

Message from the Ombudsman

‘The Transport Accident and WorkCover Unit continues to encourage effective networks throughout the TAC and WorkCover industries. Through these relationships I aim to improve responses to my enquiries as well as timely complaint resolution. This edition builds on these themes and provides advice on how to respond to my enquiries and assist me to improve administrative practices.’

– G E Brouwer, Ombudsman.

Visiting you

In the last quarter, this office met with the TAC, VWA, ACCS, WorkCover Assist and several WorkCover agents.

The purpose of these visits was to share information, to conduct general discussions and enquire about specific complaints. On some occasions these meetings included themes identified in the allegations made to this office and themes identified in the handling of complaints by the respondents.

The respondents also provided valuable information about changes in their organisations and new service delivery initiatives. These meetings are constructive and so this office will continue this strategy .

Complaint assessment at OV

When OV makes an assessment of a complaint generally speaking we would expect the complainant to demonstrate that the agency complained about has first been given the opportunity to resolve the complaint. This does not apply to a person making a disclosure under the Whistleblowers Protection Act.

This practice is to:

- ◆ avoid premature investigations by OV when the agency is already considering the complaint, and
- ◆ avoid duplication of effort when the agency responds to the complainant and to this office at the same time.

There are times when the complainant has not been through the agency’s complaint handling process but the Ombudsman will investigate. For example, where:

- ◆ it is one of a number of similar allegations and the Ombudsman sees merit in initiating enquiries and investigations immediately;
- ◆ it is a recurring issue and the Ombudsman has concerns about the agency’s handling of such matters;



- ◆ it is a serious issue and the Ombudsman has concerns about retention of evidence or the agent's capacity to deal with it adequately;
- ◆ there are security issues regarding a witness or group of people; or
- ◆ the complainant requires assistance with access to a complaints handling process.

The Ombudsman will consider the allegations made but may also be interested in the way a complaint has been handled by a respondent. Complaint-handling is an important indicator of the administrative health of an organisation, in that an ability to respond positively to complaints indicates that the agency is interested in improving decision making and administration.

Highlighted below, are some of the key aspects of good complaint-handling and a list of some useful considerations titled 'Checks'.

Accessibility

All agencies should have written procedures to handle complaints and this policy needs to be easily available to staff and to people who wish to make a complaint. The process should encourage officers to speak to complainants directly and respond in writing. This allows the allegations to be clarified, assists complainants to understand the outcomes and may prevent further escalation of a complaint.

Checks

- √ Are the contact details for making a complaint on your websites?
These contacts should include a dedicated phone number (toll-free where possible), email address and facsimile number.
- √ Is the website information on how to make a complaint easy to find?
To test, ask someone outside your organisation to find this.
- √ How are complainants with special needs assisted?
Consider people with hearing, visual or speech impairment or those with literacy problems or English language difficulties.

Responses to complainants

To build trust into the complaints-handling process complaints should be handled by someone independent of the original decision or action. Responses should set out specific details of the complaint and address each of the allegations.

Not responding in full to a complaint will often mean that the complainant will become more concerned with the decision making process. They may ignore the responses you have provided and now only focus on what you have left out. They may become more dissatisfied and more frustrated and will often write again or escalate the complaint. This will in turn generate more work for you.

A timely response is also more likely to lead to a resolution which the complainant will accept. Providing a delayed response with an outcome the complainant is not satisfied with only exacerbates the complainant's dissatisfaction, building mistrust and it may be a reason a complaint is escalated.

Providing a written response to a complainant assists their understanding and cooperation when further action is required. A written response is also essential when you are aware that the complainant will remain dissatisfied. This provides clarification, may assist understanding and again it may prevent escalation of the complaint.

Checks

- ✓ Were the allegations confirmed with the complainant at the start?
- ✓ Does the complainant know what to expect from your intervention?
- ✓ Have you informed the complainant of their responsibility? Such as providing complete and timely information.
- ✓ Is the person handling and responding to the complaint independent from the original process?
- ✓ Has the complainant been kept update to date during a lengthy process?
- ✓ If there has been a delay, has the complainant received an apology?
- ✓ Have you answered all the allegations raised?
- ✓ Ask 'If I were the complainant would I be satisfied with this response?'
- ✓ Is this a complex/sensitive matter and if so should a colleague review the response before finalising?

Working with the Ombudsman

The Mission

Independently investigate, review and resolve complaints concerning administrative actions of state government departments, local councils and statutory authorities; to report the results to complainants and agencies; to report to Parliament; to improve accountability; and to promote fair and reasonable public administration.

When enquiries are made by this office, the responses should set out specific details of the complaint and be checked by a colleague to ensure that all matters have been addressed. A chronology of actions can be useful for the more complex matters and supporting documents are expected to be provided. A thorough and quick response is best for all parties and so if you are unclear regarding the allegations or how to respond, this office encourages telephone contact to clarify the matter.

The following considerations may reduce the need for the Ombudsman making further contact with you.



Checks

- √ Have all the questions asked by the Ombudsman been answered?
- √ Have documents that support or are referred to in the advice been provided? For example, correspondence or policies.
- √ Does the response include the actions been or being taken or suggested methods of resolving the complaint if appropriate?
- √ Does the response include additional information that will assist the Ombudsman to make an assessment?

