to prove or disprove any matter or fact raised by a complaint. This is done by gathering evidence. The main categories of evidence available to the investigator are oral evidence, documentary evidence, expert evidence and site inspections.

The rules of evidence will not apply to the majority of administrative or disciplinary investigations. Nevertheless, the investigator should ensure that the evidence obtained is the best available and will be admissible should there be a likelihood of subsequent legal proceedings.

### *Oral evidence*

Oral evidence may be obtained from witnesses through interviews. When dealing with witnesses, the investigator should be aware of the following:

- the timing and location of any interviews should be discreet
- what evidence the witness can give (relevant, reliable, logically probative or is it hearsay or opinion)
- letting witnesses give their version of events
- whether they have all the necessary documents they want to show the witness
- making a record of the documents which have been viewed by the witness, together with the witness' response to them
- any relevant objects, photographs or documents provided by the witness need to be tagged, dated and initialled
- always remain objective.

The objective of any interview is to ascertain facts and to endeavour to gain sufficient information to confirm or deny the basis of the complaint. Preparation is the key to effective interviewing. Whenever an investigation requires interviews, the investigator should:

- prepare set questions or lines of enquiry in advance to be used as a checklist to ensure all relevant issues are covered. The investigator should also be flexible to respond to evidence as it emerges in the interview
- avoid assumptions, if in doubt, ask further questions
- be familiar with, and comply with, any relevant legislation or approved procedures
- ensure all relevant witnesses are interviewed
- remain focussed on asking questions and obtaining factual evidence
- the purpose of the interview is to obtain answers to six categories of question – *who? what? when? where? how? and why?*
- avoid narrow or closed questions, especially during the early part of the interview. Such questions should be reserved for clarifying aspects of the evidence presented
- avoid leading questions
- resist any temptation to enter into discussion or argument with the person being interviewed
- gather all relevant information, not just information that supports the complaint.

Witnesses will sometimes ask if they can have another party present during their interview. Whenever a third party is present during an interview with a witness, either by right or by leave, it is necessary to ensure that the third party:

- understands that they are an observer, and may not take part in the discussion or interview
- is not a potential witness
- has not agreed to assist any other witnesses to the investigation

- undertakes to respect the confidentiality of the issues discussed in the interview.

### *Documentary evidence*

Some of the most reliable evidence in an investigation is documentary evidence. Where appropriate, the authenticity of the documents should be verified with the person indicated as being the author of that document. In relation to documents relevant to the investigation:

- keep all such evidence in a secure place
- make sure originals are not marked, changed, lost or damaged in any way
- take photocopies for use during the investigation
- keep a record of when, where and how they were seized or otherwise obtained, and how they are stored
- when any documents are removed, leave behind a receipt or record.

### *Expert evidence*

An investigation may also be assisted by the use of other professional experts such as accountants, valuers or human resources professionals. This will be guided by the nature of the matters under investigation.

### *Site inspections*

Where visual information or the context is important in terms of the allegation or an understanding of the issues, a site inspection may be necessary.

### *An investigation report*

After completing the investigation a report must be prepared. The report is OLG's record and may be subject to outside scrutiny. Investigation reports should be signed by the investigator and marked confidential.

The investigation report should include the following:

- executive summary
- terms of reference of the investigation
- name of the investigator and details about the authorisation of the investigation
- sources of information and methodology used
- relevant legislation and/or policies
- a statement of all the relevant facts and evidence
- the conclusions or findings reached and the basis for them

- recommendations to overcome any actual or potential shortcomings of problems identified
- any other general issues raised by the investigation
- statements and other items of evidence.

### Determining investigation outcomes

At the conclusion of an investigation a range of outcomes are possible.

Where the complaint relates to the conduct of an individual, and the enquiry was in the nature of a fact finding prior to determining whether the matter warranted investigation, the Director may recommend to the Chief Executive that a formal investigation for misconduct or unsatisfactory performance is warranted.

