

## Complaint assessment criteria (Public Administration Jurisdiction)

Under the *Ombudsman Act 1974* the Ombudsman has wide discretion in deciding which of the many complaints received about government agencies will be pursued. The following criteria are not definitive, but have been devised as a guide to the exercise of that discretion. In all cases, consideration will also be given to the availability of resources and the public interest.

### A. Complaints given preference

Preference is generally given to complaints identifying:

- systemic (structural or procedural) deficiencies in public administration
- individual cases of serious abuse of powers
- significant public interest issues
- an agency's failure to properly deal with complaints
- issues which, if investigated, are likely to lead to recommendations resulting in significant changes or amendments to law or policies
- significant cross-jurisdictional issues (ie. issues involving or concerning the conduct or policies of two or more agencies or their staff)
- sensitive issues which are unlikely to be (or be seen to be) properly addressed by the agencies concerned (due to such factors as the seniority of the staff the subject of the allegations, conflicts of interest on the part of the agency or its senior staff, significant sensitivity, etc), or
- serious maladministration or detrimental action as defined in the *Public Interest Disclosures Act 1994*.

- are concurrent representations, where the complaint was also sent to a Minister, head of department or other people or agencies who may be able to resolve the problem and their inquiries have not been finalised
- relate to matters where there is an alternative and satisfactory means of redress. This includes internal and external review and appeal mechanisms (ie. a specialist watchdog agency or a tribunal)
- relate to the discharge by an agency of a function which is substantially a trading or commercial function, unless there is evidence that shows the conduct was tainted by a pecuniary interest, conflict of interests, possible corruption or is otherwise manifestly unreasonable
- involve questions of law or legal interpretation requiring judicial determination or a legally enforceable judgement, (ie. dispute over contractual terms, or legal liability for economic loss/damages)
- concern technical and professional judgements (e.g. medical diagnosis, engineering certification, decisions on prison security or university grades) unless evidence is provided that shows or tends to show that the expert judgement was tainted by some form of improper consideration or motive, or is otherwise manifestly unreasonable
- question the merits of decisions made within the lawful exercise of discretion by the agency where there is otherwise little or no evidence of wrong conduct (e.g. the setting of policy on resource allocation or resource priorities, and the adoption of local planning policies)
- concern conduct that occurred at too remote a time so that investigation is either not justified or impractical
- involve a complainant who has no direct interest or an insufficient interest in the matter
- involve allegations there would be no utility in pursuing because:
  - › the consequences of the action cannot be remedied and/or the systems, policies, agencies or personnel responsible have already been changed or no longer exist.
  - › no evidence is available to support the complaint and it appears unlikely that such evidence could be readily obtained,

### B. Complaints that are declined

**Complaints are declined that:**

- are outside jurisdiction
- contain no evidence of maladministration or other wrong conduct on the part of the agency or public officials concerned
- are frivolous, vexatious, not in good faith or raise trivial matters

**Unless factors described in A or C are present, complaints will generally be declined that:**

- are premature (ie. the complainant has not taken the matter up with the agency concerned or has not pursued it through the internal resolution/appeal mechanisms available)

# Complaint assessment criteria

- › the complaint is derived from the complainant's interpretation of actions or events and there is no independent evidence supporting that interpretation over other possible interpretations, or likelihood of obtaining such evidence
- › it involves minor misconduct which is likely to be an isolated error, or which the agency has already taken adequate steps to remedy, (e.g. customer service issues where an apology or training has been provided)
- › the matter has already been reviewed by the ICAC, Division of Local Government or other appropriate investigating body and, in our view, has been satisfactorily dealt with by those agencies.

## Notes

- 'Alternative and satisfactory means of redress', 'insufficient interest', 'satisfactorily dealt with' and similar terms are defined by the Ombudsman not the complainant.
- Even in declining complaints, the office will strive to provide a service to those with legitimate grievances. This generally includes providing appropriate referrals (where such exist), and/or providing additional information which is readily available to us and which we consider may assist the complainant's understanding of the matter. In all cases we are required to provide reasons for our decisions.

## C. Additional factors that can be considered when assessing complaints

Additional factors that can be considered include:

- the complainant's specific circumstances make it unreasonable to expect them to pursue the matter themselves, particularly where no advocate is able to act on their behalf, (e.g. inmates, youth, people with a disability, homeless persons)
- the complainant is in immediate need of assistance and our intervention is likely to clarify if and how the matter may be resolved, or otherwise progress the resolution of the matter
- there appears to be a misunderstanding or lack of communication that would be easy for the office to resolve, or where our intervention may better assist the complainant understand the actions or decisions of agencies.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street  
Sydney NSW 2000

**Email** [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

**Web** [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

**General inquiries** 02 9286 1000

**Facsimile** 02 9283 2911

**Toll free** (outside Sydney metro) 1800 451 524

**Tel. typewriter** (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.