



Premier & Cabinet  
Division of Local Government

Division of Local Government  
Department of Premier and Cabinet

# **Procedures for Managing Complaints and Feedback About the Division of Local Government**

November 2012

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# **Procedures for Managing Complaints and Feedback about the Division**

## *Purpose*

An effective complaint management system is an essential component of quality service provision and sound corporate governance. It is fundamental in ensuring an appropriate level of accountability and is one method utilised in measuring the Division's performance.

We are committed to providing services of the highest quality. Key to meeting this commitment is using feedback about our services or staff as opportunities to improve the quality of the services we provide.

Feedback can be in the form of a complaint, a compliment or a suggestion. The quality of our response to complaints and feedback has an impact on our reputation.

We are committed to ensuring that complaints received are handled in a manner which is fair, courteous and respects the privacy of the person making the complaint. We are also committed to ensuring that reasons are provided for decisions made in relation to any complaint received.

The Complaint Handling Guidelines have been developed to assist the Division and its staff in the management and handling of complaints about us. The Managing Complaints and Feedback about the Division Policy and these Procedures have been designed for use by all staff.

The development of these Procedures is intended to enable the Division and its staff to reduce risks associated with:

- untimely handling of complaints;
- customer dissatisfaction;
- unfair, discourteous handling of complaints;
- breaches of complainant privacy; and
- decisions made without transparency and objectivity.

## *Coverage/Scope of Procedures*

This publication has been divided into three sections.

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

- benefits of an internal complaints system
- what is a complaint about us or our staff
- internal complaint system
- procedures for complaint handling
- analysing & reporting on complaints
- key responsibilities
- business rules & forms

*Section Two – Procedures for Managing internal Public Interest Disclosures* – applies to complaints made by staff of the Division under the *Public Interest Disclosures Act 1994* and provides information on:

- managing disclosures;
- investigations standards;
- reporting requirements; and
- key responsibilities.

*Section Three – 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.

This publication has taken into account and is consistent with:

- the 2010 edition of the NSW Ombudsman's Effective Complaint Handling Guidelines;
- NSW Ombudsman – Managing Unreasonable Complainant Conduct Practice Manual 2009
- 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
- *Public Sector Employment and Management Act 2002*
- Public Service Commission, Personnel Handbook version 12.3, September 2012.

# Section 1

## Procedures for Managing Complaints and Feedback about the Division

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

### Background

Our Division has a guarantee of service which commits us to delivering good service and invites comments or complaints about us so that we can improve our performance.

As part of our role we undertake reviews and investigations of councils and provide oral and written information and assistance to a variety of third parties including other government departments, council officials and members of the public.

In our line of work, it is inevitable that we will receive complaints and compliments. They tell us where we have gone wrong and what we have done well. We acknowledge that sometimes people are reluctant to provide feedback.

Through our Managing Complaints and Feedback about the Division Policy we show our commitment to actively seek and use feedback to improve the way we do things. We expect local councils about which we receive complaints to take a constructive approach to complaints about the way they operate and the services they provide. Our Division should be no different.

In dealing with individuals and agencies we aim to be polite, responsive, respectful, fair, impartial, prudent, effective and efficient. Feedback from the people who receive our service is essential to determine how well we are achieving this goal.

Both positive and negative feedback should be recorded and responded to in a way that allows us to improve the way we do things, and recognise what we are doing well.

Ideally we try to do things right the first time, but we will not always be able to provide the best service or fulfil people's expectations at the outset. This is why we need an internal complaints system.

We recognise that external feedback is an important tool that we can use to continually improve our services. This section of our Procedures provides a framework for taking a consistent and professional approach to handling complaints about us.

### Why it is important for the Division to handle complaints properly

One of our key functions is investigating complaints about councils and councillors. Our reputation is largely based on finding practical solutions to people's concerns, including requiring local councils to improve the way they do things. We also encourage local councils to improve the way they handle complaints about themselves. It would be reasonable for local councils to expect that we apply the same standards to ourselves.

Properly handling complaints about our work is important to our performance.