Where the investigation was in the nature of a misconduct or unsatisfactory performance enquiry, the Chief Executive may find the allegations unsubstantiated or alternatively, may take action for misconduct or unsatisfactory performance.

Another possible outcome may be for the complaint to be referred to an external agency for further investigation or prosecution.

Both complaints about practices or procedures and complaints about the conduct of individuals may result in recommendations being made for changes in administrative procedures and practices. Where such recommendations arise as a result of an investigation into the conduct of an individual, the purpose of such recommendations would be to prevent similar conduct from recurring.

Where someone has suffered detriment as a consequence of the conduct of the subject of the complaint, the investigation may result in recommendations for redress for the aggrieved party.

### Managing complainants

The following is a list of matters to be considered in managing the complainants:

- manage the complainant's expectations by explaining the action to be taken or not taken and the reasons why, providing information about the management of their complaint in plain English, avoiding the use of jargon and technical terms
- explain the reasons why confidentiality should be maintained by the complainant
- provide support and information to the complainant, particularly if there are fears of harassment, victimisation or other detrimental actions in reprisal for their complaint

- keep the complainants up to date of progress in the investigation
- inform the complainant of the outcome of the investigation or other action proposed.

*Managing persons the subject of the complaint*

The following is a list of matters to be considered in managing the person the subject of the complaint:

- need to be sensitive to the impact that a complaint may have on the person the subject of the complaint.
- avoid unnecessary disclosure of the identity of the person the subject of the complaint as this might do considerable damage to them, even if the subsequent investigation exonerates them.
- conduct a fact finding enquiry before approaching the person the subject of the complaint (in most cases). It is important to ascertain that there is some case to answer before allegations are put to the individuals concerned.
- the person the subject of the complaint has the right to be informed as to the substance of the allegations in all but the most exceptional circumstances. This is part of the procedural fairness process.
- the person the subject of the complaint has a right to be informed of any adverse comment to be made in respect of them. They should be given reasonable opportunity to put their case to the person carrying out the investigation.
- the point at which the person who is subject of the allegations should be informed will depend on the type of conduct at the centre of the complaint.
- consideration may need to be given to transferring the person the subject of the complaint to other work, being directed to take leave or be suspended with/without pay if such steps appear to be necessary to protect vulnerable people, the integrity of the investigation or the interests or reputation of OLG.

*The actions that can be taken where allegations of breach of policy, misconduct, corrupt conduct and fraud are substantiated.*

The *Government Sector Employment Act 2013* outlines the actions that can be taken in relation to an employee of a government sector agency. Reference should be made to sections 68 and 60 of that Act and Parts 7 and 8 of the *Government Sector Employment (General) Rules 2014* as to the procedures to be followed and actions that may be taken in relation to misconduct and unsatisfactory performance.

Section 69 of the *Government Sector Employment Act 2013* defines the meaning of misconduct.

## Policy Details

**Approved by:** Chief Executive, Local Government

**Date approved:** 1 May 2018

**Effective from:** 1 May 2018

**Next review date:**

Two years from approval date.

**Responsible Officer:**

Director, Business Improvement

**Key references/further info:**

OLG's Managing Misconduct and Serious Misconduct Policy and Procedures  
OLG Internal Reporting Policy - Public Interest Disclosures 2017

**Other useful references for use with this Policy**

OLG Code of Conduct

NSW Ombudsman's Effective Complaint Handling Guidelines (2017)

NSW Ombudsman – Managing Unreasonable Complainant Conduct Practice Manual 2012

NSW Ombudsman Investigating complaints – A manual for investigators, June 2004

ICAC Fact-Finder A 20-step guide to conducting an inquiry in your organisation 2002

*Government Sector Employment Act 2013*

Public Service Commission, Managing for Performance, Guide for Managers 2014.

**Note:** This policy and/or associated procedures may be varied, withdrawn or replaced at any time.