



**WARRINGAH
COUNCIL**

INTERNAL OMBUDSMAN GUIDELINES

August 2008

**These guidelines should be read in conjunction with the
Complaints Management Policy October 2003**

**The purpose of these guidelines is to provide an agreed operational
framework between the General Manager of Warringah Council and the
Internal Ombudsman**

Guidelines to be updated 2012

Definitions

1. In these Guidelines, except in so far as the context or subject matter otherwise indicates or requires:

“Affected person” means any Council officer who could be sanctioned as an outcome of a complaint made under the Complaints Management Policy.

“Council” means the Council of Warringah and includes an administrator;

“Councillor/s” means the Councillor/s of Warringah Council;

“Expert” means any person appropriately qualified in a particular area and available to provide advice to the Internal Ombudsman as required.

“General Manager” means the General Manager of the Warringah Council;

“Internal Ombudsman” means the Office of the Internal Ombudsman and includes any personnel conducting activities associated with, or on behalf of, the Internal Ombudsman.

“Mayor” means the elected Mayor of Warringah Council. Whilst Council has an Administrator they shall assume the role of Mayor for the purposes of these guidelines.

Appointment of Internal Ombudsman

- 2(1) The General Manager shall appoint a suitably qualified person to carry out the position in accordance with the duties required.

Term of Office

- 2(2) Unless the Internal Ombudsman resigns, dies or is removed from office, the Internal Ombudsman shall hold office for a period determined by the General Manager and may be re-appointed for further contracts.

Reporting

- 2(3) The Internal Ombudsman shall report directly to the General Manager and the General Manager shall receive and determine recommendations and ensure their implementation with the Council. The exception to this is when the General Manager has a conflict of interest in a matter – the determination shall then be made by the Mayor. If both the General Manager and Mayor are perceived to have a conflict of interest then the matter shall be referred direct to the Council to address and determine the recommendations.

Budget

- 3(1) The Internal Ombudsman shall be required to maintain and submit a budget to the General Manager.

Organisation of Office

- 3(2) Subject to the approval of the General Manager, the Internal Ombudsman may select, appoint and compensate, within the approved budget, such employees as the Internal Ombudsman considers necessary to perform the duties as required by the position.

Employees

- 3(3) An employee in the office of the Internal Ombudsman shall be appointed either as a member of Council staff or on a contract basis and is entitled to benefits similar to those of other employees of the Council.

Confidentiality

- 3(4) The Internal Ombudsman, every person carrying out duties in connection to investigations conducted by the Internal Ombudsman, and any person who becomes aware of an investigation being carried out by the office of the Internal Ombudsman shall maintain confidentiality in respect of all matters that come to their knowledge.

Process

- 3(5) The Internal Ombudsman is responsible for the development and documentation of processes associated with the investigation and reporting of each matter.

Jurisdiction

- 4(1) The Internal Ombudsman may, on receiving a complaint in accordance with the Complaints Management Policy, or on the Internal Ombudsman's own initiative, investigate;

- (a) a decision or recommendation;
- (b) an act done or omitted; or
- (c) a procedure;

relating to a matter of administration or conduct of Council staff.

Council employees investigated shall abide by the Internal Ombudsman's recommendations, once the General Manager, the Mayor or the Council has determined the matter. Nothing in these guidelines prevents Council officers from accessing their lawful rights to appeal under relevant legislation. The complainant cannot be bound.

While it may be usual practice that a complainant should first exhaust the existing internal business processes to resolve their concerns, the Internal Ombudsman shall have the right to waive this requirement on a case by case basis except in the case of complaints made by Council officers involved in grievance and dispute procedures under clause 30 of the Local Government State Award.

The Internal Ombudsman shall have the right to investigate any complaint or initiate any investigation without the need for any prior consent of any person or body against whom the complaint is made.

In the case of complaints made against specific Council officers, the Internal Ombudsman may inform them of the nature of the allegations and give such person(s) an opportunity to answer those allegations.

The only circumstance where staff won't be informed of allegations against them is if such allegations have been found to be unsubstantiated.

