

INDEPENDENT COMMISSION AGAINST CORRUPTION**STATEMENT IN THE MATTER OF: Operation Tarlo**

PLACE: 255 Elizabeth Street SYDNEY (ICAC's Office)
NAME: Ms Eleri Morgan-Thomas
ADDRESS: Known to the Commission
OCCUPATION: Executive Director, Service System Commissioning
TELEPHONE NO: Known to the ICAC
DATE: 15 June 2017

States:

-
1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness. The statement is true to the best of my knowledge and belief, and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
 2. This is my second statement in relation to Operation Tarlo. My first statement was made on 17 August 2016. My first statement sets out my background and experience at Family and Community Services (FACS) and elsewhere. As with my first statement, this statement is prepared based on matters within my direct knowledge or based on matters reported to me by those I manage.
 3. This statement provides an update in relation to some matters set out in my first statement or addresses additional matters.

Signature _____

Sensitive

tness _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

Non-Government Organisation (NGO) Governance capacities and funding policies and processes

4. FACS asks NGOs at the end of their acquittal period to certify that they have a range of governance, probity and risk related policies and processes in place.
5. As part of the acquittal process we request contract managers to sight a selection of policies and/or Prudential Oversight may nominate policies for contract managers to review based on risk assessment, complaints and specific areas of interest. The extent to which we request the policies to be sighted will depend on the risk factor associated with the funding as well as the extent to which we are already familiar with the organisation. For entities applying to FACS for funding for the first time, what we require will depend on the sector. For example, we have just done a tender for an intensive therapeutic residential care program as part of Out of Home Care and we required proposed tenderers to provide documentation concerning their financial and governance status. Out of home care providers are regulated by the Office of the Children's Guardian (OCG) which has requirements around governance for accreditation. FACS does not duplicate the work of regulators such as the OCG.
6. Organisations such as the Non English Speaking Housing Women's Scheme Inc. (NESH) provide lower risk services for FACS, and do not require such stringent criteria to be applied to them as organisations providing services like intensive therapeutic care. NESH was funded under the Homelessness Program. While there are standards required to be met under this program they tend be more focussed on service delivery than financial governance. NESH was unsuccessful

Signature _____

Witness _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

in a competitive tender as part of a major reform, which is why it was not offered a further contract.

7. We have contracted with most of our currently funded organisations for a long time. This means that we have a history of their performance, and can look at their historical compliance, risk status and any issues that have been performance managed. Most open tenders attract organisations we are already working with in other service types.

Minutes of FACS funded organisations and other recent oversight initiatives

8. We might provide 2% of an organisation's funding or 100% but we are not the regulator of the organisation as a whole. Regulation of organisations sits with the Australian Charities and Not-for-Profit Commission (ACNC), NSW Office of Fair Trading (OFT) or Australian Securities Investment Commission (ASIC). If a regulator is in place FACS does not want to duplicate this with additional red tape, as this is an additional cost burden for both the NGO and FACS.
9. Nevertheless, our Funding Deed does allow us to audit an organisation if we have concerns about their finances and service delivery. We have to be proportionate in our oversight and responses to issues that arise. For example, if we are funding an organisation for \$70,000 per year, the risk to FACS of the organisation underperforming is fairly low and the cost of having a rigorous compliance regime in that situation would be disproportionate. Recent external audit costs for those agencies we have audited have been between \$50,000 and \$70,000.
10. For similar reasons, while we do not routinely request minutes of Board meetings from organisations we fund, we can and may, by way of example, request relevant

Signature _____

Witness _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

minutes when managing a complaint; when confirming a conflict of interest has been declared; and when seeking confirmation of the election of officers.

11. FACS has more insight, for example, into Community Housing providers because we have billions of dollars in assets with some of these organisations. The Community Housing sector also has a regulator with high standards for corporate and financial governance. Community housing providers are regulated according to proportionate risk relevant to the size and scale of operations; there are higher thresholds for performance specifically because several organisations in this sector typically take on debt in order to deliver housing stock.

