

Fact sheet 10

Ombudsman reports and adverse comments

Before the Ombudsman finalises any report that contains adverse comments about a person, she provides that person with a copy of the relevant parts of the draft report. This requirement is set out in section 25A(2) of the *Ombudsman Act 1973* (the Act) which states:

If the Ombudsman intends to include in a report under this Act a comment or opinion that is adverse to any person, the Ombudsman must first give the person a reasonable opportunity to respond to the adverse material and fairly set out the response in the report.

In some cases, some of the report may be blacked out or blank. This is because you are only able to view the sections of the report that directly relate to you.

You now have the opportunity to provide a written response. Your response will be considered by the Ombudsman and any defence will be fairly set out in the final report. The Ombudsman may also decide to vary, amend or omit a section of the report in light of your response.

Can a legal advisor provide advice about responding to adverse comments?

Yes, you have the right to seek legal advice in relation to a draft report or part thereof. The Ombudsman does however have the authority to direct you not to seek advice/representation from a particular legal practitioner if the Ombudsman considers the involvement of that practitioner may prejudice certain investigations and proceedings. Therefore, prior to engaging a legal practitioner you should notify the Ombudsman's office of the name of the practitioner you propose to consult. Should the Ombudsman consider that your nominated legal practitioner is not appropriate you will still be able to obtain legal advice, however you will be required to nominate another legal practitioner. Under the Act you will be given at least three working days to nominate an alternative legal practitioner.

When making your response, you should be aware of the obligation not to make any statement which you know to be false or which may, in any way, mislead the Ombudsman. If you are found guilty of having done so, you may be imprisoned for 12 months, receive a \$1,000 fine or both (sections 22 and 30 of the Act).

Please note: This document is intended as a guide only. For this reason the information contained herein should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Victorian Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to www.legislation.vic.gov.au.

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