

Discussion Paper:

**The use of external investigators
by NSW Government agencies**

July 2016

Discussion Paper:

**The use of external investigators
by NSW Government agencies**

July 2016

**NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000**

**Phone 02 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: 02 9283 2911
Website: www.ombo.nsw.gov.au
Email nswombo@ombo.nsw.gov.au**

ISBN 978-1-925061-85-7

© Crown Copyright, NSW Ombudsman, July 2016

This work is copyright, however material from this publication may be copied and published by State or Federal Government Agencies without permission of the Ombudsman on the condition that the meaning of the material is not altered and the NSW Ombudsman is acknowledged as the source of the material. Any other persons or bodies wishing to use material must seek permission.

Contents

Introduction	1
1. External investigations	1
2. Deciding when an external investigation is required	3
3. Clarity about the scope of the investigation	4
4. Qualifications and experience of the investigator.....	4
5. Monitoring and evaluating the quality of external investigations	8
6. Maintaining records of investigations	10
7. Agencies' experience of using internal/external investigators	11
8. Conclusion.....	12
9. Submissions	12

This page is intentionally blank.

Introduction

There are more than 1,100 current NSW Acts, over 600 statutory instruments and in excess of 300 environmental planning instruments.¹ In addition to any statutory requirements, NSW Government agencies must also comply with a whole raft of internal policies, practices and procedures.² The need to investigate compliance with those laws and procedures is a frequent responsibility for government agencies.

In addition to their primary roles, agency heads may have the sometimes confronting task of causing investigations to be conducted which can lead to severe impacts upon individuals or the agency itself. The reality is that conducting an effective administrative investigation can be quite complex and an agency may not have suitable internal investigative capability.

The subject matter of administrative investigations will generally relate to alleged misconduct or negligence on the part of an individual or agency, to the exercise of regulatory or compliance functions of an agency, or the alleged failure to comply with government or agency policies, practices and procedures.

Government agencies frequently appoint internal investigators to undertake inquiries on issues that have arisen in the agency. On the other hand agencies may be subject to varying pressures to engage an external investigator. These may include: the need for expert assistance on complex issues; to avoid perception of bias and ensure arms length consideration; lack of internal expertise; and a requirement to uphold the integrity of the agency in the public arena.

In the last few years a number of larger Government agencies have lost their internal investigation resources and have had to rely on external investigation contractors for administrative investigations. We are aware that some agencies have been directed by their principal departments to engage external investigators for all matters requiring investigation. Unfortunately where an agency finds it necessary to outsource an investigation, very little guidance material exists as to how this is best achieved, costs can be burdensome and we have seen that the quality of external investigations can be very poor.

This discussion paper sets out some of the key issues we have identified. The Acting Ombudsman is seeking submissions from individuals or organisations involved in engaging investigators and those managing/conducting such investigations on behalf of NSW state and local government agencies.

1. External investigations

As part of our complaint handling, investigation and public interest disclosure (PID) work we have encountered problems in work undertaken by external investigators. These problems include:

- no clearly defined terms of reference
- investigators failing to adhere to the terms of reference
- investigators misunderstanding relevant legislative requirements
- investigators failing to provide procedural fairness to individuals who are the subject of adverse findings
- investigations appearing to be focussed on preconceived outcomes

1. From the database compiled and maintained by the Parliamentary Counsel's Office. See <http://www.legislation.nsw.gov.au/> accessed 15 April 2016.

2. The term 'agencies' used throughout this paper applies to local government and universities as well as all state government bodies.

- assumptions and conclusions/findings in investigation reports that are unsupported or insufficiently supported by the available evidence
- investigators failing to obtain relevant evidence that was readily ascertainable, e.g. not interviewing relevant witnesses or obtaining relevant documents
- investigators and/or the contracting agency failing to make and retain adequate records
- factual conclusions being drawn in investigation reports on the basis of evidence which does not meet the applicable standard of proof
- excessive unexplained or clearly avoidable delays in completing investigations
- illogical and confusing report formats, and
- recommendations in reports that are not justified by, or referable to the evidence, conclusions and findings in a report.

We have identified the following issues as a result of the problems we have encountered and seek responses to questions in these key areas:

- deciding when an external investigation is required
- the need for clarity about the scope of the investigation
- the qualifications and experience required of an investigator
- monitoring and evaluating the quality of external investigations
- maintaining proper records of investigations
- agencies' experience of using internal/external investigators.

CASE STUDY 1.