12. Since August 2016 we have had further discussions with the ACNC to establish exchanges of information. The ACNC and FACS are in the process of developing policies to underpin these new practices and improve information sharing. It has had a positive affect on FACS' practices because we can go to the ACNC's website to see if the organisation is reporting to ACNC as required. To streamline our processes at particular times of the year, the ACNC can send us a batch file and we match their records with our own. There is a strong corporate compliance focus by the ACNC because it goes directly to the organisation's tax status as a not for profit. The ACNC can impose financial penalties to organisations for non-compliance and the ATO can cancel their tax status and retrospectively recover tax.

13. FACS does not really have a similar arrangement with the OFT, although we have been advised that the ACNC is separately negotiating with OFT in relation to sharing of information. Recent involvement with the OFT has been on a case by

Signature 

Witness 

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

case basis. We do fund a small number of For Profit organisations so we are involved with ASIC, but to a lesser extent than with the ACNC.

Organisations that receive funds from sources in addition to FACS funding

14. FACS does not require NGOs it funds to inform FACS of the other funding sources it receives, or to hold FACS funds in a separate bank account. This would be impractical. However, our Funding Deed requires organisations to notify us in writing, if financial assistance is provided by any other organisation or authority in relation to our funded project (Program Level Agreement or PLA). We also require organisations to report on the acquittal of FACS and other funds separately.
15. We review organisations' Annual Reports and Audited Financial Statement to understand how our funding is accounted for within the corporate level accounts. FACS is also interested in whether an organisation has other sources of funding as this helps in our decisions about continuing to provide funding to that organisation and the level of their reliance on our funding. We do not require organisations to have a separate audit of the FACS' funding as this would place an unnecessary administrative burden on the NGOs. As set out above, NGOs may receive only a very small percentage of their funding from FACS and most of their funding from a number of other sources.
16. A requirement of the Funding Deed is that FACS funds are held on trust by the NGO on behalf of and for the benefit of FACS until the services it is to provide are provided. I understand that a purpose of that requirement is that FACS may have better recovery rights in the event of an organisation entering into some type

Signature _____

Witness _____


STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

of third party administration. The requirement does not extend to placing funds in an actual trust account.

17. The insolvency of a non-government organisation is rare and there is no discernible pattern ahead of events triggering a third party insolvency. For example, the NGO Board might just walk away leaving no one there to sign accounts, and there is no administrator. It is hard to get the OFT to take action in such cases.

Data collection, outcomes and outputs

18. In my 17 August 2016 Statement, I advised that FACS was developing a system to ensure that data collection is used to determine client outcomes and appropriate management for service providers.
19. In Out of Home Care, we have performance-based contracts commencing on 1 October 2017, which move toward outcomes funding and are more client focused than the previous unit price approach.
20. Challenges in an outcome-based system are identifying what the outcomes are, identifying the time frames for achieving the outcomes, and the attributions you can make to that NGO for outcomes. For example, if we want an Out of Home Care organisation to ensure that a child finishes Year 12 we need to look at a number of factors in the child's life that happened in previous years, including the number of homes the child has been placed into and the child's developmental issues from birth. By the time the child is 17, it is very difficult to attribute a specific outcome, for example finishing Year 12, to the NGO who is looking after the child at that time. Therefore, there have to be intermediary outcomes that are

Signature 

Witness 

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

measurable. FACS also has to factor into this of the complexity of the NGOs and the type of work they do.

21. In organisations like NESH and Immigrant Women's Health Service (IWHS), where services appeared to largely comprise group sessions for people of similar cultural background, it is very difficult to measure an outcome for such a service and more practical to measure outputs.
22. While it might have been possible to frame an outcome in NESH as being, for example, the number of women and children housed per year, other factors outside of NESH's control will impact on this including the lengthy waiting list for public housing. NESH's main role was advocacy but the success of advocacy is difficult to measure. We also have to consider the cost of measuring outcomes. For example if we are funding an organisation \$100,000 per year and they see 1,000 clients it could be cost-prohibitive to measure outcomes.
23. The NSW Human Services Outcomes Framework is developing outcomes for NSW and the factors contributing to those outcomes. Using that framework, FACS can set measures at the population level, for example the level of homelessness and the factors that contribute to homelessness.
24. Competitive tendering for NGOS has been in NSW for many years, but we are getting to a more sophisticated level in some parts of the system, particularly in the high value, high risk contracts such as Out of Home Care.
25. Evaluation by FACS is typically done on specific programs – that is for a homelessness program delivered by a number of organisations. We seek to

Signature



Witness



STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

understand how the program overall is delivering on the NSW Government's objectives.