Complaints which are not promptly resolved can generate significant additional workload for the Division and impact heavily on staff morale, and public perceptions of the Division. Even though all complaints may not be 'justified' from our perspective, complainant dissatisfaction can fester and make further contacts with the Division difficult. Dissatisfied complainants can also publicly criticise our service, so that our reputation and credibility suffers.

Complaints can give us ideas for improving the way we do things.

An effective complaints management process is also one way we can check that the Division is meeting the needs of social justice groups and support our Disability Action Plan by acting as a customer feedback mechanism.

### 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 accountability of the Division— people’s dissatisfaction is on the record
- provides opportunities to strengthen public support for the Division, 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.

### What is a complaint about us?

A complaint about us includes:

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

A complaint is not:

- a disagreement about an assessment of facts
- a disagreement about an evaluation of evidence, or
- a grievance or complaint related to work or the work environment, made by a staff member (see our Grievance Policy & Procedures).

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

Examples of possible complaints about the Division 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 the Division's code of conduct
- information not being provided in an accessible format.

#### Unreasonable complainant conduct

If a complainant complains about the Division 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 'Procedures for Managing Complaints about Councils'*)

#### Complainants will not be punished for complaining

Members of the public and other people who we have professional dealings with the Division 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 Deputy Chief Executive will manage any complaints that allege a person has suffered reprisal as a result of complaining about the Division or its staff.

### 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 you should also advise any anonymous complainants that you may not be able to resolve their specific concerns or tell them how the Division 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 Divisional officer. File notes should not contain inappropriate personal views or reflections of the Divisional officer. File notes are subject to the provisions of the Government Information (Public Access) Act 2009.

### 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 Deputy 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 to inform your supervisor what you have done. Your supervisor should report these matters to the Deputy Chief Executive.

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

### How we handle complaints received in writing

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

- ensure that the complaint is recorded
- attach a compliment/complaint form to the correspondence
- 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 on the compliment/complaint form, and saved in the central complaint register.

Generally all written correspondence enters the Division via the Communications Team. When a complaint is received in writing by the Communications Team, all written complaints must be referred by members of that Team to the Coordinator Communications or Manager Communications & Operations in the Coordinator's absence.

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

### 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 inquiries, if any, are required.

If the matter is serious or involves allegations of corrupt conduct, the Deputy Chief Executive should be informed, and it may be necessary to carry out some enquiries and notify the matter to 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 3 – 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 the Division's Grievance 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 investigated and responded to within 2 weeks.

#### Centrally recording complaint information

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

Team 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 Deputy Chief Executive and the documents placed on a caveated register in the Division'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.

Team 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 Team Leader, 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 the Division's annual planning process. The outcomes from the review and analysis will be used to assist with continuous improvement and inform the Division's policy and planning.

### Complaint Handling Model

A complaint handling model aims to provide a mechanism for an organisation to respond to, record, report and use complaints to improve its own service delivery.

Such a model is used to guide us in managing the complaints we receive about us. The model includes a Policy and these 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 Divisional 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.

**Tier 1: Frontline Complaint Handling**

Staff empowered to respond to and resolve complaints at the first point of contact wherever possible. Staff use appropriate record keeping practices so that complaints can be later used for reporting and analysis purposes.

**Tier 2: Internal Review**

More senior staff review/investigate unresolved complaints or serious complaints.

**Tier 3: External Review**

Complaints which remain unresolved are referred to external agencies for resolution eg:

- Alternative dispute resolution procedure (eg mediation)
- Referral to an external agency eg NSW Ombudsman
- Appeal process or legal remedy

### 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 you should complete a compliment/complaint form and give it to your supervisor. The form is available electronically on the Division'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 the Division. The complainant should be told in clear terms what you (and the Division) 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 - 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 the Division to properly analyse complaint information.

Supervisors 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 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 the Division that is the subject of the complaint
- an issue number corresponding to the nature of the complaint (see form)
- 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 DCE 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 interest
- 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 Deputy Chief Executive:

- when significant disciplinary action 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.

Referral of complaints to the Deputy 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 or DCE. 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.

Your supervisor may consult with the Deputy 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 Deputy 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 Deputy 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 Deputy 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 Deputy Chief Executive should be done via your supervisor.