A PID was made about the alleged behaviour of another officer, and alleged administrative failures. The officer who was the subject of the allegations was said to have taken reprisal action against the maker of the PID. That reprisal action consisted of harassment and intimidation causing psychological injury to the maker of the PID.

This matter was referred to an external investigator contracted by the agency. An audit of the handling of the PID found that there were significant failings with how the investigation was conducted and reported on. This was exacerbated by the way the investigation contract was managed and the apparent lack of oversight by the agency.

We saw that the investigator:

- failed to identify and report on each of the allegations
- misread or misinterpreted the requirements of the PID Act
- had not detailed the methodology used during the investigation in the final report
- had not followed up on evidence allegedly implicating other senior officers, and
- dealt with matters outside the terms of reference that were not reported on or referred back to the agency for further advice or action.

While subsequent disciplinary action was successfully taken against the officer when the allegations were made, we noted that this investigation was not to a standard we believe acceptable for a NSW Government agency.

2. Deciding when an external investigation is required

2.1 Investigating minor workplace issues

We have seen or been informed of instances in which external investigators were engaged to investigate minor workplace issues, including where an investigation was apparently conducted into an allegation that a manager had allegedly spoken harshly to a fellow employee and 'stormed off'.

We have been told by staff of some agencies that the default position within their agencies is that all matters, including minor matters, are required to be investigated externally.

2.2 Determining the need for external investigation

Not every complaint/report/allegation will require an investigation. Many concerns raised will be able to be resolved at an informal level or through other processes. For example, many concerns raised about the conduct of individuals may have arisen because of a lack of clear communication or a misunderstanding between colleagues.

Agency heads have the authority to conduct an investigation into allegations of misconduct. Before making a decision about whether and how to conduct an investigation, some form of an assessment of the complaint or allegation will generally need to be undertaken.

In making a determination about how to proceed, the agency head (or his or her delegate) should assess the matter and have regard to the facts, seriousness and nature of the particular incident. To determine whether a matter should be subject to external investigation, a number of factors may need to be considered. Including:

- whether it is an isolated incident
- the seriousness of the incident
- the circumstances surrounding the incident
- the impact on the organisation and other employees.

We have noted that in many instances the common reasons why a matter may require the use of external investigation resources are that the agency is:

- unlikely to have adequate powers or technical expertise to investigate and/or
- the matter is of such a complex or sensitive nature that investigating using internal resources would not be effective.

As noted, we believe that minor workplace issues are generally unlikely to require investigation by external contractors. We wonder how agencies assess the need for investigator support and whether general guidance needs to be developed to assist agencies to address such issues.

Question for consideration

1. What are your views on whether agencies need guidance to assist them decide whether an externally appointed investigator is required, or if the situation can and should be handled through a different process?

CASE STUDY 2.

We were advised that officer D who had made a PID about a number of workplace code of conduct issues was subsequently the subject of a number of counter claims. While the original PID related matters were substantiated, one of the persons (officer E) who had been the subject of the PID, lodged a complaint about various issues which related to the way officer D had interacted with them in the workplace. Officer E had also alleged that they had been excluded from conversations and prevented from providing input into work issues.

We did not understand why there was a need to engage an external investigator to examine officer E's complaint. We considered these to be workplace matters which could have been dealt with more efficiently by performance management action.

3. Clarity about the scope of the investigation

3.1 Terms of Reference

Terms of reference provide formal guidance to investigators on precisely what they are supposed to do and how they are to do it. The terms of reference should stipulate any conditions which must be complied with and may also refer to things such as confidentiality, procedural fairness requirements, security of information, protection of documents and evidence, access to data, reporting requirements and deadlines.

We believe properly drafted terms of reference are pre-requisite for a successful investigation. They should be clear and concise, and at a minimum contain:

- a statement as to the questions to be answered/issues to be investigated,
- the name of the person delegated to investigate the matter
- a person or position the investigator is to report to over the course of the investigation
- identities and contact details of all known witnesses and persons of interest
- time frames for progress reports of the investigation
- reporting and confidentiality requirements (particularly where the matter is a PID), and
- guidance on dealing with additional matters that arise during the investigation and the process to be used to seek any amendments to the terms of reference.

4. Qualifications and experience of the investigator

4.1 Selecting the right investigator

Variations in business processes and cultures can make it difficult to identify an investigator with suitable practical knowledge/experience in a particular area. If there is no suitable investigator it may help to obtain references from agencies that previously engaged an investigator to identify someone with an appropriate background.