Long tail and complex claims

It appears that the longer the relationship an injured person has with their insurer the more likely contention occurs. Considering the types of complaints received by the Ombudsman, there appears to be two clear drivers for this. Firstly, the greater the number of interactions the greater the chance that an error occurs or expectations are not met. Secondly, there is a cumulative effect. One small issue may go by without a reaction but a number of small issues may generate increasing dissatisfaction over time.

Poor handling of claims and complaints can be costly to the schemes, may hinder the recovery of an injured worker and may result in mistrust.

There are times that a person raises the same complaint repeatedly. It is inefficient to continue to respond to the same complaint or to have many lengthy interchanges. Once you are satisfied that there are no new allegations, you may want to inform the complainant that the matters raised have been responded to in the past providing copies of the relevant correspondence and ensure that the complainant is aware of any other avenues he/she may pursue.

If a decision has been made to change the way you will receive or respond to a complainant's contact, they must be informed. For example, if phone calls with one complainant are frequent, long and confusing you may want all complaints to be in writing. This direction should be clarified in a letter to the complainant .

In addition to the key aspects for handling complaints detailed above, you may find the following considerations useful when managing claims and complaints. These are based on this office's observations made during enquiries and investigations conducted.

Managing claims

- ◆ Determine the early indicators which may identify potential long tail and complex claims. Consider injury types, pre-morbid health, type of work, number of claims, conflicting medical opinions, language and cultural barriers and whether someone acts on behalf of the claimant. Appropriate service delivery interventions can then be planned over the life of the claim.

- ◆ Irrespective of the age or complexity of the claim, provide a consistent approach to service delivery and access to entitlements.
- ◆ If you are to review an injured person's entitlements intermittently over the years, inform them of each review and what to expect.
- ◆ An injured person must be consulted during a review.
- ◆ Documenting all contacts with a claimant provides a better opportunity to clarify past events. This is vital when a contact may be used as part of a decision making process.

Complaint-handling

The following tips are based on OV's experience handling complaints for over 30 years:

- ◆ Promote centralisation across your business. Narrow the entry of complaints into your business and centralise their handling. This will assist service delivery in complaints handling and ensure the complainant receives a consistent response. It also allows valuable complaints data to be collected.
- ◆ When there is one complainant with multiple issues, centralise the responsibility for all the responses to one complaint officer. This encourages more efficient and consistent management particularly for the interrelated complaints and matters which may return.
- ◆ Centralising complaints to a team and multiple complaints to an officer minimises the complainant's ability to search for different responses from elsewhere in the business.
- ◆ Irrespective of the number of times a person has complained in the past, you should provide a consistent approach to complaint-handling.
- ◆ Irrespective of how difficult a person's behaviour becomes over time, they may still have a valid complaint which requires a response.
- ◆ Irrespective of the number of complaints or the age of the claim, you should maintain a neutral, even-tempered approach and demonstrate respect for the complainant.
- ◆ Provide timely and full responses to the allegations made.
- ◆ Provide a written response with full reasons for the position taken.
- ◆ Inform the complainant what they can do if they remain dissatisfied.
- ◆ If there was an error, correct it promptly and apologise.

Case study

Vocational assessment

A person injured in 1991 contacted the Ombudsman complaining about the failure of the respondent to consult him as part of a vocational assessment which resulted in cessation of entitlements. A vocational assessment was completed in 2004 which concluded that the injured person had no capacity to work. One year later the respondent organised a 'desk top' vocational assessment. That is, the injured worker was not consulted during this process. The respondent agency informed this office that the policy did not require an injured person to be consulted and exclusion of an interview with the injured person does not make the final report invalid. The complainant alleged that the respondent was simply looking for a preferred outcome which would benefit them.

This process is not fair and transparent. Consulting an injured person allows the decision maker to take a balanced and well informed position, ensures a transparent process and may preserve trust. For example, the injured person can provide information which is not otherwise available from any other sources.

In the same case the respondent agency informed this office that the injured person should have been consulted and that the practice has since changed. Now all injured people are consulted as part of a vocational assessment.

The respondent agency could have improved the claims management and complaints handling process in this case. There was an opportunity to think beyond legislative and policy requirements and to consider the principles of good decision making. Consulting the injured person would have been fair and the process would therefore have been transparent. As the respondent agency recognised that the injured person should have been consulted, apologising and explaining the new practice may have assisted in resolving the complainant's concerns .

Complaints update

Examples of allegations received in the previous quarter included:

- ◆ unreasonable requests to attend medical exams
- ◆ failure to respond to FOI requests
- ◆ failure to locate all documents or provide a list of existing documents
- ◆ significant delay in the payment of medico legal reports, and
- ◆ failure to implement agreed actions following conciliation.

Future editions and contact details

We welcome enquiries about this publication. The purpose is to provide you with information that can assist you in your roles and your relationship with OV.

Comments and recommendations for future editions can be forwarded to joanna.carden@ombudsman.vic.gov.au

Complaints can be directed to:
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