26. We do discuss performance against KPIs with the organisations we fund, with the most attention paid to those high risk, high value contracts.

27. If we have concerns about an organisation, we might conduct an audit, particularly if there is a significant risk to FACS. For example, we did intervene in one NGO which was receiving significant funding from FACS. The NGO was having major problems at the corporate level and we sought their permission, and they gave it, for us to intervene because the services they provided to clients would have failed otherwise.

28. In situations where we believe there is a major governance failure, we would have to ask OFT to appoint an Administrator if it is an Association because that is not something FACS has the legal power to do. Even so, the OFT has limited ability to appoint an Administrator. Organisations that are companies limited by guarantee would have to decide themselves whether to go into voluntary administration. However, that is an expensive option and they would generally try to wind the organisation up themselves or merge with another NGO.

29. **Review of financials:** FACS reviews all NGOs' financials either audited or unaudited, noting that not all organisations are required by incorporation and other laws to prepare audited financials. If the report includes a management letter we would review it. However, it is not mandatory for organisations to include management letters to FACS, and FACS has not considered making it mandatory.

Signature _____

Witness _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

30. FACS would always take note of whether an NGO had a qualified Audit Report and would look further. Our annual acquittal process requires NGOs to advise if the audit report attached to the financials is qualified. FACS sees qualified audit reports as a red flag.

31. **Complaints policy.** FACS is currently streamlining its complaints process.

Exhibit 1: I have provided FACS Draft Internal Audit Report, Complaints/Allegations against Community Services (CS) Service Providers Review, dated 31 May 2017.


Exhibit 2: I have provided FACS: Community Service - Policy on Responding to Complaints about Funded Service, dated March 2012.

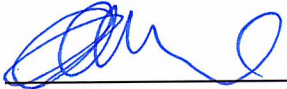
FACS Contact with NGOs

32. There is a consistent approach to monitoring funded NGOs, which applies a proportionate risk management approach.

33. This has recently been reviewed and is being updated. FACS remains in regular contact with NGOs throughout the contract period, to ensure services are being provided as contracted.

34. If an issue arises, this will be raised with the NGO, and the risk impact of the issue considered. If there are minor issues that are readily resolved with minimal risk impact, a Service Development Plan (formerly called an Action Plan) may be initiated, and regularly monitored. If a significant issue arises that is assessed as high to very high risk, FACS will document a Performance Improvement Plan, with actions the NGO is required to take, with expected milestones and dates to rectify matters. Occasionally, although not often, FACS terminates a Funding

Signature  _____


Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

Deed. This step is usually only taken if we have reasonable proof there is a serious, breach of the Funding Deed that cannot be remedied, or if the organisation seeks to wind up. I would seek legal advice before taking this step.

Skill and training of NGO staff and Boards

35. The skills required of NGO staff depend on the service.
36. In Out of Home Care residential care providers, for example, there are minimum qualifications that staff need to have and probity checks must be in place. We also have a requirement in the PLA, and a lesser one in the Funding Deed, that if we do not think someone is fit for the role, usually in a senior management position, we have the right to object. We do not have the right to terminate their employment but it does mean that we can raise our concerns with the organisation and if they do not respond that would be a breach.
37. In one case we did terminate a PLA because the Chair of the Board of an organisation providing child related service had a Working with Children bar. We terminated the PLA because the Board refused to take any action against the Chair. Other positions in NGO services may require specific qualifications, for example the qualifications and accreditation needed to practise as a psychologist.
38. I would expect the Boards that receive multi-million dollars in funding and are running a high-risk operation to be professional and skill based. In addition, I would expect such organisations to have Risk and Audit committees at least, and they generally do.
39. It is not a funding requirement of FACS that Board members undergo formal training as Directors, although FACS does value such training in Boards if they


Signature _____

Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

have these qualifications. We don't have any specific requirement in our contracts with community housing providers about the requirement for Board members to undergo Directors training. We reference the need for providers to be registered under the Community Housing National Law in our agreements and there are performance measures around governance under the Community Housing National Regulatory System.