The Deputy Chief Executive is responsible for directing initial inquiries into these kinds of complaints and reporting the matter to the Chief Executive.

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 disciplinary action the Deputy Chief Executive will need to conduct a preliminary inquiry in accordance with Part 2.7 of the *Public Sector Employment and Management Act 2002*. The Public Service Commission, Personnel Handbook, contains detailed commentary and guidelines on the conduct and performance provisions of that Act. (see *Section 3 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 the Division 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
- disciplinary action is a possible outcome
- the outcome the complainant is demanding cannot be provided by the more senior officer
- questions of precedent for the Division may be involved.

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

### 3. *External review*

The Division, like any other NSW government agency, is subject to the scrutiny of other state watchdog bodies. Sometimes, such as where the Division 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	Details of Complaint	Date received	Refer to	Issue No.	Action required	Date and outcome	Finding	Remedial action taken & date
1.	<i>Example</i> A19579	<i>Ms James</i> <i>HR Manager</i>	<i>Blacktown</i> <i>Council</i>	<i>Bea</i> <i>Bloom</i>	<i>Bea was</i> <i>rude.</i>	<i>25/3/04</i>	<i>N/A</i>	<i>10</i>	<i>Apology</i>	<i>25/3/04</i>	<i>Resolved</i>	<i>Apology</i> <i>offered and</i> <i>accepted.</i> <i>29/4/04</i>

## 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 endeavors 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"/> Complaint	<input type="checkbox"/> Compliment	Contact made via: Phone <input type="checkbox"/> Letter <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> In person <input type="checkbox"/>	
Details taken by:		Date:	Time:
Complainant name:		Phone number:	
Complainant address:			
Subject of complaint:		Objective Id:	
<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"/> Communications & Operations <input type="checkbox"/> Companion Animals <input type="checkbox"/> Sydney Office	<input type="checkbox"/> Executive Support <input type="checkbox"/> Investigations <input type="checkbox"/> Performance & Compliance	<input type="checkbox"/> Innovation <input type="checkbox"/> Development <input type="checkbox"/> Council Governance
<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>			Date:

## Section 2

# Procedures for Managing Internal Public Interest Disclosures

## **Section Two –Procedures for Managing Internal Public Interest Disclosures**

### **1. Introduction**

The Procedures for making and handling disclosures under the *Public Interest Disclosures Act 1994* are detailed in Department of Premier and Cabinet's (DPC) Public Interest Disclosures – Policy (contained in '*Managing Complaints and Feedback about the Division Policy*').

The document here provides guidance on specific issues from the Policy that those officers charged with receiving public interest disclosures need to know and apply when a disclosure is received.

The processing of a disclosure is covered here at item 3 and combines the requirements of Policy sections 3 (*Managing Disclosures*) and 5 (*Feedback to public officials who disclose wrongdoing*).

For other areas relating to disclosures, please refer to the Policy for detailed guidance on:

- confidentiality (section 4)
- protection against reprisals (section 6)
- support for those disclosing wrongdoing (section 7)
- support for the subject of a report (section 8)

Reference throughout these Procedures is made to the DPC's Policy document contained at Appendix A to the Division's '*Managing Complaints and Feedback about the Division Policy*'.

### **2. Internal reporting procedures** (see section 1 of Policy)

Some points you need to be aware of are:

- Disclosures can be made by public officials from inside or outside the Division. The policy and procedures refer to all public officials, not just employees.
- Some public officials may have concerns that approaching the Director General or a Public Interest Disclosure Co-ordinator in the workplace will identify them as someone who has made a disclosure. In these cases the public official may request a private meeting away from the workplace. A reasonable meeting place should be agreed.
- If a disclosure is made verbally, the person receiving the disclosure must ensure a comprehensive record of the disclosure is made and ask the person

making the disclosure to sign this record. The public official should be given a copy of this record.

- Disclosures made anonymously must still be assessed. DPC's Policy alerts public officials that an anonymous disclosure may not prevent them from being identified. If it is not known who made the report, it may not be possible to prevent reprisal action.