Referral by Council

4(2) Council may refer to the Internal Ombudsman via the General Manager a matter that is before Council for consideration, and the Internal Ombudsman shall, subject to any special directions of Council, investigate the matter, so far as it is within the jurisdiction established, and report to Council.

4(2.1) Complaints about a breach of the code of conduct by the General Manager, the Mayor, or a Councillor will be subject to the provisions of the Code of Conduct and may be referred to a Conduct Review Committee in accordance with the provisions of the Code of Conduct.

Limit on jurisdiction

4(3) Nothing in this Part authorises the Internal Ombudsman to investigate a decision or recommendation, an act done or omitted, or a procedure used by Council, a committee of Council or a community committee; or to investigate a matter, where an adequate remedy or right of appeal exists, whether or not the complainant uses it. Notwithstanding, matters of maladministration or misconduct that have not, or are not likely to be addressed through the remedy or right of appeal, can be investigated by the Internal Ombudsman.

Questions as to jurisdiction

4(4) Where a question arises as to the jurisdiction of the Internal Ombudsman to investigate a matter, the Internal Ombudsman may discuss the matter with the General Manager and/or any 'expert' as required, to determine the question.

Refusal to Investigate

5(1) The Internal Ombudsman may refuse to investigate, or will cease to investigate a matter where:

- (a) a remedy or right of appeal, deemed adequate by the Internal Ombudsman, already exists, whether or not the complainant uses the remedy or right of appeal. Where this provision is in conflict with Section 4(3), the earlier Section 4(3) will prevail;
- (b) the complaint, in the opinion of the Internal Ombudsman, is frivolous, vexatious or not made in good faith, or concerns a trivial matter;
- (c) the complaint relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than one year before making a complaint to the Internal Ombudsman;
- (d) the complaint relates to a decision of the Council;
- (e) the complaint relates to actions or conduct of the General Manager, Mayor and/or Councillors, other than in an administrative capacity. (Refer 4.2.1)
- (f) the complaint relates to decisions of a standing committee or a sub committee of the Council;
- (g) the complaint pertains to conduct relating to a matter before a court; Coroner; tribunal; or the Industrial Relations Commission;
- (h) the complaint relates to matters under investigation by the:
 - (i) Minister of Local Government (NSW);
 - (ii) Independent Commission Against Corruption (ICAC);
 - (iii) New South Wales Ombudsman;
 - (iv) A Minister of the Crown or Government Department; or New South Wales Police Service.
- (i) the complaint relates to the appointment or dismissal of an employee or any industrial or disciplinary issue;
- (j) the complaint relates to a matter awaiting determination by the Council (conduct in dealing with the matter can be investigated);
- (k) a complaint relates to the actions or conduct of private individuals, unless such persons were Council officers or Councillors at the time such conduct was alleged;
- (l) senior Council staff have not had adequate opportunity to address the complaint; where this provision is in conflict with Section 4(1), the earlier Section 4(1) will prevail;
- (m) resources are not available or the matter is of a low priority;
- (n) there is insufficient information available, and

- (o) the complainant declines or refuses to provide further information and/or there are threats made against Council, or an employee or officer of the Council.

Complaints that are frivolous, vexatious, trivial or not made in good faith

- 5(2) Where the Internal Ombudsman has declined to investigate a matter on the basis that it is frivolous, vexatious, trivial or not made in good faith, in accordance with clause 5(1)(b) above, then if the complainant continues to contact Council in relation to that matter, the Internal Ombudsman may contact them in writing and inform them that no further correspondence will be entered into, in relation to the issue that forms the substance of that complaint.

Prior to taking the action specified in this clause, the Internal Ombudsman will provide a report to the General Manager giving reasons for so doing.

Report of decision not to investigate

- 5(3) Where the Internal Ombudsman decides not to investigate, or to cease to investigate a complaint, the Internal Ombudsman shall, in writing, inform the complainant and any other interested person (as deemed by the Internal Ombudsman) of the decision and shall state the reason for the decision.

Access to Information

- 6(1) The Internal Ombudsman may receive and obtain information, documentation, and other materials, from any person and in a manner that the Internal Ombudsman considers appropriate.

