

## Fact Sheet 8

# Interviews

### Interviews conducted by the Ombudsman

During an investigation the Ombudsman obtains information from a variety of sources, including through interviewing people. Reasons for interviewing include:

- ascertaining background information
- fact finding
- substantiating or disproving complaints and allegations.

When the Ombudsman determines that people should be interviewed, an Ombudsman delegate will contact interviewees, usually by telephone, and ask them to attend at the Ombudsman's office or an alternative location for an interview. Witnesses will be advised of the nature of the matters they will be asked to provide evidence on prior to the interview, unless the Ombudsman forms the opinion on reasonable grounds that doing so may prejudice the investigation or be contrary to the public interest.

If a person is the subject of a complaint or investigation, the person will be informed prior to any questions being put to them, usually at the time the interview is arranged.

Not all people who are interviewed by the Ombudsman are the subject of a complaint or investigation.

However, if an interviewee provides information during the course of an interview which raises concerns about their own conduct, the interviewee may also become a subject of the investigation.

### Voluntary and compulsory appearances

Prior to the interview the Ombudsman will inform the interviewee whether the appearance is to be on a voluntary or compulsory basis.

#### Voluntary appearances

Most witnesses attend interviews voluntarily. Witnesses involved in a voluntary appearance will not be required to take an oath or affirmation.

If an Ombudsman delegate asks a person to attend a voluntary interview, the person is not required to attend. However, if a person declines to attend voluntarily, the person may be summonsed to appear.

#### Compulsory appearances

Sometimes the Ombudsman will require a witness to give evidence under oath or affirmation. Where evidence is taken under oath or affirmation, the appearance is a compulsory appearance.

The Ombudsman may issue a summons that requires a witness to attend an interview and give evidence and/or produce documents. Where a summons is issued the appearance is a compulsory appearance.

## Powers of the Ombudsman

In addition to the *Ombudsman Act 1973*, sections 17, 18, 19, 20 and 20A of the *Evidence (Miscellaneous Provisions) Act 1958*, as in force immediately before their repeal, apply to the Ombudsman's investigations. These provisions give the Ombudsman power to:

- summons witnesses and/or documents
- examine a person on oath or affirmation
- require witnesses to re-attend without issuing a further summons
- compel interviewees to answer questions or produce documents.

Penalties may apply if interviewees who are summonsed refuse to attend. Penalties may also apply if an interviewee refuses to give evidence under oath or affirmation.

## Confidentiality

The Ombudsman Act provides that investigations are conducted in private.

The Ombudsman may issue an interviewee with a confidentiality notice requiring that confidentiality be maintained over certain information that if disclosed would be, in the Ombudsman's opinion, likely to harm:

- certain investigations
- the safety or reputation of a person
- the fair trial of a person who has been or may be charged with an offence.

The confidentiality notice will contain detailed information about an interviewee's obligations. Failure to comply with a confidentiality notice is an offence and penalties may apply.

Confidentiality notices remain in place until cancelled by the Ombudsman. Cancellation will usually occur at the conclusion of the Ombudsman's investigation, however the notice may be extended in some instances.

If the investigation relates to a protected disclosure complaint under the *Protected Disclosure Act 2012*, it is an offence to disclose certain information about the investigation. The interviewee should contact the Ombudsman's office before disclosing any information about the investigation to another person, other than a legal representative. For information about confidentiality requirements in protected disclosure complaints, refer to Fact Sheet 17 – Confidentiality requirements in relation to protected disclosure matters.

## Legal representation and support persons

An interviewee has the right to seek legal advice from, and be represented by, a lawyer in relation to:

- an enquiry or investigation conducted by the Ombudsman under the Ombudsman Act
- the person's rights, liabilities, obligations and privileges under the Ombudsman Act and the Protected Disclosure Act.

The Ombudsman may direct an interviewee not to seek legal advice or representation from a particular lawyer if the Ombudsman considers on reasonable grounds that an investigation may be prejudiced. In those circumstances, the Ombudsman must allow an interviewee at least three days to obtain representation or advice from another lawyer.

An interviewee who wishes to exercise their right to be represented by a lawyer at interview should contact the Ombudsman's office before the interview and provide the details of their lawyer.

The Ombudsman will generally permit an interviewee to bring a support person with them to an interview, provided that support person does not have any involvement in the matter being investigated. A support person is there to provide a reassuring presence to the interviewee during the interview. The support person may not provide the interviewee with advice, attempt to answer questions on their behalf or otherwise interrupt the interview without the approval of the Ombudsman's delegate. If a support person is attending, the name of that person should also be given to the Ombudsman's office before the interview.

An information sheet is provided to the interviewee before the interview, which includes detailed information regarding the obligations imposed on a person who attends an interview with an Ombudsman delegate. These obligations also apply to any support person or lawyer, including that it is an offence to mislead or obstruct the Ombudsman.

### **Obligation to provide certain information and claims of privilege**

The Ombudsman is able to override most secrecy obligations which can restrict interviewees from providing certain information, such as information subject to a confidentiality agreement signed with an employer. This means an interviewee may be required to produce documents or provide evidence about matters which are otherwise regarded as confidential.

If an interviewee has concerns about providing particular information, they should seek legal advice. They may also discuss their concerns with the Ombudsman's delegate.

If an interviewee wishes to claim a privilege, the interviewee must satisfy the Ombudsman's delegate that the privilege applies to the evidence being sought. For example, a person who wishes to claim the privilege against self-incrimination will need to satisfy the Ombudsman's delegate as to why an answer might expose that person to a civil penalty or conviction for a crime.

### **The interview**

At the beginning of the interview, the Ombudsman's delegate will explain the process involved, including that:

- interviews are voice recorded and may also be video recorded
- where appropriate, interviews are conducted under oath or affirmation
- all questions must be answered by the interviewee truthfully and frankly.

If a question is unclear, interviewees are encouraged to seek clarification during the interview.

## What happens after the interview?

### *Interview recordings*

Where an interview has been conducted under oath or affirmation or as a result of a summons, the Ombudsman is required to provide an interviewee with a copy of the audio or video recording of the interview, and a written transcript of the interview, if one has been prepared – unless she believes on reasonable grounds that doing so may prejudice an investigation under the Ombudsman Act.

Where the Ombudsman decides not to provide an interviewee with a copy of the interview recording, interviewees are able to arrange with the Ombudsman's delegate a time to review the interview recording at the Ombudsman's premises during business hours.

A copy of recordings of voluntary interviews is available on request.

### *Investigation report*

The interview is only one aspect of an investigation. Once an investigation is finalised, a report is prepared. If the report makes any comment adverse to any person, that person will be provided with a copy of the relevant section of the report to respond to, before the report is finalised. Any response provided is taken into account by the Ombudsman, and she is required to fairly set out the person's response in the report.

For further information see *Fact Sheet 10* – Ombudsman reports and adverse comments.

*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](http://www.legislation.vic.gov.au).*

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