

## Internal Ombudsman Shared Service

### City of Parramatta, Cumberland City and Inner West Councils

#### Governance Charter

#### 1. The Role of the Internal Ombudsman Shared Service

1.1 The Internal Ombudsman Shared Service is a service provided to member Councils who have opted to pool resourcing to fund and facilitate an Internal Ombudsman Service that conducts independent and impartial investigations and reviews into administrative processes and services provided by the member Councils.

1.2 The Internal Ombudsman Shared Service provides residents, community members, ratepayers, local businesses, staff, Councillors and other Council stakeholders with an 'independent ear' regarding complaints about: administrative conduct; unethical behaviour by Council; corrupt conduct; misconduct; or maladministration. All operations of the Internal Ombudsman Shared Service are underpinned by the principles of procedural fairness; accountability; transparency; and fairness.

1.3 The Internal Ombudsman Shared Service will investigate matters within jurisdiction and provide the relevant Council and affected parties with the results of the investigation and make recommendations regarding required corrective action and process improvements where relevant. The Internal Ombudsman Shared Service will also provide member Councils with a proactive education service regarding continuous improvement in administrative processes, good governance and ethical decision-making across all member Council services.

1.4 This Governance Charter and the operation of the Internal Ombudsman Shared Service reflect the commitment of each member Council in operating to a high standard of ethical conduct and decision-making; administrative conduct; corporate governance; and being corruption free.

1.5 This Governance Charter has been agreed upon and adopted by each member Council and the Internal Ombudsman Shared Service Management Committee, and provides a framework for the operation of the service and relevant delegations. This Governance Charter details the functions and powers of the Internal Ombudsman Shared Service and these are subject to change. The Internal Ombudsman's Governance Charter will be reviewed annually.

1.6 Councils who are part of this Shared Service have all signed a legal Agreement detailing their obligations in regards to the Internal Ombudsman Shared Service resourcing; scope of the operations; and their required participation on the Internal Ombudsman Shared Service Management Committee.

1.7 The Internal Ombudsman Shared Service will abide by each member Council's Code of Conduct and relevant policies and procedures in relation to any work conducted for, in relation to, or on behalf of the relevant member Council to which the work relates.

## **2. Scope of the Internal Ombudsman Shared Service**

2.1 The operations of the Internal Ombudsman Shared Service apply to all Council functions and activities; staff; Councillors; and other delegates for each member Council.

2.2 All staff, Councillors, and other delegates for each member Council are to cooperate fully with the Internal Ombudsman Shared Service in any investigation to be carried out, and must comply with any lawful direction given by the Internal Ombudsman or associated staff in connection with any investigation undertaken or any recommendation made by the Internal Ombudsman Shared Service pursuant to this Governance Charter.

2.3 All staff, Councillors, and other delegates for each member Council shall be bound by the Internal Ombudsman Shared Service recommendations, once, as relevant to the circumstances, the General Manager or Chief Executive Officer, or Mayor or the elected Council or a Council's Audit, Risk and Improvement Committee has accepted them. The complainant cannot be bound.

## **3. Management Committee**

3.1 The role, functions, resourcing and budget of the Internal Ombudsman Shared Service is administered by the Internal Ombudsman Shared Service Management Committee which is a committee comprising of one (1) representative from each member Council. The Internal Ombudsman Shared Service Management Committee has its own Terms of Reference.

#### **4. What the Internal Ombudsman Shared Service will investigate**

4.1 The Internal Ombudsman Shared Service will review and investigate the following types of matters including, but not limited to:

- a) All Council administrative processes, including matters such as: development processes; waste management; sporting and community operations; recreation and environment Council operations; Council Committees; and other staff matters as determined by the Chief Executive Officer or General Manager;
- b) Any failure to comply with Council's Code of Conduct or policies or procedures including but not limited to conflict of interests; tender processes; release of confidential information; other employment; and gifts and benefits. (The applicable provisions of the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW will be applied during these reviews where required);
- c) Council's lack of attention to matters, or review of Council's complaint handling procedures;
- d) Anonymous matters will be considered for review or investigation, but only if adequate detail is provided to allow the matter to be reviewed or investigated;
- e) Receipt and referral of allegations of poor administration; unreasonableness; maladministration; corruption; or other alleged improper conduct by Council or Council Officials;
- f) Referral of internal matters from a General Manager or Chief Executive Officer, Mayors, Internal Audit; and external government agencies including but not limited to the following agencies: the NSW Independent Commission Against Corruption (the ICAC); the NSW Ombudsman; or the Office of Local Government;
- g) Public Interest Disclosures, including breaches of disclosure obligations.

