

**Information for Ombudsman liaison officers
in public authorities**

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ombudsman VICTORIAN

Introduction

This guide aims to assist 'liaison officers' in public authorities who deal with requests from the Victorian Ombudsman.

Liaison officers have been the key to efficient, productive communication between authorities and the Ombudsman for many years.

By acting as a central contact point for Ombudsman requests, you:

- help us obtain the information we need faster
- provide a source of expertise and advice about the Ombudsman for your colleagues and senior management in your authority
- help resolve matters sooner.

The guide provides information to help you in your role. It explains:

- the different types of work we do
- the types of requests you are likely to receive from us
- how you can help resolve matters sooner
- what you can expect from us
- what to do if you have a question or a problem.

This guide does not provide information for protected disclosure coordinators dealing with disclosures about improper conduct. Protected disclosure coordinators will find references to other information to assist them with their specialist responsibilities on page 10.

Our role

The Victorian Ombudsman is an independent and impartial officer of the Parliament. We do not advocate for members of the public or authorities. We make evidence based decisions and operate in accordance with the *Ombudsman Act 1973*.

A lot of what people know about the Ombudsman is based on the investigation reports we table in Parliament. This is only a fraction of what we do.

The Ombudsman's purpose is to ensure fairness for Victorians in their dealings with the public sector, and to improve public administration.

Our day to day work involves:

- taking complaints from the public about 'administrative actions' by state government departments, statutory authorities and local councils (and some private contractors acting on behalf of those bodies)
- making enquiries and resolving complaints informally where possible
- investigating when needed and making recommendations for change
- examining systemic problems in public administration (these are 'own motion' powers)
- promoting best practice in public administration through good practice guides and education workshops
- sharing complaint information with authorities to improve their administrative practices.

The Ombudsman Act defines 'administrative action' broadly. It can include a decision to grant a permit, a failure to provide a service, formulation of a proposal and the making of a recommendation to a minister.

We look at whether the administrative action is lawful, reasonable and fair. We can also consider whether the action is compatible with Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

Most of our work takes place in private, but the Ombudsman can decide to make our work public in some circumstances.

How we deal with complaints

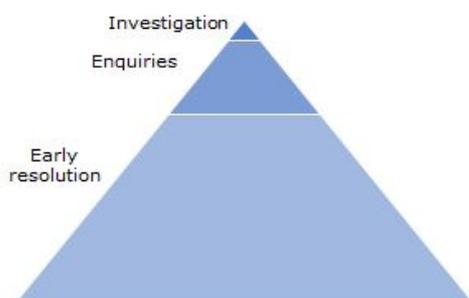
The Victorian Ombudsman does not formally investigate every complaint we receive.

We can deal with complaints in three different ways:

1. early resolution
2. further enquiries
3. investigation

The vast majority of complaints to the Ombudsman are dealt with at the early resolution stage. Other complaints may be informally resolved through further enquiries, with a small number of formal investigations each year.

Figure 1: How we deal with complaints



What happens at the early resolution stage?

Our early resolution team assesses all incoming complaints to the Ombudsman.

They aim to identify and treat straightforward complaints at an early stage, usually by telephone or email, preventing small issues

turning into bigger problems that consume disproportionate resources at our office and your authority.

Our officers may seek your assistance to reach a quick and practical solution. For example, we may make enquiries with you to (Ombudsman Act, section 13A):

- ask your authority to contact the complainant to try to resolve the problem, or
- pass on the complainant's information with their consent, so you can try to address the issue
- facilitate a solution agreeable to you and the complainant e.g. a clearer explanation for your decision, or agreement to reconsider a decision.

Sometimes we decide not to become involved. We have considerable discretion under the Ombudsman Act about how we respond to complaints. Generally speaking, we do not become involved where:

- it is more appropriate for the person to try to resolve the complaint with your authority in the first instance
- the complaint is about terms and conditions of employment
- the person has a right of review or a remedy at a court or tribunal
- the person has waited for more than 12 months before approaching us, without a satisfactory explanation
- there is another specialist body that is better placed to deal with the problem.

These are not hard and fast rules, however, and we look at the circumstances of each case.

What happens at the enquiries stage?

If a complaint requires more detailed consideration, we may make further enquiries under the Ombudsman Act (Ombudsman Act, section 13A).

The purpose of these enquiries is to determine if the complaint can be informally resolved, or if an investigation is warranted.

