

# POLICY

## Recommendations and proposals

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## POLICY STATEMENT

As a result of an enquiry or investigation process, the Ombudsman may suggest that Victorian state government departments, agencies or local councils (and those acting on behalf of these bodies) take action to improve public administration by making recommendations or proposals.

The Ombudsman may also comment on a matter to highlight and draw attention to an issue of interest or concern.

In making a recommendation or proposal, the Ombudsman may seek to address the root cause of an error or to remedy or mitigate its effect to prevent similar errors from occurring in the future, or to instigate broader change aimed at improving public administration. The Ombudsman makes recommendations and proposals that are proportionate and practical in responding to the issue.

The Ombudsman also seeks to enquire into the implementation of the recommendations or proposals by state government departments, agencies or local councils.

## PURPOSE OF RECOMMENDATIONS, PROPOSALS AND COMMENTS

1. The Ombudsman's ability to make suggestions to an authority to remedy, mitigate or otherwise deal with the cause or effect of a deficient action or decision, or improper conduct, provides a practical mechanism to address deficiencies and errors in public administration. This process supports the continual improvement of government services to the public.
2. When formulating a recommendation or proposal, or when commenting on a matter, we may take into account the outcome desired by the complainant, future and current activities that may address the issue at hand and what can realistically be achieved by the authority concerned. Ultimately, we seek to make recommendations and proposals that are fair, proportionate, effective and in the public interest.
3. VO provides suggestions for administrative improvement by making:
  - 3.1. **recommendations** that address deficiency or error in public administration, or address improper conduct involving a public body or public officer, on completing an investigation

- 3.2. informal **proposals** that an authority take further action to resolve a matter in the course of conducting enquiries
  - 3.3. **comment** on matters that would benefit from further attention, as identified in the performance of our statutory functions.
4. Generally, we will provide a recommendation, proposal or comment to the authority concerned first, and give the authority an opportunity to respond. We will consider the authority's response before finalising our enquiry or investigation.
  5. When making a recommendation, proposal or comment, we usually ask the authority concerned to report back on and provide evidence of its implementation (Ombudsman Act, sections 23(4) and 13A).
  6. We will inform the complainant or discloser of a recommendation, proposal or comment made as a result of an investigation or enquiries and, where known, the outcome (Ombudsman Act, sections 24 and 13B, noting exceptions).

## RECOMMENDATIONS ON COMPLETION OF AN INVESTIGATION

7. The Ombudsman may make recommendations (Ombudsman Act, section 23(2)) on forming an opinion that an authority appears to have acted in error (Ombudsman Act, section 23(1)) and that:
  - the subject matter of the investigation should be referred to the appropriate authority for consideration
  - action could be, and should be, taken to rectify, mitigate or alter the effects of the error
  - any practice deemed to have contributed to, or caused, an error should be varied
  - a law, which applied is deemed to have contributed to, or caused, an error, should be reconsidered
  - reasons should be provided for the actions concerned
  - any other steps should be taken.
8. The Ombudsman may also make recommendations as a result of completing an investigation of a protected disclosure complaint (Ombudsman Act, section 23(2A)(b)).
9. Where the Ombudsman has made recommendations and considers that no appropriate steps have been taken within a reasonable time, the Ombudsman may send the investigation report, recommendations and any additional comment to

the Governor in Council and, where the investigation relates to a council or councillor, to the relevant Mayor (Ombudsman Act, section 23(5)). When this occurs, VO may also report to the Parliament on the matter.

## PROPOSALS DURING ENQUIRIES

10. When conducting enquiries (Ombudsman Act, section 13A), VO may ask an authority to take a particular course of action where doing so is likely to result in the matter being informally resolved without the need to commence an investigation. For example, we may propose that the authority:

- respond to the complainant if they have not done so within a reasonable time or where we consider a prior response is inadequate
- devise and implement its own solution to an issue or dispute
- undertake further action to remedy a potential error or deficiency (for example, by reconsidering its decision, offering an apology or changing a practice)
- report back to us on an issue that we consider requires ongoing monitoring.

11. Proposals made during enquiries may take any form deemed appropriate and may be made in writing, during a meeting or by telephone. In general:

- 11.1. a proposal that is complex, wide reaching or requires significant action or consideration by the authority concerned will be made in writing to a senior officer of the authority
- 11.2. a proposal that is relatively straightforward to implement will be made verbally.

12. If an authority rejects a proposal or does not implement a proposal within a reasonable time, we may take further action. For example, we may make more exhaustive enquiries and further proposals or commence a formal investigation (see our policy on 'Investigations').

## COMMENTING ON AN ISSUE

13. VO may provide comment on a particular action, decision or practice to the authority concerned to highlight an issue and provide the authority an opportunity to review or reconsider its approach, or to provide its own proposal for identifying the issue, without suggesting that it take specific action.

14. We may comment on a matter that comes to light during the performance of any of our statutory functions.

## PROCEDURAL FAIRNESS

15.If we report on a recommendation, proposal or comment that involves material that may be adverse to a person or body, we will provide the person or body an opportunity to respond to the material and fairly set out their response in the report.

## EVALUATING EFFECTIVENESS OF RECOMMENDATIONS

16.While VO does not have the legislative power to enforce the implementation of recommendations or proposals, we do monitor the acceptance, implementation and outcomes of recommendations, proposals and comments made to authorities.

17.This data is analysed to evaluate the effectiveness of individual recommendations and to identify systemic issues affecting individual authorities, sectors or all of government.

VO may publish information on the acceptance and implementation of recommendations and proposals in our annual report (Ombudsman Act, section 25(1)) or at any other time in a special report tabled in parliament (Ombudsman Act, section 25(2)).

## ROLES AND RESPONSIBILITIES

Role	Responsibility
<b>Assistant Ombudsman, Portfolios &amp; Administrative Improvement</b>	<i>Owner</i> – Accountable for ensuring the drafting, maintaining and seeking authorisation of the policy and standards from a suitable Senior Leadership Committee.
<b>Manager, Human Rights Portfolio</b>	<i>Charter compliance</i> – Responsible for checking compatibility of the policy with the human rights protected by the <i>Charter of Human Rights and Responsibilities 2006</i> .
<b>Governance Committee</b>	<i>Authorisation</i> – Authorises, leads, monitors and reports on information management activities.
<b>All staff, contractors and third parties</b>	<i>Implementation</i> – Responsible for acting in compliance with the policy, standards, procedures and associated documents.

## DOCUMENT MANAGEMENT

### Compliance

VO maintains a compliance management system. Compliance to this policy, including use of information and systems, is subject to regular monitoring and reporting to the Senior Leadership Committee (Governance Committee). For further details on compliance checks please refer to the compliance management system.

### Document approval

This document was approved by the Governance Committee on 21 December 2016.

### Document review

This document is due for review upon major changes or three years from the date of the last review.

### Document control

Version	Date	Section	Brief Description of Change
<b>0.1</b>	21/12/2016	All	Policy approved by the Executive Committee
<b>0.2</b>	28/2/2017	All	Policy content transferred to new template

## APPENDIX A: Related documents

Title	Location
<i>Ombudsman Act 1973</i>	<a href="#"><u><i>Ombudsman Act 1973</i></u></a>