Investigation costs will be important to keep in mind, but we consider that obtaining the services of an investigator who is competent and experienced in the relevant area should be a priority.

Question for consideration

2. What are your views on how external investigators are selected to conduct administrative investigations?

4.2 Qualifications of investigators

There are currently no minimum qualifications for investigators in NSW. While there are Certificate IV and Diploma level courses in government investigations that are available, none of these courses have been identified by the NSW Government as minimum requirements to conduct investigations within agencies.

The Australian Government Investigations Standards contain standards which are *recommended* for investigators, but not mandatory. It stipulates:

1.5 Investigator qualifications

The minimum level of training or qualification recommended for investigations staff are:

- *Certificate IV in Government (Investigation), or its equivalent, as set out in the Public Services Training Package (PSP04). This qualification should be obtained before an officer is primarily engaged as an investigator; otherwise the officer should be under the supervision of a qualified investigator.*
- *Diploma of Government (Investigation), or equivalent, as set out in the Public Services Training Package (PSP04) for staff primarily engaged in the coordination and supervision of investigations.*³

Service providers who wish to become members of the NSW Government Prequalification Scheme for investigations must hold appropriate master licenses or individual licenses for investigative activity, such as Commercial Agent or Private Inquiry Agent (CAPI); licence from NSW Police Force or equivalent.⁴ It is unclear to us as to whether those licences address competency to conduct administrative investigations or how that licensing system adds value to the quality assurance process for investigations.

It is also of concern that qualifications stipulated in the prequalification scheme relate to commercial agents or private inquiry licensed persons. It would seem that these requirements do not address the needs for investigators to be qualified and experienced in administrative/disciplinary investigations.

Question for consideration

3. What qualifications/experience criteria should be applied to selecting an investigator to conduct an administrative investigation?

4.3 Selection and accreditation of investigators

The Department of Finance and Services maintains a Prequalification Scheme: Performance and Management Services, Service Provider Listing. This scheme provides a list of service providers to agencies.

3. *Australian Government Investigation Standards (AGIS)*, Commonwealth of Australia 2011.

4. *Guidelines for Applicant Prequalification Scheme: Performance and Management Services*, Department of Finance, Services and Innovation, January 2016.

Service providers are assessed initially by the Assessment Body. This includes a review by a Panel of Assessors (which comprises representatives from NSW Government departments and one or more independent members) in accordance with the evaluation criteria set out in the 'Scheme Conditions'. Clause 8 states:

Applications will be assessed according to the following evaluation criteria:

- (a) *demonstrated capability and experience in the capabilities applied for.*
- (b) *demonstrated capability and experience in the following general areas:*
 - *well-developed project leadership, planning and management skills; demonstrated ability to provide high level strategic advice;*
 - *good understanding of contemporary approaches to public sector administration and reform.*
- (c) *demonstrated experience, satisfactory previous performance and applicant referee reports that include referee comments in relation to the applicants applied for capabilities.*
- (d) *demonstrated capability, including management, human resources and commercial rates and prices, insurances and other resources.*
- (e) *for Audit & Assurance Services ONLY: where applicable, demonstrated application of and compliance with professional standards from appropriate recognised professional bodies such as Institute of Chartered Accountants Australia (ICAA); CPA Australia (CPAA); Institute of Internal Auditors (IIA); Information Systems Audit & Control Association (ISACA).*
- (f) *for Investigation Services ONLY (emphasis added): where applicable, applicants must hold appropriate master licenses or individual licenses for investigative activity such as Commercial Agent or Private Inquiry Agent (CAPI); license from NSW Police Force or equivalent.⁵*

We note that the prequalification scheme does not seem to include evidence of experience and qualifications by investigators in administrative investigations. It is also not clear how 'demonstrated capability and experience in the capabilities applied for' (Clause 8 (a)) is assessed for investigators.

As part of the scheme the Easy Access Registration List (EARL) provides Agencies with a list of registered service providers for low value work of up to \$50,000. Where the estimated cost of the project is less than or equal to \$150,000, an engagement can be made directly from the scheme by inviting one written quotation from a service provider. Where the estimated cost of a project is more than \$150,000, a minimum of three prequalified service providers must be invited to submit a proposal.⁶

In addition we understand that some agencies have internal lists of preferred contractors, however from what we have seen the process and criteria used by agencies to assess the competence of investigators is of mixed quality. We have been advised that some agencies refer matters to external investigators who they have used previously, without necessarily consulting approved lists.

