

MEMORANDUM OF UNDERSTANDING BETWEEN
AUDIT OFFICE OF NEW SOUTH WALES
AND
OFFICE OF LOCAL GOVERNMENT

Department of Planning, Industry and Environment

1. Purpose

- 1.1 This Memorandum of Understanding (MOU) sets out the arrangements for liaison between the Department of Planning, Industry and Environment, Office of Local Government (OLG) and the Audit Office of New South Wales (the Audit Office) concerning the sharing of information and referral of complaints relating to local councils.
- 1.2 The MOU acknowledges the preparedness of OLG and the Audit Office, in the public interest, to share with each other on an ongoing basis and as far as is legal and practicable, information in each agency's possession relevant to matters within the jurisdiction of the other and covered by this MOU.

2. Definitions

agency means OLG and/or the Audit Office.

complaint means a complaint (however described) that is made to a relevant agency.

consent includes consent that is given orally.

disclosing agency means the agency holding the information and that is referring or intending to disclose part or all the information to the other agency.

Department means the Department of Planning Industry and Environment.

OLG means the Local Government Investigation Team within the Department and includes a reference to the Secretary of the Department (or delegate) as required.

sensitive personal information, in relation to a complainant, means information relating to the complainant's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities.

receiving agency means the agency receiving a referral or a disclosure of information.

3. Complaint referral arrangement

- 3.1 Part 6 (complaint handling by relevant agencies) of the *Ombudsman Act 1974* (the Ombudsman Act) permits two or more relevant agencies, including OLG and the Audit Office, to enter into arrangements for the referral of complaints among themselves. Any such referrals will be made in accordance with a Complaint Referral Arrangement entered into between the agencies. This Part of the MOU constitutes a Complaint Referral Arrangement for the purpose of section 42(1) of the Ombudsman Act.

Notification of complaints

- 3.2 OLG and the Audit Office will notify each other of matters which come to the attention of each other relating to specific areas of complaint, or councils of interest, as identified and agreed to between them. All such matters will be notified orally and/or in writing, during periodic liaison meetings and otherwise on an ad hoc basis, as the need arises.

Circumstances in which a complaint may be referred

- 3.3 A complaint may be referred by one agency to the other if it appears to the disclosing agency to be within, or partly within, the receiving agency's jurisdiction. On that basis:
- OLG agrees to receive complaints about:
 - rates, charges and fees;
 - financial policy matters, such as revenue policies and resource allocation decisions;
 - financial assistance provided by councils;
 - matters relating to compliance with OLG guidelines, such as investment policy, capital expenditure, internal audit, payment of expenses and the provision of facilities for Mayors and Councillors, tendering and code of accounting practice;
 - matters relating to national competition policy.
 - The Audit Office agrees to receive complaints about:
 - an audit conducted by the Audit Office or one of its Audit Service Providers;
 - serious and substantial waste.

Public interest disclosures

- 3.4 Both the Auditor-General for New South Wales (the Auditor-General) and the Coordinator General, Planning Delivery and Local Government (the Coordinator General) can receive disclosures about serious and substantial waste of local government money made pursuant to the *Public Interest Disclosures Act 1994* (the PID Act).
- 3.5 The Auditor-General will be the primary agency to deal with such disclosures in the first instance. In this regard, disclosures received by the Coordinator General alleging serious and substantial waste of local government money will be referred to the Auditor-General in accordance with the requirements of the PID Act.
- 3.6 Such referred disclosures will be managed in accordance with the requirements of the PID Act.

Consent of receiving agency and complainant

- 3.7 The prior consent (either oral or written) of the receiving agency must be obtained before a complaint is referred to that agency.
- 3.8 The express consent of the complainant must be obtained by an agency before a complaint may be referred to the other agency. The express consent can be given orally (either over the telephone or face to face) or in writing (in correspondence, by facsimile or by email). Where consent is given orally, a written record is to be made and retained on the relevant file.

- 3.9 If the express consent of the complainant is not obtained, information regarding the complaint can be shared in accordance with clauses 4.4 and 4.5 below.

