

Handling of Complaints by or Against Commissioners

Procedure

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1. Procedure statement

The Greater Cities Commission (Commission) is committed to ensuring compliance with the Commissioners' Code of Ethics and Conduct (Code). To achieve this goal the Commission ensures clear standards and procedures are in place for reporting a breach of the Code.

This Commissioner's Complaints Handling Procedure (Procedure) outlines the standards and procedures for making and assessing a complaint made about behaviour of a Commissioner that is contrary to the Code and/or the Ethical Framework in Part 2 of the *Government Sector Employment Act 2013* (Ethical Framework).

The aim of this Procedure is to ensure that all reports are assessed impartially, confidentially and are procedurally fair. This Procedure should be read in conjunction with the Commissioners' Code.

2. Who does this Procedure apply to?

This Procedure applies to Commissioners of the Greater Cities Commission.

For purposes of this Procedure, a reference to a Commissioner is a reference to the Chief Commissioner; a City Commissioner or a Greater Cities Commissioner appointed under s 6 of the *Greater Cities Commission Act 2015* (GCC Act).

This Procedure does not apply to ex-officio members who must comply with the applicable Procedures and Codes of Conduct and Ethics of their Department or agency.

3. Definitions

Arbitration	means the hearing and determination of a grievance by an impartial referee.
Bullying	means repeated and unreasonable behaviour directed towards any individual or group of Commissioners that creates a risk to health and safety. Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time. Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating, or threatening. A single incident of unreasonable behaviour is not considered to be workplace bullying; however, it may have the potential to escalate and should not be ignored.
Complaint	means a verbal or written expression of dissatisfaction by a Commissioner, a Commission staff member, or an external stakeholder about the conduct of a Commissioner that is in contravention to the Commissioners' Code of Conduct and Ethics.
Intervention	means a process used to resolve grievances, usually involving direct negotiations between both parties, mediation and/or a face-to-face meeting between the person raising the grievance, the manager or a People and Culture representative, and the respondent.

Discrimination	means when a person is treated unfairly because they may belong to a particular group of people or have a particular characteristic.
Grievance	means a complaint made or an objection raised (written or verbal) by a staff member or Commissioner, about an act, behaviour, omission, situation, or decision they think is unfair or unjustified.
Harassment	means any form of behaviour that is unwanted, offends, humiliates, intimidates or is a breach of anti-discrimination legislation.
Issue resolution	means a specific process to ensure that any work health and safety matter arising from the workplace or from the conduct of the business can be appropriately resolved.
Mediation	means a method for settling a grievance, assisted by an independent mediator, which can happen at any stage in the grievance management process.
Natural justice	means a process that is fair to all parties and free of bias, which includes the rights of an affected person to: <ul style="list-style-type: none"> • be heard before any decision which has the potential to affect them is made; • be informed of allegations made; • respond to allegations; • representation; and • consistency in the Commission’s approach to issues.
Negotiation	means a discussion between parties to consider the issues and mutually to resolve a grievance between the parties. Parties can enter negotiations at any time and without the assistance of a third party to settle the grievance.
Procedural fairness	means a process that is fair to all parties, free from bias and allows all parties involved to be informed, heard, and represented.
Sexual harassment	defined as: <ul style="list-style-type: none"> • unwanted sexual advances; or • unwelcome requests for sexual favours; or • other unwelcome conduct of a sexual nature; that a reasonable person would expect would offend, humiliate, or intimidate someone given the circumstances.
Respondent	means the person who is alleged to have caused the grievance.

4. Complaints, allegations, and grievances

Complaints

A complaint is an expression of concern, dissatisfaction, or frustration with the conduct of a Commissioner.

Generally, complaints can be about:

- failure to act, as well as not responding to an issue;
- dissatisfaction with decision-making processes;
- performance in relation to how a decision was made;
- unexplained or unreasonable delays in the making of a decision or responding to a concern;
- communication problems;
- incorrect or misleading advice; and/or
- behaviour such as being rude, abrupt, or aggressive.

Allegations

Allegations are complaints alleging misconduct or corruption on the part of a Commissioner or staff member which may involve issues of probity or other matters which have the potential to seriously compromise the Commission's professional reputation. Examples include:

- theft or misuse of resources;
- corrupt behaviour;
- undeclared conflicts of interest; and
- public behaviour which is detrimental to the reputation of the Commission.