4.2 The Internal Ombudsman Shared Service may instigate its own investigations on matters without first receiving a complaint, upon approval from the Internal Ombudsman Shared Service Management Committee.

4.3 The Internal Ombudsman Shared Service may also provide ad-hoc or written probity advice to staff; Councillors; or Council delegates.

#### **5. What the Internal Ombudsman Shared Service will not investigate**

5.1 The Internal Ombudsman Shared Service will NOT review and investigate, or will cease to investigate the following types of matters including, but not limited to, matters in which:

- a) They are not part of Council's functions or businesses;
- b) They have not firstly been reviewed or investigated in accordance with the member Council's relevant Complaints Management Policy;

- c) The complainant has had knowledge of the matter for more than six (6) months before making the complaint unless it is a complaint about a staff member or a Councillor (see below);
- d) They relate to the conduct of staff or Councillors or delegates, where the complainant has had knowledge of the matter for more than three (3) months before making the complaint (refer to the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW);
- e) They require initial referral to external agencies including but not limited to: the NSW Independent Commission Against Corruption (the ICAC); or the Office of Local Government; or the NSW Ombudsman; or the NSW Police;
- f) Adequate details of the complaint are not available to allow proper investigation;
- g) They are frivolous, vexatious or not made in good faith or concern a trivial matter;
- h) The complainant has no direct interest or sufficient interest in the subject matter of the complaint;
- i) An adequate remedy of right of appeal already exists, whether or not the complainant uses that remedy or right of appeal;
- j) They are already before or under investigation by a court, coroner or other tribunal or government agency;
- k) They relate to the appointment or dismissal of an employee or any industrial or disciplinary issue, other than in relation to the administrative process of the appointment, dismissal or disciplinary issue;
- l) They concern a private individual;
- m) Resources are not available, or the matter is of a low priority;
- n) The complainant declines or refuses to provide further sufficient information to allow investigation;
- o) The complainant has made threats against Council or the IOSS;
- p) It concerns a review of a decision of the elected Council, or committee of Council, or matters awaiting determination;
- q) It relates to a planning decision.

5.2 However, any matters that are listed above but are considered systemic; reflect a pattern of conduct; and/or are serious and significant; may be investigated immediately or reviewed by the Internal Ombudsman Shared Service at the Internal Ombudsman Shared Service Management Committee's discretion.

5.3 The Internal Ombudsman Shared Service may refer matters as appropriate to any other internal Council departments or senior person to investigate a matter; or to any external government agency and third-party companies to investigate as appropriate.

5.4 The Internal Ombudsman Shared Service will not act as a community advocate, nor support any organisation or body; or defend Council.

5.5 When the Internal Ombudsman Shared Service decides not to investigate, or ceases to investigate a matter, the Internal Ombudsman Shared Service will inform the complainant in writing of the decision and provide the reason for the decision.

## **6. Who can make complaints?**

6.1 Anyone with a sufficiently direct interest in a matter can make a complaint to the Internal Ombudsman Shared Service as long as it concerns one of the member Council's operations and functions and is within the Internal Ombudsman Shared Service's jurisdiction. Complaints may be received from: residents; community members; ratepayers; local businesses; staff; Councillors; and other Council stakeholders.

6.2 Complaints must be made in writing direct to the Internal Ombudsman Shared Service. Complaints can also be made to the member Council.

6.3 Internal Ombudsman Shared Service staff are available in person or by telephone to discuss matters as to whether the Internal Ombudsman Shared Service is the correct entity to handle the complaint or refer matters appropriately.

6.4 Internal Ombudsman Shared Service staff can provide assistance to persons who wish to make a complaint but are unable to submit a written complaint themselves.

## **7. Who pays for the services?**

7.1 Each member Council contributes financially to the operation of the Internal Ombudsman Shared Service, as agreed upon and detailed within the *Internal Ombudsman Shared Service Management Committee – Terms of Reference*, and the legal Agreement between the member Councils.

7.2 There is no charge to lodge a complaint to the Internal Ombudsman Shared Service or have a matter reviewed or investigated.

## **8. Confidentiality and Privacy**

8.1 All parties to a matter facilitated or investigated by the Internal Ombudsman Shared Service are required to maintain confidentiality in relation to all correspondence and reports; any conversations or discussions; and any interviews conducted. The processes of the Internal Ombudsman Shared Service are undertaken in private, and in a secure location.

8.2 Records management and the handling of personal and private information within the Internal Ombudsman Shared Service are in accordance with the relevant member Council's Code of Conduct **and legislative obligations**. The Internal Ombudsman Shared Service will manage and maintain strict separation and confidentiality of each individual member Council's records.