### **3. Reporting required under section 6CA of the Act** (see section 9 of Policy)

Statistical information is to be recorded for reporting to the Ombudsman and Parliament. This is to be provided by the Division's Disclosure Co-ordinator as required.

### **4. Managing disclosures and feedback to those who disclose wrongdoing** (see sections 3 and 5 of Policy)

A Public Interest Disclosure Co-ordinator will oversee the management and investigation of any disclosure, unless it pertains to their own conduct in which case the Director General will manage the matter. If a disclosure is about the Director General it is to be referred to an investigating authority (see section 2 of Policy).

#### *When a disclosure is received*

- Within 45 days of the person making the disclosure, the Disclosure Co-ordinator sends to the person:
  - written acknowledgement of receipt of the disclosure
  - a copy of the Policy and Procedures
  - timeframe for when further updates will be received
  - contact details of people who can advise what is happening
  - advice that he or she should maintain confidentiality of their disclosure.
- For a verbal disclosure, the Disclosure Co-ordinator makes a written record of the disclosure with the person making the disclosure and has the person sign the record.
- With reference to DPC's policy at section '*Public interest disclosures*', consider whether the disclosure meets the requirements for protection under the Act.
- Inform the Director General of the circumstances of the disclosure.
- A risk assessment is to be conducted identifying any risks to the employee who reported the wrongdoing and strategies to deal with those risks.

### Deciding how to deal with the disclosure

- The Director General and the relevant Public Interest Disclosure Co-ordinator will determine how the matter is to be actioned. Depending on the circumstances, appropriate action may include:
  - a) Nomination of an appropriate person to take responsibility for dealing with the disclosure
  - b) Preliminary or informal investigation
  - c) Formal investigation
  - d) Prosecution or disciplinary action
  - e) Refer it to an investigating authority for investigation or other appropriate action
  - f) Refer it to the Commissioner of Police (if a suspected criminal matter) or the ICAC (if the matter concerns suspected corrupt conduct).

**Note:** Investigation standards from DPC's Fraud and Corruption Control Strategy are contained as an appendix to Section 3 of these Procedures: '*Procedures for Managing Internal Investigations*'.

- Within 10 working days of a decision on how to deal with the disclosure, provide the person making the disclosure with:
  - information about the action that will be taken in response to the disclosure, including if any action is to be taken despite it being determined that it is not a public interest disclosure
  - likely timeframes for any investigation
  - information about the resources available within the Department to handle any concerns the public official may have
  - information about external agencies and services for support.
- Procedural fairness will generally require that employees who are the subject of disclosures be informed of the substance of the claims against them and be given a reasonable opportunity to respond.

### During the investigation

- A confidential report will be prepared by the person undertaking the investigation and submitted to the Director General as quickly as possible.
- Provide the person who made the disclosure with:
  - information on the ongoing nature of the investigation
  - information about the progress of the investigation and reasons for any delay
  - advice if his or her identity needs to be disclosed for the purposes of investigating the matter and an opportunity to talk about this.
- The result of any decisions and/or further action in relation to the disclosure will be made known to the employee who made the disclosure as quickly as possible and within the six months required by the Act.

### End of the investigation

At the end of any investigation, the employee will be given:

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

## Section 3

# Procedures for Managing Internal Investigations

## Section Three – Procedures for Managing Internal Investigations

### Overview

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

- NSW Ombudsman Investigating complaints 2004;
- ICAC Fact-finder, A 20-step guide to conducting an inquiry in your organisation 2002;
- Public Service Commission, Personnel Handbook 2012.

The Procedural Guidelines, contained in Appendix 9A of the Personnel Handbook, issued by the Public Service Commissioner for the purpose of dealing with allegations of misconduct by officers as a disciplinary matter, and the taking of subsequent disciplinary action related to misconduct, should be used to guide misconduct enquiries.

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 the Personnel Handbook), then the Procedural Guidelines issued by the Public Service Commissioner at Appendix 9A of the Handbook should be observed.

### 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 formal disciplinary action. The following factors should be considered 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 disciplinary action 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 pre-disciplinary fact finding inquiry, or
- is part of a disciplinary inquiry in accordance with a formal discipline scheme because there is sufficient information available to warrant this.