Grievances

A grievance is a clear statement by a Commissioner or staff member of a work-related problem, concern, or complaint, involving another Commissioner. Examples include, but are not limited to:

- a communication problem or interpersonal conflict;
- interpretation and application of people management policies;
- terms and conditions of employment;
- unfair selection practices;
- discrimination on the grounds of age, gender, race, marital status, disability or sexual preference;
- bullying;
- harassment, including sexual harassment;
- a lack of adequate information to fulfil job responsibilities effectively; and
- the allocation of work.

5. Making a report

In this Procedure, the reporting of a grievance, allegation, or complaint, whether informally or formally made, by or about the behaviour of a Commissioner that is contrary to the Code and/or Ethical Framework, is defined as a report.

A report is to be made to the Chief Commissioner or the Chief Executive Officer.

Where a Commissioner has a potential complaint, allegation, or grievance to make against another Commissioner (or staff member) they should first consult with the Chief Commissioner.

Though, if a report is about the Chief Commissioner, it should be referred to the Chief Executive Officer who will deal with the report in accordance with this Procedure. In such a case, references to the Chief Commissioner in this Procedure are taken to be references to the Chief Executive Officer.

To facilitate the Chief Commissioner in assessing the report Commissioners should:

- make the report in writing or verbally; and
- ensure the report contains sufficient details and particulars for the report to be assessed and, if necessary, investigated.

In some circumstances (for example an anonymous complaint with insufficient detail or particulars), it may be that no further action can be taken.

Behaviour that may also be corrupt conduct, maladministration, a serious and substantial waste of government resources, or a breach of Government information or privacy rights, should be reported to the Chief Executive Officer of the Commission, or the relevant investigating authority (such as the Independent Commission Against Corruption, the NSW Ombudsman, Auditor-General, the Information Commissioner or the Privacy Commissioner).

5.1. Public Interest Disclosures

A public official may provide a report as a Public Interest Disclosure where they believe, on reasonable grounds, that a public official or a public authority has engaged in corrupt conduct, maladministration, serious and substantial waste of public money or a breach of the *Government Information (Public Access) Act 2009*.

The Commission's Public Interest Disclosures Policy and Procedure contains further information about how to make a Public Interest Disclosure and how it will be handled.

5.2. External Complaints

A report that is an external complaint about a Commissioner will be evaluated by the Chief Executive Officer to determine whether a formal process is required.

The Chief Executive Officer will follow the Commission's External Complaints Handling Policy in dealing with such a report.

6. Assessing the report

The Chief Commissioner will determine the appropriate course of action for dealing with the report, following the guidance of the Commission's Code of Conduct and other relevant policies and procedures. The Chief Commissioner may (wherever deemed appropriate) seek advice from the Chief Executive Officer and the Director, Governance & Legal.

Without limiting the powers of the Chief Executive Officer or the Commission under ss [7](#) and [11](#) of the *GCC Act*, the Chief Commissioner may in their absolute discretion authorise the Chief Executive Officer of the Commission to carry out any of the actions or steps in dealing with a report.

Where the matter is determined to be minor or of a low level, the Chief Commissioner will discuss the matter directly with the person who made the report. Such action may range from discussing the report with the Commissioner concerned to convening a meeting between the complainant and the person about whom the report was made. If the report concerns a staff member of the Commission, then the assessment and investigation process will be overseen by the Chief Executive Officer.

Where the Chief Commissioner considers the matter to be of a more serious nature than an investigation into the report is required and the report will then be referred to the Chief Executive Officer for investigation.

7. Investigation

The Chief Executive Officer will oversee the investigation of a report. Though, the Chief Executive Officer may delegate the authority of investigation to a person with appropriate expertise and experience, in accordance with legal requirements and procedural fairness.

Where appropriate, the Chief Executive Officer may outsource the investigatory function to an impartial and confidential third party.

Once sufficient facts have been gathered about the circumstances and nature of the complaint, the Chief Executive Officer will provide a full briefing to the Chief Commissioner.

The Chief Commissioner or the Chief Executive Officer will then discuss the complaint with the relevant Commissioner (and their support person/legal representative if desired). At this meeting, the Commissioner about whom the complaint was made will be provided with an outline of the substance of the allegations made against them and the process that is to be undertaken. Written notice of the commencement of the formal investigation process will be provided at, or shortly after, this meeting.