40. In smaller NGOs it is usually a challenge just to get Board members. I would expect Board members of the smaller NGOs to act honestly, understand their role and perform their duties to the best of their ability. Boards that, for example, manage a Neighbourhood Centre or a similarly relatively low risk NGO really just need to ensure that the organisation is functioning well and that they have oversight of financial and performance reporting. I would not expect members of such Boards to have undertaken formal training such as Institute of Company training although it would be a bonus if they had.

41. FACS does not currently require, and nor is it considering requiring, NGO Board members to have undergone training for their role. FACS could, however, make such training a condition of a Performance Improvement Plan if it was concerned about the poor performance of an NGO.

42. FACS is in the process of changing [its organisational structure](#). There is a copy of FACS structure on the FACS website.

FACS Contract Governance Risk and Assessment policy

43. I provided a draft of the FACS Contract Governance Risk and Assessment policy with my 17 August 2016 Statement. This policy has now been implemented, and

Signature 


Witness 

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

we produce a dashboard report that goes to the Districts and to me about funded NGO acquittals and risks. It is currently in a continual improvement status and we are upgrading it every few months. For example we are currently developing a risk calculator to determine the level of risk for organisations that are 100% funded by FACS and for lesser proportions of funding. We will later do a review.

44. We now have one full year of reporting on our FACS risk assessment (for communality services, homelessness and disability contracted services) which we do on a corporate and service delivery level. Some organisations have several PLAs which are all different. We assess service delivery from what the organisations tell us and what else we know about their service delivery. We assess their financial records at the PLA level and corporate level. As a result, we can tell that, based on our risk assessments that 93% of NGOs we fund are low (87%) or medium risk (5.6).

45. **Red flag indicators:** All good organisations have service delivery problems at some time. An indicator of this could be a spike in complaints, and not meeting the deliverables in their contract. We would require an organisation to report to us about these issues. Sometimes, particularly in remote areas it may be that the NGO is having difficulty finding staff. Other times it is because of more systemic issues such as bullying of staff resulting in staff turn over and or orders against the provider by the Fair Work Ombudsman; lack of governance controls/policies and their application by staff and management resulting in service delivery complaints from clients, the public and organisation staff, allegations of conflicts of interest, misappropriation of funds due to poor or inadequate delegations policy and


Signature _____

Witness  _____


STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

monitoring; poor or no board oversight of management and or Chief Executives leading to allegations fraud and corruption.

46. Organisations with low liquidity raise a high red flag. If an NGO has low liquidity ratio when receiving regular quarterly funding that is a problem. If an organisation has low liquidity, we consider it probably has a governance problem. If an organisation has both low liquidity and poor governance this is a strong indicator that there are also problems with service delivery.

47. Since implementing the risk assessment process we have a better understanding of our high risk areas. Recent high risk areas include **Governance** such as inadequate or no financial policies and procedures including delegations and their oversight by the Board, failure to properly monitor and train staff, no or inadequate conflict of interest policy, no or inadequate complaints handling – and failure to acknowledge/accept complaints, no or inadequate minute taking by Boards, no or inadequate Board training, poor or inaccurate performance reporting; **Financial** include no or inadequate financial policies and oversight, no or inadequate budget, or no or inadequate understanding of obligation to funding agency.

48. **Bundling/Subcontracting and Joint Working Agreements:** The NGOS are autonomous bodies and it is their decision if they wish to bundle, merge or enter into Joint Working Agreements (JWA). NGOs who merge must inform FACS of the name of the bundled/merged entity as FACS will only issue a contract to a single organisation. These organisations must seek approval from FACS to transfer by direct negotiation any existing funded contracts. FACS requires the


Signature _____

Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas


NGO to seek FACS approval if they wish to sub-contract as FACS needs to ensure that the new lead/primary contractor is passing on information from the PLA to the sub-contractor, all subcontracting conditions are consistent with the FACS Funding Deed all subcontractors are suitable and capable. If the sub-contractor fails to deliver contracted services, has a dispute etc, then FACS requires the lead/primary contractor to remedy the situation. FACS will monitor all subcontracting issues/disputes.