Our officers may seek further information from the complainant and research publicly available information about laws, policies and programs. They may contact you for information, conduct file inspections or meet with interested parties.

The Ombudsman Act states that your authority's principal officer (i.e. your secretary or the head of your agency) must assist the Ombudsman in the conduct of an enquiry (Ombudsman Act, section 13A(3)).

At the end of this process, we may decide to close the complaint because we are satisfied that your authority has acted lawfully, reasonably and fairly, or there is no practical outcome that can be achieved.

If we think there is a problem but it can be resolved informally, we will contact you to explore ways to fix the problem.

In more complex cases, we may write to the head of your authority or

a senior manager, or request a meeting with officers to try to find a solution.

Alternatively, the Ombudsman may decide to proceed to a formal investigation. The Ombudsman has broad discretion to decide when to investigate. An investigation is more likely where an authority's administrative action:

- extends beyond the interests of the complainant and affects other people or the wider community
- has occurred on numerous occasions before without remedy
- is likely to arise again
- is serious
- resulted in significant personal loss or detriment
- could lead to recommendations for meaningful outcomes for the complainant or improvements to public administration.

What happens in an investigation?

The purpose of an Ombudsman investigation is to establish whether an authority's administrative action involves one of the 'errors' listed in our Act (Ombudsman Act, section 23(1)). For example, the action may:

- appear to have been taken contrary to law
- be unreasonable, unjust, oppressive or improperly discriminatory
- be based on a mistake or law or fact
- be the result of an exercise of a power or discretion and the

authority has taken into account irrelevant considerations, or failed to give reasons

- be wrong.

If the Ombudsman decides to investigate, she notifies your authority's principal officer and responsible minister. In the case of a local council, she also notifies the mayor.

An investigation can involve interviewing witnesses; obtaining documents and information from authorities; conducting research; inviting public submissions; seeking expert advice; conducting site inspections; or meeting with interested parties.

We generally try to obtain information cooperatively, but the Ombudsman Act does give the Ombudsman 'coercive powers' such as the power to summons people or documents.

If the Ombudsman proposes to make any comment that is adverse to any person, she must:

- give the person a copy of the relevant parts of her draft report
- provide a reasonable opportunity for comment
- fairly incorporate the person's response in her report.

At the end of the investigation, the Ombudsman writes to your authority's principal officer, minister and, in the case of a local council, to the mayor. She sets out her opinion and usually makes recommendations.

If the Ombudsman makes recommendations to your authority, we will ask you to keep us informed about any steps you are taking to address them.

The Ombudsman can decide to discontinue an investigation at any time, after taking into account certain considerations.

Internal review

Sometimes complainants disagree with the outcome of their complaint. We give them the opportunity to seek an internal review.

Internal reviews are conducted by senior, experienced officers who were not involved in handling the original complaint. They may seek further information from you to help us determine if our original decision was correct, or if we need to take further action.

Own motion powers

The Ombudsman can also decide to make enquiries or investigate the administrative actions of an authority without receiving a complaint. These are 'own motion' enquiries and investigations (Ombudsman Act, sections 13A and 16A).

These powers are most often used where there is evidence of a systemic problem that extends beyond the interests of one complainant.

An own motion enquiry or investigation can be prompted by a trend in complaints to our office or other information, such as annual reports, media reports, reports by other integrity agencies, or information provided by community groups.

We conduct own motion enquiries and investigations in the same way as enquiries and investigations into complaints.

The types of requests you may receive

When will we contact you?

We will not contact you about every complaint we receive about your authority. You are more likely to hear from us when we:

- think a complaint can be resolved quickly with your assistance
- need information to assess a matter further when conducting enquiries
- need information for an investigation. Even if your authority is not the subject of the investigation, you may still have information that can assist us.
- are seeking information about the steps your authority is taking to implement the Ombudsman's recommendations.

Sometimes we receive information that makes us concerned for a person's health, safety or welfare. We may contact you so your authority can take appropriate action (Ombudsman Act, section 16M(1)(b)).

What will we ask for?

This varies from case to case but commonly includes:

- agreement to take action to resolve clear, simple complaints
- further information or evidence. In some cases, we may simply need background information about a particular case, policy or service. In others, we may ask for specific information and documents.