The Commissioner about whom the complaint was made:

- will be invited to meet with the Chief Commissioner or Chief Executive Officer or the authorised investigator to be interviewed in relation to the allegations;
- will be provided with details of the outcome of the investigation; the investigation report (once finalised) or extracts of it may be provided to the Commissioner if it is appropriate in all the circumstances;
- may make formal representations and provide comments to the Chief Commissioner or Chief Executive Officer or the investigator; and
- will be given the opportunity to provide comments if any adverse findings are likely to be made against them.

8. After the investigation

Following the conclusion of an investigation, the Chief Commissioner or Chief Executive Officer will determine what action may be necessary. The Chief Commissioner or Chief Executive Officer may seek confidential advice from the Minister, the Secretary of the Department of Premier and Cabinet, the Public Service Commissioner, or from an external professional adviser. Advice may be sought from the Commission's Finance & Governance Committee. In all cases, legal and procedural fairness requirements will be followed.

Where the report was made against a Commissioner, the Commission may use the findings from the investigation and any additional advice sought to determine appropriate actions including (but not limited to):

- request a public apology, written or verbal from the Commissioner;
- request the Commissioner to attend training on the specific topic found to have been breached; or
- refer the matter to the Premier with a request to have the Commissioner suspended or removed from office.

Where the findings determine that the breach was corrupt conduct, maladministration, a serious and substantial waste of government resources, or a breach of Government information or privacy rights then the matter will be dealt with in accordance with the Commission's Public Interest Disclosure Policy and Procedure or the Privacy Management Plan. This may involve referring the report to an external investigatory authority such as:

- the Independent Commission Against Corruption;
- the NSW Ombudsman;
- the NSW Auditor-General;
- the NSW Information Commissioner or the Privacy Commissioner; or
- the NSW Police Force

9. Procedural fairness

The Commission follows the guidance of the [NSW Ombudsman Complaint Handling Process](#) and the [NSW Ombudsman Investigation of Complaints Fact Sheet](#) to ensure each complaint is assessed in accordance with the appropriate procedural requirements.

Procedural fairness is an important issue in investigations which could result in an outcome that affects the rights, interests, or reputation of an individual. Any decision affecting an individual that has been made without affording procedural fairness is liable to be challenged and set aside.

Procedural fairness may require an investigator to:

- inform people of the substance of any allegations against them or grounds for proposed adverse comment in respect of them;
- provide such persons a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- make reasonable inquiries and consider any submissions before making a decision;
- act fairly and without bias, including not investigating a case in which they have a direct interest; and
- conduct the investigation without undue delay.

While a person the subject of an investigation should be informed of the substance of the allegations against them and proposed adverse comment, this does not require all the information in the investigator's possession supporting those allegations to be disclosed to that person. Indeed, it may damage the effectiveness of the investigation to show the investigator's hand completely by offering too much information too early to the person the subject of complaint.

In rare cases there may be an overriding public interest in short-circuiting certain natural justice requirements. This will normally be in situations that involve serious risks to personal safety or where substantial amounts of public funds may be at risk. In these cases, expert external advice should always be sought and documented.

10. Further information and resources

10.1. Internal Policies and Procedures

- Commissioners' Code of Ethics and Conduct

10.2. Legislation

Commonwealth

- [Age Discrimination Act 2004](#)
 - [Australian Human Rights Commission Act 1986](#)
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- [Disability Discrimination Act 1992](#)
- [Fair Work Act 2009](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Workplace Gender Equality Act 2012](#)

NSW

- [Anti-Discrimination Act 1977](#)
- [Crimes Act 1900](#)
- [Constitution Act 1902](#)
- [Crown Employees \(Planning Officers\) Award 2016](#)
- [Crown Employees \(Public Service Conditions of Employment\) Reviewed Award 2009](#)
- [Government Information \(Public Access\) Act 2009](#)
- [Government Sector Employment Act 2013](#)
- [Government Sector Employment Regulation 2014](#)
- [Health Records and Information Privacy Act 2002](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Industrial Relations Act 1996](#)
- [Privacy and Personal Information Act 1998](#)
- [Public Interest Disclosures Act 1994](#)
- [State Records Act 1998](#)
- [Work Health and Safety Act 2011](#)

10.3. Other resources

[NSW Ombudsman Complaint Handling Process](#)

[NSW Ombudsman Investigation of Complaints Fact Sheet](#)

11. Document management

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