Further Access

- 6(2) Without restricting the generality of subsection (1), the Internal Ombudsman may:
 - (a) at a reasonable time enter, remain on and inspect premises owned or occupied by Council,
 - (b) converse in private with any person on the premises and
 - (c) otherwise investigate matters within the jurisdiction of the Internal Ombudsman.
 - (d) require a person to furnish information, or produce a document, or thing in the person's possession or control that relates to an investigation at a time and place specified by the Internal Ombudsman, whether or not the document or thing is in the custody or under the control of the Council; and,
 - (e) make copies of a document produced under this section.
- 6(2)(a) Employees retain the right to have a support person, (mutually agreed with the Internal Ombudsman) present during any conversation with the Internal Ombudsman.

Right to silence

- 6(2.1) Councillors and staff have a right to remain silent during investigations being conducted by the Internal Ombudsman.
- 6(2.2) If it is reasonable, under the circumstances, for the Councillor or staff member to remain silent then no adverse inference may be drawn by the Internal Ombudsman.

Investigations to be Private

- 6(3) An investigation by the Internal Ombudsman shall be conducted in private.
- 6(4) No simultaneous or parallel investigations are to be conducted into matters being investigated by the Internal Ombudsman.

Meetings and Right to be Heard

- 6(5) The Internal Ombudsman may hold meetings, obtain information from any person and make such inquiries as the Internal Ombudsman considers necessary; and no person is entitled, as of right, to be heard by the Internal Ombudsman except in their own defense.

Report on Investigation

- 7(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 employees 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 shall provide a confidential written report of the opinion, with reasons, to the General Manager. A summary of the confidential report will be provided for public dissemination in the Annual Report and it will comply with privacy provisions, HR policy and the Award.

Opportunity to make Representation

- 7(2) Where it appears to the Internal Ombudsman that there may be sufficient grounds for making a report under section 7(1) that may adversely affect the Council or a person, the Internal Ombudsman may request representations be made by the General Manager or any other person before the report is completed. The request for this representation is at the discretion of the Internal Ombudsman.

Nature of Recommendations

- 7(3) In making a report under subsection (1), the Internal Ombudsman may recommend to the General Manager that;
- (a) a matter be referred to the General Manager 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; and
 - (l) such other steps are taken as the Internal Ombudsman considers reasonable and just.

Power to publicise

7(3.1) In those cases where the Internal Ombudsman's recommendations under clause 7(3) are not complied with by the General Manager, the Internal Ombudsman will have the power to publicise, or require the publication of, such non-compliance.

Notice of Proposed Steps

7(4) Where a recommendation is made under subsection (3), the Internal Ombudsman may request the General Manager to notify the Internal Ombudsman within a specified time of steps taken, or that are proposed, to give effect to the recommendations.

Further report on Recommendations

7(5) If, within a reasonable time after a request is made to the General Manager under subsection (4), no action is taken that in the opinion of the Internal Ombudsman is adequate and appropriate, the Internal Ombudsman may report the General Manager's inaction on the recommendations to Council.

Report to Complainant

7(6) Where an investigation is made of a complaint, the Internal Ombudsman shall report the result of the investigation to the complainant, in such manner and at such time as the Internal Ombudsman considers proper.

Publication of Reports

7(6.1) Where the Internal Ombudsman considers it to be in the public interest, or in the interest of a person or Council, the Internal Ombudsman may make public a report relating generally to the performance of duties under these guidelines or to a matter investigated by the Internal Ombudsman, whether or not the matters in the report are the subject of a report to Council under these guidelines.

Reports to be made Public

7(6.2) Before making public a report that may damage the reputation of any person, the Internal Ombudsman will:

1. Provide the draft or proposed report to the person or persons who are the subject of the Internal Ombudsman's report or identified in the report;
2. Invite those persons or persons to confirm the accuracy of relevant facts or matters in the draft or proposed report, or to indicate where, and in what respects, they regard any material as erroneous;

3. Give the opportunity to the person or persons the subject of the report to provide a written response to the Internal Ombudsman's report and that response is to be made public with the report subject to the provisions of the relevant legislation such as the Privacy Act.

