

## Fact sheet 5

## Investigations and Section 15B of the *Ombudsman Act 1973*

### Difference between enquiries and investigations

Not all complaints to the Victorian Ombudsman (VO) warrant an investigation. Section 13A of the *Ombudsman Act 1973* allows VO to conduct enquiries to:

- determine whether a matter may be resolved informally
- determine whether a complaint needs to be formally investigated

The 'informal resolution' process is used in dealing with the majority of complaints. In this process, VO may ask public bodies to provide information or assistance to resolve the matter informally. Public bodies must assist when VO is conducting an enquiry. (See *Fact Sheet 3* and *Fact Sheet 4* for further information.)

### Section 15B – Investigation of complaints

Section 15B of the Ombudsman Act states that: "...the Ombudsman may conduct an investigation under this Act on a complaint."

### Powers during a formal investigation

The Ombudsman generally relies on the co-operation of public bodies and witnesses when conducting investigations. For example when inviting a witness to attend for interview or seeking the assistance of a public body in providing documents.

In some instances however, it may be prudent for the Ombudsman to use the coercive powers available to her under the Ombudsman Act to compel a witness or a public body to assist her investigation.

Listed below are examples of the coercive powers available to the Ombudsman along with some of the processes associated with an Ombudsman investigation:

- The Ombudsman may summons witnesses, require the production of documents and take evidence under oath or affirmation. The provisions of sections 17, 18, 19, 20 and 20A of the *Evidence (Miscellaneous Provisions) Act 1958*, as in force immediately before their repeal, apply to Ombudsman investigations..
- Investigations are conducted in private. The Ombudsman or her delegates may conduct an investigation in such manner as deemed fit.
- For the purposes of an investigation, the Ombudsman is able to override certain privileges and secrecy obligations which would usually protect disclosure of information.
- The Ombudsman or her delegates may enter an authority's premises to inspect the premises or anything therein.
- It is an offence to obstruct the Ombudsman or her delegates.

In certain circumstances the Ombudsman may decide to discontinue an investigation. When this occurs, the Ombudsman will inform relevant parties of the decision.

## Interviews

The aim of an interview is to obtain first-hand information about the issue to assist an investigation. The fact that officers of a department or other persons are interviewed does not necessarily imply that their conduct is in question, even where the complaint is about the conduct of an individual officer.

No conclusions are made at the time of the interview.

## Completion of a formal investigation

Before the conclusions of an investigation are finalised a number of things may occur.

Where the Ombudsman's draft report of an investigation includes comments that may be adverse to an individual or public body, the relevant sections of the draft report are provided to the person or public body to give them the opportunity to respond. The Ombudsman is required to fairly set out the person's or public body's response to her adverse comments in her final report.

When the report is finalised the Ombudsman:

- must provide the report to the head of the relevant public body
- can table the report in Parliament making it a public document.

The Ombudsman must provide a copy of her report to the relevant Minister and may also provide a copy to the Premier.

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