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

In accordance with the Procedures for '*Managing Complaints and Feedback about the Division*', serious matters and those

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

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

The Chief Executive or Deputy Chief Executive will oversee investigations initiated within the Division.

### Who undertakes an investigation?

Having determined that a matter requires investigation, the Chief Executive or Deputy 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 *Public Sector Employment and Management Act 2002*. See Personnel Handbook)
- 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 or Deputy 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 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 inquiry 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 inquiry 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, 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 the Division'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 investigation was in the nature of a fact finding investigation, the Chief Executive or Deputy Chief Executive may decide to pursue disciplinary action.

Where the investigation was in the nature of a disciplinary inquiry, the Chief Executive or Deputy Chief Executive may find the allegations unsubstantiated or alternatively, they may impose a disciplinary sanction.

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 inquiry 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 the Division.

*The disciplinary penalties that can be applied where allegations of breach of policy, misconduct, corrupt conduct and fraud are substantiated.*

The Public Sector Employment and Management Act 2002 outlines the disciplinary procedures that apply to persons employed in staff positions and senior executive positions. Reference should be made to that Act and Chapter 9 of the Personnel Handbook as to the disciplinary procedures to be followed and actions that may be taken in relation to misconduct

Section 43 of the Public Sector Employment and Management Act 2002 defines the meaning of misconduct. Section 42 of that Act outlines the disciplinary and remedial actions available in relation to an officer.

## **Annexure A: Investigation standards from the DPC Fraud and Corruption Control Strategy**

### **Corruption**

The Assistant Director General, Corporate Services, is responsible for receiving and actioning reports of alleged fraud and corruption. This action will include coordinating investigations within DPC.

The initial investigation is to establish whether there is suspicion on reasonable grounds that the matter concerns or may concern corrupt conduct. If there is such suspicion then the ICAC Act Section 11(2) requires the Director General to report the matter to ICAC.

The following provides a checklist to ensure all appropriate matters have been covered for the purpose of reporting under section 11 of the ICAC Act:

Section 11 report checklist:

- a complete description of the allegations
- the name and position of those alleged to be involved
- the name/s of the person/s who made the allegation
- the name and role of any other person/s relevant to the matter
- the dates and/or timeframes in which the alleged conduct occurred
- an indication as to whether the conduct appears to be a one-off event or part of a wider pattern or scheme
- the date the allegation was made or the date you became aware of the conduct
- what DPC has done about the suspected conduct, including notification to any other agency
- what further action is proposed by DPC
- the approximate amount of money or value of resources (if any) involved
- any other indicators of seriousness
- any other information deemed relevant to the matter
- copies of any relevant documents
- references to any relevant legislation
- the name of the relevant contact officer
- whether or not the matter is a protected disclosure under the Public Interest Disclosures Act 1994.

### **Fraud**

If during the initial investigation it appears the matter may involve fraud then the investigation is to cease and NSW Police are to be informed. Fraud is a criminal offence. It must be treated as such from the outset. ICAC must also be advised.

## **Conducting Investigations**

Once a matter has been reported to the appropriate external authority then that authority will advise whether they or DPC will complete the investigation. The Assistant Director General, Corporate Services, must remain in contact with the reporting authority to ensure the matter is dealt with in a timely manner and agree final reporting scope and timeframes.

If an investigation is to be undertaken internally then options include:

- internal auditors
- selected management and/or employees
- external auditors
- external investigators.

An investigation plan is to be prepared by the Assistant Director General, Corporate Services. Matters to be considered as part of the planning process should include:

- description of the alleged wrongdoing
- terms of reference for the investigation
- specific issues and matters to be examined in depth
- details of initial inquiries
- identification of functional areas and key staff to be involved
- identification of specialist expertise or support required
- expected costs and time period for the investigation
- milestones, key review points and report back dates
- possible outcome/s
- report to the person who initially raised the matter.

## **Rights of individuals**

A DPC employee who is the subject of fraud or corruption allegations is considered innocent unless and until proven guilty.

An employee has the right not to have details of the allegation disclosed to others or discussed by others not concerned with the matter.