Commissioning

49. FACS is in the process of moving to become a commissioning organisation rather than one that primarily delivers services itself. When we talk about commissioning, we mean a strategic approach to the identification and sourcing of services that benefit individuals and communities. This approach involves:

- Assessing the needs of people or users in an area.
- Working with users to identify the products and services required to meet the need.
- Developing a true sense of partnership between the user and the Supplier in delivering the products and services.
- Measuring outcomes and feeding learnings into a cycle of improvement towards the goals of the user.
- Making best use of available resources.

50. We are a service deliverer and we also contract those services from NGOs, for example, in the delivery of Out of Home Care and housing services. In future, across government, these services will be contestable. It may be that FACS


Signature _____

Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas


decides that it is better for FACS to deliver those services or that it is better for an NGO to do so.

51. In the commissioning process, FACS first needs to decide what we want to do and to what standard, and be agnostic about who delivers the service. It will mean that the service we deliver will be to the same standard as other parties. To be agnostic we need to restructure to separate service delivery from commissioning activities. It is a work in progress at the moment. We have had some external advice about how to restructure which will take place over the next couple of years.

52. The advantages of commissioning is that it is a clearer definition of what you want to buy and why you are buying and a clearer definition about what good performance is.

Corruption prevention activities

53. FACS has sent a number of its staff to corruption prevention training. In 2014 the ICAC delivered the Fact Finder training to 15 district senior contract managers, Helpline Manager and Service System Commissioning (SSC) Staff. The Manager Prudential Oversight and I have attended the ICAC Strategic Responses to Fraud and Corruption training. Prudential Oversight and District Contracting Support staff have attended the Ombudsman training on the Public Interest Disclosure Act and we are current working with the ICAC training unit for tailored training for senior district managers and contract managers on fraud and corruption prevention and detection. We have rewritten our Contract Governance Framework. It is now the Contract Management Framework and is simpler and clearer for contract managers and sets our expectations.



Signature _____

Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

**Exhibit 3: I have provided the ICAC with a folder of information about
the Funded Contract Management Framework.**


54. FACS is driving a cultural change and following this up by setting performance standards. We have had hard discussions with NGOs about their requirements to follow their contracts. We have actively followed up with organisations where there has been suspicion of fraud, and have become clearer about what we see as the definition of fraud. In discussing changes to culture, FACS is using issues arising from Operation Tarlo.
55. It is difficult to convince NGOs that we need particular powers in the Funding Deed. Those that are doing well, do not have insight into those NGOs that are not doing well and, because of privacy concerns, we have been unable to disclose some instances of fraud and corruption to illustrate our point. FACS has reported more matters to the ICAC since Operation Tarlo commenced. FACS is also receiving more complaints. I believe this is a good thing and it is because we have been asking more questions and following up.
56. FACS could deliver most services through very large organisations if it chose to but larger organisations are less likely to know what is happening on the ground in specific communities. So for FACS it is a real trade off – Boards of small organisations do not have the sophistication of Boards of big organisations but they do have community knowledge and a lot of heart.
57. FACS will progressively implement the ‘Guidelines for engagement with NSW human services non-government organisations’ which is coming into effect on 1 August 2017.



Signature _____

Witness  _____

STATEMENT IN THE MATTER OF: Operation Tarlo
NAME: Ms Eleri Morgan-Thomas

58. In relation to the District structure, FACS has had to reduce the numbers of staff at the District level and we are reducing the number of contract managers at the same time as we introducing more complex, performance based contracts. FACS is funding 800 NGOs with a higher number of PLAs under them. This presents challenges for ongoing contract management and FACS needs to be more proportionate and risk based in contract management in identifying and targeting where FACS and its clients are most exposed.
59. FACS also needs to be responsive to new client needs and to do so within budgetary constraints provided by the NSW Government.


Signature _____

Witness  _____

[The page contains a large, faint, and mostly illegible watermark or bleed-through from the reverse side. The text is mirrored and difficult to decipher, but appears to be a formal document or letter.]

Department of Family & Community Services: Community Services**Policy on Responding to Complaints about Funded Services****Purpose:**

The purpose of this statement is to guide the responses that Community Services' staff make to complaints about funded services. Two groups of Community Services staff are closely associated with this policy:-

- » Staff of the Complaints Unit at Helpline, and
- » Staff who administer Community Services' relationship with funded services.