8.3 Staff and Councillors are also bound by the confidentiality and privacy provisions of Council's Code of Conduct.

8.4 Complainant's details will not be disclosed unless written consent from the complainant has been provided **or as required by law**.

8.5 In the event of any unauthorised access to IOSS information, the IOSS will immediately seek to rectify the issue as is required by law and in accordance with the Information and Privacy Commission NSW's *Data Breach Guidance for Agencies* and relevant Council policies and procedures. The IOSS will act immediately to contain the breach and then commence the process to assess, notify and take action to prevent any future occurrences. Any possible deliberate action will be assessed under the relevant Council *Code of Conduct* and/or policy. As part of the IOSS's prevention measures, a regular program of quality assurance is undertaken.

8.6 The IOSS located at 11 Northumberland Road Auburn NSW 2144, collects personal information primarily to undertake the roles and functions set out in this Governance Charter, including: receiving, assessing and investigating complaints. Collected personal information may also be used for a secondary purpose including, involving another government or partner agency. The information a complainant supplies is voluntary, if a complainant chooses to give no information to the IOSS, the IOSS may not be able to handle a complaint and it may be closed. The IOSS and subject Council are the intended recipients of information provided by a complainant.

8.7 The information the IOSS holds is securely stored by the Cumberland City Council located at 16 Memorial Avenue Merrylands NSW 2160. Information may also be accessed when required by the subject Council. A complainant has the right to access their personal information and update it when it is incorrect. A complainant can access or request correction of personal information by contacting the IOSS on (02) 8757 9044 or by email [internalombudsman@cumberland.nsw.gov.au](mailto:internalombudsman@cumberland.nsw.gov.au).

8.8 When the IOSS discloses personal information, this disclosure is governed by privacy law. For further details on how the IOSS manages personal information, please refer to Council's Privacy Management Plan.

## **9. Access to information**

9.1 The Internal Ombudsman Shared Service will have access to all relevant information upon which to conduct a fair investigation and will not seek to access any irrelevant information from any member Council or related party. Each Council's records will be managed separately, and

confidentiality will be maintained individually for each Council and in accordance with the Code of Conduct. Any investigation of electronic information held by Council, will be undertaken in accordance with relevant legislation and Council policies.

9.2 The Internal Ombudsman Shared Service may enter and inspect any member Council premises and engage in conversations with persons; obtain or create records; make requests for information or records; and remove information or records from Council premises.

9.3 The Internal Ombudsman Shared Service can request member Councils provide information. When the Internal Ombudsman Shared Service requests information it will give a timeframe for response, where appropriate this timeframe will be agreed. Where not agreed the Internal Ombudsman Shared Service will give a minimum of 5 business days. If a Council is not able to provide information in the timeframe, it must request an extension by contacting the Internal Ombudsman Shared Service.

## **10. Reviews and Investigations**

10.1 The process for reviews and investigations conducted by the Internal Ombudsman Shared Service will operate around the following basic principles, as the Internal Ombudsman Shared Service considers necessary:

- a) Review of the matter as to its jurisdiction and priority allocated;
- b) An acknowledgement letter will be sent to the complainant;
- c) Preliminary documentation review of any records or information available in relation to the issues raised; including any current policies and procedures applicable to the matter; and site inspections where relevant;
- d) Interviews with the relevant person(s), as required;
- e) Preparation of a confidential report to the relevant General Manager or Chief Executive Officer or as appropriate to the Mayor or the Council (see 11.3) or the Chair of the member Council's Audit, Risk and Improvement Committee, which will include:
  - i. A review of the evidence available to the investigation.
  - ii. Determinations on the complaint.
  - iii. Appropriate recommendations on the matters investigated.
  - iv. Any other issues identified which are not directly associated with the matters under review or investigation will be noted for further review by Council.
- f) Notification to the complainant detailing the results of the investigation, and any actions, if appropriate giving consideration to relevant privacy legislative requirements. Information provided to the complainant detailing the results of some investigations may therefore be limited.

10.2 The procedures adopted and undertaken by the Internal Ombudsman Shared Service will comply at all times with relevant legislation, Council policies and follow best practice.

10.3 The timeframe for the investigation will be determined by the allocation of the priority of the matter, and other work constraints of the Internal Ombudsman Shared Service.

10.4 The Internal Ombudsman Shared Service may refer matters to other bodies, internal or external to Council for investigation, due to the nature of the matter; or the current resourcing or skills of the Internal Ombudsman Shared Service; or the urgency of the matter.