Question for consideration

4. Should agencies work to approved lists of investigators across NSW for external investigations tailored to specific agency needs? If so, who should run such a scheme?

5. *Scheme Conditions* (requalified Service Providers), NSW Government Prequalification Scheme: Performance and Management Services, July 2015

6. NSW Government Prequalification Scheme: Performance and Management Services, Service provider Listing - 10 February 2016.

4.4 Local government

Many councils in NSW engage external investigators to investigate code of conduct⁷ issues and in some instances other matters.

Councils are required to establish a panel of conduct reviewers who investigate allegations of conduct by a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.⁸ Councils may enter into arrangements with other councils to share a panel of conduct reviewers.

To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:

- (a) an understanding of local government, and
- (b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
- (c) knowledge and experience of one or more of the following:
 - (i) investigations, or
 - (ii) law, or
 - (iii) public administration, or
 - (iv) public sector ethics, or
 - (v) alternative dispute resolution, and
- (d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.⁹

We have been told that it may not be unusual for councils to engage an investigator to examine allegations about a councillor or officer who the investigator had previously investigated. We have seen such practices result in accusations that there is a reasonable apprehension of bias in appointing that investigator.

Various councils we have spoken with told us they had previously used the services of the Internal Audit Branch accredited investigators. Feedback about these arrangements was generally positive and some council officers voiced regret at no longer having access to external investigators through that organisation.

Question for consideration

5. *[For Local Councils only]* Would there be merit in having a central panel of investigators specifically for the conduct of investigations in local government, given the complexities of investigating matters in accordance with legislation such as the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*?

7. Section 440 of the *Local Government Act 1993* directs that Councils are to adopt a model code of conduct which councillors, members of staff and delegates must comply with, where applicable.

8. *Procedures for the administration of the Model Code of Conduct for Local Councils in NSW*, Department of Premier and Cabinet, Division of Local Government, 2013, p9.

9. Clause 3.6 specifies those persons who are ineligible to be members of conduct review panels, which includes; councillors, administrators, council employees, parliamentarians and those convicted of an indictable offence.

4.5 Internal Audit Bureau

For some years we have identified significant issues with the quality of investigations into public interest disclosures. As a result we developed a Memorandum of Understanding (MOU) with the Internal Audit Bureau (IAB). The IAB offered investigation services by experienced and qualified external investigators who had been subjected to IAB accreditation processes. The MOU stipulated minimum qualifications and experience for investigators to be included on the IAB panel. We saw this as a way to raise the standards of external investigations. As the IAB was a government agency that was within our jurisdiction, we were able to review the quality of its investigations where questions were raised by a party to an investigation, we could audit the IAB's.

The IAB assessment procedures for identifying external investigators for PID were over and above the minimum contract procurement guidelines laid down by the Department of Finance, Services and Innovation.¹⁰ They were:

- 15 years successful experience in public administration at a senior level. This will include experience in one or more of the following areas:
 - Industrial relations
 - Human resources
 - Governance
 - Legal services
 - Investigations
- Relevant qualifications in investigations, including at least:
 - Certificate IV in Investigations, and
 - NSW Commercial and Private Inquiry Agent License (CAPI).¹¹

The IAB was disbanded in December 2015.

Question for consideration

6. In light of how the IAB previously assessed, accredited and managed investigators prior to its disbandment, is there a need for a government body that is able to assess, accredit and manage investigations on behalf of other government agencies?

5. Monitoring and evaluating the quality of external investigations

5.1 Managing the investigation/contract

Engaging an external investigator means a contractual arrangement is entered into. The agency is responsible for ensuring the contract provides value for money and delivers the requirements of the terms of reference.

A crucial quality assurance element will be the appointment of an agency officer to manage the contractual arrangements, who has experience in assessing the conduct of investigations and who

10. *Scheme Conditions*, (requalified Service Providers), NSW Government Prequalification Scheme: Performance and Management Services, July 2015.

11. Memorandum of Understanding NSW Ombudsman and IAB Services The Investigation of Public Interest Disclosures, 19 September 2011.

is familiar with administrative law principles. We consider that where possible this should not be the same person who will be the decision-maker in relation to the recommendations arising out of the investigation. This will allow the decision-maker to focus purely on the investigation findings, recommendations and available evidence when deciding what action to take.

It is unclear to us whether or not agencies have the requisite knowledge and experience to effectively evaluate the quality of investigations conducted by an external party.