Scope:

Community Services funds a range of organisations to provide services on its behalf. Because NGOs form the bulk of Community Services-funded service providers, this statement is framed in terms applicable to NGOs. It is intended that the same principles be applied to complaints about services provided by local councils and NSW Government agencies on behalf of Community Services.

The complaints that Community Services receives about funded services are generally about:-

- » Access to services
- » The behaviour or actions of service provider staff
- » Decisions taken by the service provider's governing body, or
- » Concern about some aspect of the funded service's internal workings.

This policy does not cover complaints about the actions (or inaction) of Community Services funding staff, or Community Services decisions. Complaints about the actions of Community Services staff are dealt with under current general complaints policy and procedures. Complaints about decisions to fund, or not fund, an organisation that has applied for Community Services funds under a tender will be handled separately and according to the State Government's *Code of Practice for Procurement*.

Where a complaint about a funded service includes (or reveals) information that a child or young person may be at risk of serious harm, the Community Services staff who receive the complaint will refer this information to the Child Protection Helpline as a matter of urgency so that it can be appropriately followed up.

It is acknowledged that some complaints cannot be remedied to the satisfaction of the complainant even after considerable time and effort have been devoted to this task. This means that some complaints will result in a decision by the complaints-handling body to end formal processing of a complaint despite the complainants continuing dissatisfaction with the outcome.

Policy:**Principle One-**

Service providers are autonomous organisations and have primary responsibility for responding to complaints about the services they provide using Community Services funding

Application of the Principle:

- Community Services' relationship with the organisations it funds is governed by the standard service agreement. This imposes requirements on service providers, including the requirement to have "an effective complaints mechanism" (Service Agreement 2011-12, section 4.5(d))¹. The purpose of this requirement is to ensure that service providers are able to effectively receive and resolve complaints about the services they have been funded to provide. It also empowers Community Services to intervene when there is evidence that a service provider's complaints process may not be effective.
- The service provider – specifically the board of management – has primary responsibility for investigating complaints about the organisation. This includes complaints about the services that the service provider has been funded to provide, the behaviour of the service provider's employees, the decisions of the board of management, and so on.
- When Community Services receives a complaint about a funded service, the initial response will be to refer the complainant to the service provider's complaints process, if it appears that this has not already been done.
- Separate from the requirement established by the standard Community Services service agreement, service providers are required under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to enable complaints about their services to be dealt with fairly, informally, quickly and at a place that is convenient for the complainant.

Principle Two:

Community Services will only become involved in a complaint about a funded service in certain circumstances. The form, and degree of involvement will vary according to the circumstances

A - The funded service does not appear to have a complaints process for its services

Action: In these cases, funding staff will contact the service to enquire about the arrangements it has established for handling complaints. They will assist the funded service to establish the effective complaints process they are required to have under the Service Agreement, and they will assist the complainant to make contact with this process. They will not investigate the substance of such complaints.

¹ The essential features of 'an effective complaints mechanism' are described in the NSW Ombudsman's publication *Effective Complaint Handling Guidelines* (2nd edition, December 2010) pp5-12.

B – The funded service does not appear to have processed the complaint according to its stated complaints policy

Action: In these cases, funding staff will contact the service to enquire about the handling of the complaint. They will take steps to make sure that the service provider considers the complaint and they will report on these enquiries to the complainant, but will not investigate the substance of such complaints.

C - The funded service appears not to have addressed the substance of the complaint

Action: In these cases, funding staff will contact the service to enquire about the handling of the complaint. They will take steps to make sure that the service provider considers the issue the complainant wishes to have dealt with and they will report on these enquiries to the complainant, but will not investigate the substance of such complaints.

Summary: The interventions that funding staff make in the circumstances described in A, B and C above are geared to supporting funded services to establish and maintain the effective complaints mechanism they are required to have under their service agreement with Community Services.

D – The funded service is accused of denying a client access to its services or of providing insufficient service

Action: In some of the programs that Community Services administers, client eligibility for the service (or the operation of the funded service's intake process) will have been explicitly agreed between Community Services and the service provider. In these cases, funding staff will contact the funded service to enquire about this instance of refused service. They will also report on this enquiry to the complainant.