- help arranging inspections of files or documents at your agency
- help organising visits or meetings
- contact information about authority officers with firsthand knowledge of matters or specialist expertise
- other relevant information that we may not be aware of (e.g. that there are ongoing legal proceedings between your authority and the complainant).

If we have asked officers at your authority to attend interviews during an investigation, we may also refer them to you for general information about our office and their obligations.

Our portfolio teams

We also think it is important that our office and public authorities speak regularly about how we communicate; share information about complaints that can be used to improve public administration; and discuss changes to law, policy or practices that may affect complaints.

The Victorian Ombudsman appoints 'portfolio teams' of officers for each sector of government. They will contact you regularly to discuss these issues.

If you're not sure who the portfolio manager is for your authority, call us on 9613 6222 or (regional areas) 1800 806 314, or email us at ombudvic@ombudsman.vic.gov.au.

How you can help resolve matters sooner

We understand that some officers may feel nervous or even defensive when an external oversight agency like the Ombudsman starts looking at their actions and decisions. We also appreciate that your authority may already have been dealing with a complainant or a problem for some time, and it can be frustrating to revisit the matter when we contact you.

We have a responsibility to assess matters independently, and we value your cooperation so we can do this as quickly as possible.

It helps us resolve matters sooner if you:

- are flexible about how we communicate in simple cases. Dealing with these cases by telephone means a quicker solution for the complainant and better use of resources in your authority and our office.
- answer requests as completely, clearly and accurately as you can. This avoids repeated requests for the same information and helps avoid the matter escalating further.
- provide evidence, such as records, to support your response when asked. This helps us reach evidence based decisions, particularly where a complainant and an authority disagree about the facts.

- respond by the date requested or, if that is not realistic, contact us beforehand to discuss an alternative time. We usually ask authorities to respond to simple requests in one or two business days and more complex requests within 10 business days. In very urgent cases (e.g. if a person's safety is at risk), we may ask you to respond on the same day.
- suggest ways to resolve a complaint if something has gone wrong. This is more likely to result in an achievable solution for your agency and a meaningful outcome for the complainant.
- provide additional information that we may not be aware of.

On a practical note, it also helps if you tell us the name of your replacement when you are planning leave, so we know who to contact while you are away.

What you can expect from us

Our officers will contact you in most cases when we need information from your authority.

There may, however, be some cases where we need to speak to someone else. The complaint may be particularly sensitive, for example, and we may need to speak to your legal area, a protected disclosure coordinator or a more senior officer.

In all cases, we expect our officers to:

- tell your authority whether we are making enquiries or conducting an investigation
- be courteous, professional and impartial
- provide enough information for you to be able to respond properly. We are mindful of complainants' privacy, however. We very rarely give copies of complaints to authorities, and we respect requests from complainants not to disclose their identity and other personal information within reason.
- tell you the outcome of the complaint about your authority in cases where we asked you for information.

Got a question or a problem?

If you have questions about a particular complaint or investigation (e.g. you need more time to respond to a request), contact the officer you have been dealing with in the first instance. If you can't resolve the issue, you can ask to speak to their manager.

Our office's portfolio manager for your agency should be able to help if you would like to discuss:

- general working arrangements between your agency and the Ombudsman
- access to complaint data and trends concerning your agency.

Further information

Legal matters

The Ombudsman Act imposes some obligations on public authorities when dealing with Ombudsman requests.

This guide has already mentioned that your authority's principal officer must assist the Ombudsman in the conduct of an enquiry (Ombudsman Act, section 13A(3)).

The Act also states that it is an offence to (Ombudsman Act, section 22):

- wilfully obstruct, hinder or resist the Ombudsman when exercising her powers
- refuse or wilfully fail to comply with any lawful requirement of the Ombudsman
- wilfully make a statement to the Ombudsman that the person knows to be false or misleading.

Further information

You can find more information about Victorian Ombudsman policies and practices on our website at www.ombudsman.vic.gov.au.

The website also has:

- fact sheets about the powers of the Ombudsman, investigations and our own motion powers
- copies of good practice guides to complaint handling for VPS authorities and local councils
- information about our education workshops for public authorities on topics like good complaint handling and conflict of interest.

Protected disclosure coordinators seeking information about their responsibilities can refer to:

Fact Sheet 19: The role of the Protected Disclosure Coordinator on our website at www.ombudsman.vic.gov.au.

The Independent Broad-based Anti-corruption Commission's website at www.ibac.vic.gov.au.

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