Question for consideration

7. *[For government agencies only]* Does your agency have a policy or other guidance material for assessing, selecting and managing external investigators conducting administrative investigations? If so please provide copies.

5.2 Lack of standards for investigations

There are currently no Australian standards for government administrative investigations. At the Commonwealth level the Australian Government Investigations Standards (AGIS)¹² establishes the minimum standards for conducting investigations.

In addition to standards for the conduct of investigations, the AGIS also establishes the minimum standards for the effective and efficient management of investigations. Commonwealth agencies must employ investigation management procedures which are based on project management principles of managing resources, processes, work to be undertaken, time and outcomes.¹³ The standards also provide guidance on finalising investigations. This includes stipulating that Commonwealth agencies are to have written procedures relating to finalising an investigation following legal proceedings, disruption or prevention actions or decision to take no further action.¹⁴

It should be noted that complying with the AGIS standards is mandatory for Commonwealth agencies; however there are very few similar guidelines in place for NSW agencies.

We consider that having minimum standards for investigations conducted by NSW agencies or its contractors could improve the quality and value for money of those investigations.

Question for consideration

8. Should NSW develop minimum standards for administrative investigations, similar to the Commonwealth, which must be complied with? If so what should those standards contain?

5.3 Quality assurance

In its Annual Report for 2013-14 the then Queensland Crime and Misconduct Commission (CMC) reported on how it completed an audit of matters referred to public sector agencies where the investigations had been outsourced to external investigators. The purpose of the audit was to

12. *Australian Government Investigation Standards (AGIS)*, Commonwealth of Australia 2011.

13. *Australian Government Investigation Standards (AGIS)*, Commonwealth of Australia 2011, p9

14. *Ibid*

comment on whether the outsourcing of investigations by agencies is an efficient use of resources, and to determine under what circumstances an agency might use the services of an external investigator.

The CMC audit recommendations focused on areas such as staff training, information and workplace security, improvements to record keeping, and reviews or amendments of policies and procedures in relation to tendering and procurement practices.¹⁵ These are all similar issues to those we have identified through our enquiries and investigations.

Monitoring performance and ensuring compliance with the Government Prequalification Scheme in NSW is the responsibility of the contracting agency. Performance reporting requirements are:

13.2 *An Agency must submit a Performance Report in the form prescribed by Schedule 2 – Performance Report template to DFSI where:*

- (a) *the performance of, and the services provided by, the Service Provider are considered by the Agency to be unsatisfactory; or*
- (b) *where the total value of the relevant engagement is more than \$150,000 (including GST).*

13.3 *A Performance Report is to be submitted:*

- (a) *at the completion or termination of the relevant engagement; or*
- (b) *when a critical aspect of performance is unsatisfactory.*¹⁶

We have seen that quality assurance appears to be left to the individual agency to determine. We query whether an independent quality assurance process would be more appropriate.

Question for consideration

9. Should the quality of external investigations be audited/monitored? If so how?

5.4 Need for a whole of government approach

We have spoken with a number of agencies about how they conduct investigations and how they utilise external investigators.

It would seem that the various systems across agencies for the assessment and appointment of investigators are confusing. Perhaps a central point for setting standards, assessing and/or monitoring the quality of external investigations may be of value.

6. Maintaining records of investigations

6.1 Access to information/record keeping

The *Government Information (Public Access) Act 2009* provides for access to information provisions to be included in contracts for external providers of services. Agencies are required to ensure that the contract provides for the agency to have an immediate right of access to the following information contained in records held by the contractor:

15. Crime and Misconduct Commission Annual Report 2013–14.

16. Scheme Conditions, (prequalified Service Providers), NSW Government Prequalification Scheme: Performance and Management Services, July 2015.

- information that relates directly to the performance of the services by the contractor,
- information collected by the contractor from members of the public to whom it provides, or offers to provide, the services, and
- information received by the contractor from the agency to enable it to provide the services.

There will generally be a requirement for external investigators to obtain documents and information as part of an investigation. At times that information may be of a personal or sensitive nature and we consider that the contract requirements should reflect the need to properly account for and keep those records secured.

It should also be noted that in accordance with the Government Sector Employment Rules 2014, the head of a government sector agency is to keep a written record of the proceedings and action taken in respect of any allegation of misconduct by an employee of the agency.¹⁷

We have identified from our complaints and enquiries work that some agencies may not be aware of the requirement to maintain all records (including the statutory requirements under the *State Records Act 1998* to protect, ensure the safe custody of and ensure the return of state records). Several of our PID audits have also found that external investigation related documentation, such as detailed case notes, running sheets, interview notes etc; have not been provided to the agency at the conclusion of an investigation.