The Internal Ombudsman's final report shall contain no new material that has not been provided to the person or persons the subject of the report to allow them to make a written submission under this clause.

Review of Internal Ombudsman's Recommendations

- 8(1) No proceeding of the Internal Ombudsman 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.
- 8(1.1) Recommendations can only be reviewed by a body external to Warringah Council, such as the NSW Ombudsman or Department of Local Government.

No Proceedings Against Internal Ombudsman

- 8(2) No proceedings lie against the Internal Ombudsman or against an employee of the Internal Ombudsman for anything done in the course of the exercise or performance, or intended exercise or performance, of functions and duties under these guidelines, if done in accordance with the provisions of Section 731 of the Local Government Act 1993.

Report to Council

- 8(3) The Internal Ombudsman shall provide an Annual Report to Council on the performance of functions and duties by the Internal Ombudsman under these guidelines. Such a report shall not contain reference to individual complaints.

Media Policy

- 8(4) The Internal Ombudsman may issue media statements and make public comment on any matter relating to the Office of the Internal Ombudsman. No approval is required from the General Manager or the Mayor. As required, the Communications Manager shall provide media support. All media inquiries regarding the Office of the Internal Ombudsman are to be referred to the Internal Ombudsman for comment.

Breach and Penalty

- 9 A staff member who willfully and without justification:
 - (a) obstructs, hinders or resists the Internal Ombudsman or any other person in the performance of the functions and duties of the Internal Ombudsman under these guidelines;

- (b) fails to comply with a request of the Internal Ombudsman or an employee of the Internal Ombudsman; or
 - (c) makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under these guidelines, will be guilty of a breach of these guidelines and may be subject to disciplinary action.
- 9(1) In the case of conduct under Section 9, the Internal Ombudsman will report such matters to the General Manager in the final investigation report. The Internal Ombudsman may make recommendations as to what action should be taken. The General Manager will consider such recommendations and make a determination as to what action is to be taken. The General Manager's determination will be in accordance with relevant HR policies.

ATTACHMENT 1

Summary of staff rights and responsibilities under these Guidelines

Confidentiality

- 3(4) The Internal Ombudsman, every person carrying out duties in connection to investigations conducted by the Internal Ombudsman, and any person who becomes aware of an investigation being carried out by the office of the Internal Ombudsman shall maintain confidentiality in respect of all matters that come to their knowledge.

Council employees abide by recommendations

- 4(1) Council employees investigated shall abide by the Internal Ombudsman's recommendations, once the General Manager, the Mayor or the Council has determined the matter.

Council employees retain all lawful rights of appeal

- 4(1) Nothing in these guidelines prevents Council officers from accessing their lawful rights to appeal under relevant legislation.

Council Staff informed of allegations

- 4(1) In the case of complaints made against specific Council officers, the Internal Ombudsman may inform them of the nature of the allegations and give such person(s) an opportunity to answer those allegations.

The only circumstance where staff won't be informed of allegations against them is if such allegations have been found to be unsubstantiated.

Council staff provide information to Internal Ombudsman

- 6(2) Without restricting the generality of subsection (1), the Internal Ombudsman may:
- a) at a reasonable time enter, remain on and inspect premises owned or occupied by Council,
 - b) converse in private with any person on the premises and
 - c) otherwise investigate matters within the jurisdiction of the Internal Ombudsman
 - d) require a person to furnish information, or produce a document, or thing in the person's possession or control that relates to an investigation at a time and place specified by the Internal Ombudsman, whether or not the document or thing is in the custody or under the control of the Council; and,
 - e) make copies of a document produced under this section.

Employees retain the right to a support person

6(2)(a) Employees retain the right to have a support person, (mutually agreed with the Internal Ombudsman) present during any conversation with the Internal Ombudsman.

Right to silence

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- (b) fails to comply with a request of the Internal Ombudsman or an employee of the Internal Ombudsman; or
- (c) makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under these guidelines,

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