## **11. Reports and Recommendations**

11.1 Where, after completing an investigation, the Internal Ombudsman is of the opinion that a decision, recommendation, act, omission or procedure of an employee or Councillor or delegate of the Council:

- a) Is contrary to law;
- b) Is unjust, oppressive or improperly discriminatory;
- c) Is based on a rule of law or practice that is unjust, oppressive or improperly discriminatory;
- d) Is based in whole or in part on a mistake of law or fact or on an irrelevant ground or consideration;
- e) Is related to the application of arbitrary, unreasonable or unfair procedure;
- f) Was made without providing adequate reasons; or
- g) Involves maladministration or misconduct of any kind;

then the Internal Ombudsman Shared Service shall provide a confidential written report of the opinion, with reasons, to the relevant General Manager or Chief Executive Officer, or as appropriate, to the Mayor or the Council (see 11.3) or the Chair of the relevant member Council's Audit, Risk and Improvement Committee.

11.2 In making an investigation report, the Internal Ombudsman Shared Service may recommend to the relevant General Manager or Chief Executive Officer or as appropriate, to the Mayor or the Council (see 11.3) or the Chair of the relevant member Council's Audit, Risk and Improvement Committee that:

- a) The matter be referred to the General Manager or Chief Executive Officer for further consideration;
- b) An omission or delay be rectified;
- c) A decision or recommendation by an employee or employees of the Council be revoked or varied;
- d) Reasons be given by an employee or employees of the Council for a decision;



- e) A practice or procedure be altered;
- f) A statute, regulation or by law be reconsidered;
- g) The Council pay compensation to a complainant;
- h) The Council provide a particular service;
- i) The Council amend, or not impose, a charge or condition in relation to a particular service, application or consent;
- j) The Council supply a good or service or undertake any necessary corrective or other work to resolve a complaint;
- k) The Council make an appropriate correction, deletion or addition to a record; or
- l) Such other steps are taken as the Internal Ombudsman Shared Service considers reasonable and just.

11.3 It is the General Manager or Chief Executive Officer's responsibility to address recommendations made by the Internal Ombudsman Shared Service and ensure their implementation within the Council. The exception to this is when a conflict of interests may occur by referring the matter to the General Manager or Chief Executive Officer in which case the matter is referred to the Mayor. If for some reasons both the General Manager or Chief Executive Officer and the Mayor are perceived to have a conflict of interests, then the matter is referred direct to the elected Council to address the recommendations. The report on a complaint against the Mayor, General Manager or a Councillor in relation to a Code of Conduct breach, is reported in accordance with the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW.

11.4 Each member Council is required to record each recommendation made by the Internal Ombudsman Shared Service; take appropriate action; and record what action has been taken by Council, by whom and when, for each recommendation made by the Internal Ombudsman Shared Service. The Internal Ombudsman Shared Service has the right to request at any time from each member Council, information regarding Council's action on previous report recommendations. Any concerns that the Internal Ombudsman Shared Service has regarding the failure of the member Council to implement the Internal Ombudsman Shared Service recommendations, may be reported to the elected Council, the Chair of a Council's Audit, Risk and Improvement Committee and/or the relevant government agency as appropriate. A matter would be referred directly to the Chair of the relevant member Council's Audit, Risk and Improvement Committee should the Internal Ombudsman Shared Service have concerns regarding Council's inaction or in serious matters.

11.5 The Internal Ombudsman Shared Service cannot amend any operational decisions made by Council or Council officers.

11.6 The Internal Ombudsman Shared Service may from time to time document and implement its own specific procedures and processes regarding the management and investigation of matters.

## **12. Review of an Internal Ombudsman Decision**

12.1 No proceeding of the Internal Ombudsman Shared Service is necessarily negated or invalid because of technical defects in the conduct of the investigation. Any such defects in the conduct of an investigation will be considered individually in terms of their impact on the outcome of the investigation.

12.2 The Internal Ombudsman Shared Service's recommendations can only be reviewed by a body external to the Internal Ombudsman Shared Service and member Council.

## **13. Breach and Penalty**

13.1 A person who wilfully and without justification:

- a) Obstructs, hinders or resists the Internal Ombudsman Shared Service or any other person in the performance of the functions and duties of the Internal Ombudsman Shared Service under this Governance Charter;
- b) Fails to comply with a request of the Internal Ombudsman Shared Service; or
- c) Makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman Shared Service or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman Shared Service under this Governance Charter;

will be guilty of a breach of this Governance Charter and if a Council official, may be liable to disciplinary action in accordance with Council's Code of Conduct and other relevant policies.