Information to be provided to the complainant

- 3.10 At or about the time a complaint is or is to be referred, the disclosing agency is to send to the complainant the following information in writing:
- confirmation of any oral consent to the referral;
 - the name and contact details of the receiving agency;
 - whether the disclosing agency intends to continue to deal with any relevant part of the complaint and if not, a notice of decline or discontinuation.

Information to accompany a referred complaint

- 3.11 Subject to the information sharing arrangements set out in Part 4 below, the information to accompany a referred complaint is to include:
- copies of all documents held by the disclosing agency that relate to the complaint, or part of the complaint, being referred;
 - advice on whether any parts of the complaint being referred are also being referred to any other agency for attention;
 - advice on whether the disclosing agency intends to continue to deal with the complaint, or any part of the complaint.

- 3.12 Clauses 3.7 and 3.8 of this MOU do not apply to referrals made by the Audit Office to OLG, or by OLG to the Audit Office, pursuant to a statutory referral power under the *Local Government Act 1993* or the PID Act.

4. Information sharing arrangement

- 4.1 Part 6 of the Ombudsman Act permits two or more relevant agencies, including the OLG and the Audit Office, to enter into arrangements for the sharing of information held by them. Any such sharing must be made in accordance with an Information Sharing Arrangement entered into between the parties. This Part of the MOU constitutes an Information Sharing Arrangement for the purposes of section 43(1) of the Ombudsman Act.

Circumstances in which information can be shared

- 4.2 Each agency is authorised to disclose information to the other agency in the following circumstances:
- where one agency requests the disclosure of information reasonably necessary to assist that agency to carry out its functions relating to a matter within its jurisdiction;
 - where one agency is referring a complaint to the other agency pursuant to the MOU;
 - where the disclosing agency becomes aware that the other agency has received a complaint and the information held by the disclosing agency would assist the other agency to carry out its functions;
 - where it is reasonably necessary to share information, regularly or in appropriate circumstances, in order for one or both agencies to carry out its or their functions in an efficient manner.

- 4.3 Where a disclosing agency has (or should have) reason to suspect that certain information is or includes “sensitive personal information” about a complainant, the agency must not disclose the information without the complainant’s express consent (which can either be oral or in writing).
- 4.4 If consent in clause 4.3 (above) is not obtained, the disclosing agency may still refer the information, having removed the sensitive personal information. Such a referral may only be made if the disclosing agency considers it will not be possible to identify the complainant using the information referred.

Confidentiality of information provided

- 4.5 It is acknowledged that confidentiality is to be maintained within the statutory framework that exists for each agency.

5. Liaison

- 5.1 There will be ongoing liaison between the agencies at several levels and for a variety of purposes. Such liaison may include provision of information about allegations of serious and substantial waste of local government money, maladministration and intended operational responses or advice on proactive strategies and education issues being considered by the respective agencies.
- 5.2 Officers from OLG and the Audit Office will continue to attend liaison meetings held with the NSW Ombudsman, to consider:
- any issues in relation to current complaint files or investigations;
 - current projects of mutual interest to the agencies;
 - other matters or activities which could give rise to duplication of effort by the agencies.

- 5.3 Case officers of both agencies will liaise as necessary and appropriate in relation to particular files, areas of activity, or local councils that are the subject of interest.

6. Review

- 6.1 The MOU may be reviewed at the request of either agency.
- 6.2 The agencies may agree to vary any of the requirements of this MOU. Such agreement must be in writing and signed by both agencies.
- 6.3 Each agency shall have the right to terminate this MOU by giving at least one months' notice in writing to the other agency at any time.

7. Public availability

- 7.1 Copies of this MOU will be made available on the websites of both OLG and the Audit Office.



Margaret Crawford

**Auditor-General for
New South Wales**



Kiersten Fishburn

**Coordinator General
Department of Planning, Industry and
Environment**

Date: ...21 July 2021.....

Date: ... 2 July 2021