7. Agencies' experience of using internal/external investigators

7.1 Internal/external investigators

It has been put to us by staff from various agencies who are responsible for carrying out investigations that internal investigative elements in large agencies may be more cost effective than engaging external contractors. We hold no views on the validity of that premise, but have been advised by the staff of one agency that the annual cost of external investigations is well in excess of the costs associated with the previous internal investigation unit.

The question of corporate knowledge has also been raised, with one agency telling us that they need to train external investigators on the intricacies of the agency's IT systems before they can commence an investigation. That training usually takes between one and two days and requires a senior officer to be present with the investigator. There have also been instances where additional agency personnel have been diverted for long periods to assist with accessing data and providing advice on specific technical issues.

We query whether the additional use of agency resources by external investigators is widespread and whether this indicates a lack of technical knowledge by investigators which may impact on the efficacy of an investigation.

We understand that the costs for external investigators can vary significantly from one provider to another, dependent on the seniority or qualifications of the individual investigators.

We have been advised by one organisation that since the disbandment of its internal investigation capability, investigation costs have risen exponentially. One estimate was that annual costs are now more than 1.5 times higher than when the agency had an internal investigations unit. It is not clear how widespread this apparent cost imposition is throughout agencies. It is also unclear whether or not the use of external contractors for investigations is cost effective and provides value for money across the sector.

¹⁷. *Government Sector Employment Rules 2014*, r 41.

Questions for consideration

10. [For NSW Government agencies only] In your experience, does outsourcing investigations provide value for money?
11. [For larger NSW Government agencies only] In your experience is there evidence to indicate it is more cost effective to have qualified internal investigators in large agencies than to outsource the function?

7.2 What about small agencies?

In our discussion so far we have focussed on larger government agencies that may have a need for external investigation support and will generally have the resources to manage an external investigation. Smaller agencies may not have this luxury and will in many cases need to rely on agency officers with little or no experience in investigations to manage the contracts of external investigations.

It seems to us that these situations highlight the potential for specific model policies and guidelines for external investigations to be issued government wide.

Question for consideration

12. In some small agencies limited resources may make it impractical to engage external investigators. In your view, are options available to ensure matters are appropriately dealt with in these instances?

8. Conclusion

From our experience and discussions with staff from a range of agencies it appears that contracting external investigators can be costly and may not always produce effective results. We are keen to learn the views of individuals or organisations involved in engaging investigators and of those managing such investigations on behalf of agencies. We would also welcome submissions from individuals with experience in conducting investigations on behalf of NSW state and local government agencies.

9. Submissions

We welcome any comments, submissions on this discussion paper through our **online tool** up to 31 August 2016.

This discussion paper is also available on our website www.ombo.nsw.gov.au

Questions

1. What are your views on whether agencies need guidance to assist them decide whether an investigation is required, or if the situation can and should be handled through a different process?
2. What are your views on how external investigators are selected to conduct administrative investigations?
3. What qualifications/experience criteria should be applied to selecting an investigator to conduct an administrative investigation?
4. Should agencies work to approved lists of investigators across NSW for external investigations tailored to specific agency needs? If so who should run such a scheme?
5. *[For Local Councils only]* Would there be merit in having a central panel of investigators specifically for the conduct of investigations in local government, given the complexities of investigating matters in accordance with legislation such as the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*?
6. In light of how the IAB previously assessed, accredited and managed investigators prior to its disbandment, is there a need for a government body that is able to assess, accredit and manage investigations on behalf of other government agencies?
7. *[For government agencies only]* Does your agency have a policy or other guidance material for assessing, selecting and managing external investigators conducting administrative investigations? If so please provide copies.
8. Should NSW develop minimum standards for administrative investigations, similar to the Commonwealth, which must be complied with? If so what should those standards contain?
9. Should the quality of external investigations be audited/monitored? If so how?
10. *[For NSW Government agencies only]* In your experience, does outsourcing investigations provide value for money?
11. *[For larger NSW Government agencies only]* In your experience is there evidence to indicate it is more cost effective to have qualified internal investigators in large agencies than to outsource the function?
12. In some small agencies limited resources may make it impractical to engage external investigators. In your view, are options available to ensure matters are appropriately dealt with in these instances?



NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: (02) 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
Tel. typewriter (TTY): (02) 9264 8050
Facsimile: (02) 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au