## **14. Performance Reporting**

14.1 In addition to the confidential reporting of each matter investigated to the member Council, the Internal Ombudsman Shared Service will prepare and submit quarterly reports to each member Council, or as determined by the Internal Ombudsman Shared Service Management Committee, on the operations of the Internal Ombudsman Shared Service.

14.2 The Internal Ombudsman Shared Service Performance Report will include but not limited to the following details:

- a) A summary of the matters received including: how they were processed; the source of the complaint; and the types of complaints received.
- b) A summary of the investigations conducted and their recommendations.
- c) Education activities conducted.
- d) Probity advice provided.
- e) Promotion and media activities.
- f) Issues identified for future review.

- g) Trends identified in matters received or investigated.
- h) Other performance indicators.
- i) Financial performance.
- j) Future directions.
- k) Other procedural matters of note.

## **15. Resourcing and Review**

15.1 Staffing of the Internal Ombudsman Shared Service regarding the number of staff appointed to the service; who is appointed to the key roles; and their ongoing performance and other staff related matters; are determinations made by the Internal Ombudsman Shared Service Management Committee. Staff will be appointed to the Internal Ombudsman Shared Service based upon merit selection and shall have no relevant conflict of interests with the member Councils or have any public political affiliations.

15.2 The term of appointment of the Internal Ombudsman will be for three (3) years and is subject to ongoing satisfactory performance.

15.3 The Internal Ombudsman Shared Service shall report administratively to each member Council's General Manager or Chief Executive Officer, and to the Internal Ombudsman Shared Service Management Committee regarding all other matters.

15.4 Other resources required by the Internal Ombudsman Shared Service to effectively operate the service will be determined and funded by the Internal Ombudsman Shared Service Management Committee.

## **16. Media Policy**

16.1 The Internal Ombudsman Shared Service with the endorsement of the Internal Ombudsman Shared Service Management Committee, may issue media statements and make public comment on any matters relating to the Internal Ombudsman Shared Service.

16.2 All media inquiries regarding the Internal Ombudsman Shared Service are to be directed to and addressed by the Internal Ombudsman.

16.3 Where the Internal Ombudsman Shared Service considers it to be in the public interest, or in the interest of a person or the member Council, the Internal Ombudsman Shared Service may, with the endorsement of the Internal Ombudsman Shared Service Management Committee, publish a report relating generally to the performance of duties under this Governance Charter or to a case investigated by the Internal Ombudsman Shared Service, whether or not the matters in the report are the subject of a report to Council under this Governance Charter.

## 17. Definitions

<b>Confidentiality</b>	Means the characteristic of information being disclosed only to authorised people or organisations in the authorised manner.
<b>Corruption</b>	As per the definition in the <i>Independent Commissions Against Corruption Act 1988</i> Section 8.
<b>Council</b>	Means all member Councils who have signed the Agreement to be part of the Internal Ombudsman Shared Service and may include the elected Council and/or an appointed Administrator.
<b>Councillors</b>	Means the elected Councillors of each member Council.
<b>General Manager/Chief Executive Officer</b>	Means the General Manager or Chief Executive Officer (or equivalent, or their delegate) as appointed by each member elected Council.
<b>Internal Ombudsman</b>	Means the person appointed to the position of Internal Ombudsman with the Office of the Internal Ombudsman established by the Internal Ombudsman Shared Service Management Committee on behalf of its member Councils.
<b>Internal Ombudsman Shared Service</b>	Means the staff; procedures; and activities of the Internal Ombudsman Shared Service established by the Internal Ombudsman Shared Service Management Committee on behalf of its member Councils.
<b>Maladministration</b>	As per the definition in the <i>Public Interest Disclosures Act 1994</i> .
<b>Procedural Fairness</b>	Means that a person is entitled to know the facts and issues of a matter to be determined in order to allow preparation of the person's case. Decisions should be made, without bias, in a timely manner but with a person being given adequate time to present their case and participate in the decisions which affect them.
<b>Unreasonableness</b>	Means decisions or actions so unreasonable that no reasonable person would so decide to act. This term could include arbitrary, unfair or inequitable decisions or actions; the application of a policy inflexibly without regard to the merits of the incurred case; serious delays in making a decision or taking action.

## **18. References**

Internal Ombudsman Shared Service Management Committee - Terms of Reference

Office of Local Government Model Code of Conduct for Local Councils in NSW

Office of Local Government Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW

*Local Government Act 1993*

*Ombudsman Act 1974*

*NSW Ombudsman's Effective Complaint Handling Guidelines*

*Independent Commission Against Corruption Act 1988*

*Public Interest Disclosures Act 1994*

*Privacy and Personal Information Protection Act 1998*