

Fact sheet 7

Powers of the Ombudsman under the *Ombudsman Act 1973*

The Ombudsman has jurisdiction over more than 1000 Victorian public bodies, including government departments, statutory authorities, specified entities, professional boards, councils, universities and government schools, prisons (including private prisons) and authorised officers on public transport, as well as those acting on behalf of a public body.

The Ombudsman is able to access information and deal with matters through a co-operative approach or by using her formal powers. These extensive powers allow the Ombudsman to summons any person who may have information relevant to an investigation, including Members of Parliament, senior public servants, councillors and any other person who can give evidence.

Parliamentary referrals

The Ombudsman must investigate any matter referred by Parliament, other than a matter concerning judicial proceedings. A referral may be made by either of the Houses of Parliament or by a parliamentary committee.

Referrals from the Independent Broad-based Anti-corruption Commission (IBAC)

The Ombudsman can investigate complaints or other matters referred to her by IBAC, including a matter that involves corrupt conduct if it is referred to the Ombudsman by IBAC, including protected disclosure.

Investigations

The Ombudsman may use the following powers when she conducts an investigation:

- summons witnesses, require the production of documents and take evidence under oath or affirmation
- issue a summons to obtain and protect evidence, including CCTV footage and computer records
- obtain information from such persons and in such manner as she thinks fit - there is no obligation to hold a hearing
- enter the premises of an authority to inspect the premises or anything in them
- in relation to the Crown, override certain privileges which usually protect disclosure of information
- conduct her investigations in private and regulate her investigatory procedures as she thinks fit
- issue a confidentiality notice to any person prohibiting them from disclosing specified information relating to an investigation to other parties.

It is an offence to:

- wilfully obstruct, hinder or resist the Ombudsman
- refuse or wilfully fail to comply with her lawful requirements

- fail to attend or produce any documents when summonsed
- wilfully make a false or misleading statement.

Own Motion investigations

The Ombudsman can investigate matters without having received a complaint using her 'own motion' power under the Ombudsman Act. This allows the Ombudsman to investigate systemic issues.

The Ombudsman can also use this provision to investigate matters where the person affected cannot act on their own behalf, such as in the case reported in the Ombudsman's March 2011 Investigation, *Assault of a Disability Services Client by Department of Human Services Staff*. See *Fact Sheet 6* for more information on own motion enquiries and investigations.

Conclusions that the Ombudsman can reach

The Ombudsman can consider the broader issues arising from an investigation and is not limited to considering the procedural or legal correctness of an administrative action. Section 23(1) of the Ombudsman Act provides that she can conclude and report when she is of the opinion that the administrative action is:

- taken contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- taken in accordance with a law or practice that is unreasonable, unjust, oppressive or improperly discriminatory
- taken for an improper purpose or on irrelevant grounds
- a decision for which reasons should have, but were not, given
- based wholly or partly on a mistake of law or fact
- wrong.

The Ombudsman may also form an opinion about and report on the conduct of a person as a result of investigating a protected disclosure complaint.

In certain circumstances the Ombudsman may decide to discontinue an investigation.

Reporting

When an investigation is finalised, the Ombudsman:

- must provide a report to the relevant agency and to the relevant Minister
- may provide a copy of a report to the Premier
- can present her report to Parliament.

Making recommendations

If the Ombudsman forms an opinion of deficiency or error in public administration as a result of an investigation she can recommend that steps be taken to remedy, mitigate or otherwise address the cause or effect.

Monitoring of the Ombudsman's use of powers

The Ombudsman is required to report to the Victorian Inspectorate and/or provide copies of documents or materials when exercising certain powers of compulsion and restriction, for example:

- the issue of a summons
- where she gives direction to a person in relation to a summons or interview under oath or affirmation that they cannot be represented by a particular legal practitioner
- where interviews are conducted under oath or affirmation and/or as a result of a summons
- the issue, cancellation, or extension of a confidentiality notice.

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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