In other Community Services programs, client eligibility is a matter for the service provider. In these cases, Community Services cannot oblige the funded service to provide the service requested. Funding staff will inform the complainant accordingly. They will also encourage the service provider to inform the complainant of the reasons for this refusal of service.

Community Services' agreements with service providers provide for a given level of service to be delivered by the service provider. There may be circumstances in which a service provider has been obliged to refuse or end service delivery because the funded maximum has been reached.

E – The complaint explicitly alleges fraud, corruption or other serious misconduct involving one or more members of the service provider's board of management

Action: In these cases, it would be inappropriate for the service provider's board of management to investigate the allegations and Community Services will undertake this task. The focus of inquiry by funding staff is whether there is any substance to these allegations and whether the issue has the potential to disrupt delivery of the funded service.

The interventions that funding staff make in the circumstances described in E above will be in line with the Community Services policy: *'Responding to Fraud in Community Services Funded Services'* (2007). It is not the role of Community Services to

investigate to establish evidence for possible criminal prosecution of fraud/corruption or other criminal matters. The role of funding staff is:-

- » To report the suspected fraud to the relevant authorities and to the Business Assurance Unit at Head Office and to provide accurate information to these agencies/units on request;
- » To act as witnesses in the event of court action; and
- » To act as the contact between Community Services and the investigating authority(ies).

Application of the Principle:

- It is common for a complaint about a funded service to include a combination of allegations. In managing complaints, staff must address each distinct 'strand' of complaint, with priority going to the most serious allegations.
- Where Community Services becomes involved in dealing with a complaint about a funded service, responsibility for action rests initially with the Community Services staff who administer the relevant service agreement or service specification. If, on examination, the issues appear to extend beyond the parameters of the particular service agreement or service specification, Community Services funding staff will seek the involvement of other, relevant, Community Services units through line management.
- It may be appropriate to involve other government agencies that fund the service or the service provider that is the subject of complaint. The appropriateness of sharing information about the complaint or Community Services' actions in response to the complaint will be determined by the relevant Regional Director or Head Office executive. In these circumstances, the principles contained in the *FaCS Information-sharing Protocol for Human Services*, 2010, should be applied.

Principle Three:

Community Services will not become involved in complaints about issues that lie outside Community Services' area of responsibility

Application of the Principle:

- Community Services' relationship with the organisations it funds is governed by the standard service agreement. Community Services will not become involved with complaints about issues that lie outside the scope of this agreement.
- This means that complaints about a service provider's internal management practices, including industrial relations matters and human resource issues such as recruitment, grievances, bullying, payroll, payment of redundancies, and so on will not be investigated by Community Services. Complainants will be advised to take these issues up with their employer in the first instance, using internal processes for managing grievances, workplace safety, and so on.
- If a complainant reports that they have exhausted all internal processes for resolving complaints about internal management practices, Community Services will inform the complainant about complaints processes administered by relevant authorities such as Workcover (workplace health and safety issues), the Anti-discrimination Board (workplace discrimination), or professional bodies.

- Community Services has a legitimate interest in assisting service providers to resolve industrial relations and human resource management issues that have a demonstrated impact on delivery of the funded service to clients. Community Services funding managers will become involved in these issues at their discretion².

The role of the NSW Ombudsman

Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the NSW Ombudsman has sector-wide responsibilities for complaints about the provision of community services. In summary, these responsibilities are:-

- » To consider complaints about the provision of, or failure to provide, a community service or about the withdrawal, variation or administration of a community service;
- » To review the complaint handling systems of service providers; and
- » To provide information, education and training in relation to complaint handling in the community services sector.

It is appropriate for Community Services staff to inform complainants that they have the right to involve the Ombudsman in any complaint matter involving community services.

The Ombudsman's role does not absolve Community Services of its responsibility under the standard service agreement to ensure that service providers have an effective complaints process. Community Services will therefore not initiate involvement of the Ombudsman in resolution of complaints it receives about funded services.

Community Services will not become involved in complaints that are the subject of action by the Ombudsman unless requested to do so by the Ombudsman.

² This involvement may be limited to provision of information, and need not extend to providing advice or an opinion, or recommending a course of action.

