

Jurisdiction and functions of the Ombudsman

Legislation

The *Ombudsman Act 1974* came into operation in May 1975. There are references to the Ombudsman in 140 Acts, with over 90 referring specifically to the Ombudsman's investigative jurisdiction and 50 allowing disclosure of information to the Ombudsman.

Functions

Originally, when established in 1975, the sole function of the Ombudsman was to investigate complaints about NSW public sector agencies (not including police and local councils). Over time Parliament has significantly expanded the Ombudsman's jurisdiction by bringing the police and local councils within jurisdiction, and giving the Ombudsman a wide range of new functions, which for simplicity can be conveniently categorised as:

- **Investigating**, or otherwise dealing with complaints about:
 - › public sector agencies (at state and local level)
 - › the provision of community services by both government and non-government organisations, and
 - › the way certain agencies delivering services to children have handled allegations or convictions about conduct of employees that may be abusive to children.
- **Oversighting**:
 - › the investigation of complaints about the conduct of police
 - › the use of powers by police and others to conduct controlled operations, and
 - › the way certain agencies delivering services to children have handled allegations and convictions about conduct of employees that may be abusive to children.
- **Reviewing**:
 - › the implementation of legislation conferring further powers on police and correctional staff
 - › the delivery of community services by both government and non-government organisations
 - › the causes and patterns of deaths of certain children and people with a disability in care, and
 - › decisions by police about inclusion in or exclusion from the witness protection program.
- **Auditing**:
 - › of telecommunications interception records, and
 - › of complaint handling systems.

Role

The primary role of the Ombudsman is to be an **independent review** body – this work can be summarised as:

- **Administrative review** – including dealing with complaints primarily about the administrative conduct of public sector agencies.
- **Compliance review** – including:
 - › reviewing compliance with the law and good practice in the way agencies perform their functions (eg, compliance with procedural fairness and good practice in investigations, use of police powers, controlled operations, use of telecommunication interception powers)
 - › reviewing the compliance with the law and good practice in the handling of and response to allegations/complaints (eg, into complaints about police, child protection issues and community services), and
 - › reviewing compliance with appropriate standards of service provision (eg, for those receiving community services).
- **Legislative review** – reviewing implementation of certain legislation that expands the powers of police and correctional staff.

The role of the Ombudsman is not to replace or oppose decision-making by the agencies we scrutinise. Rather, the Ombudsman aims to assist those we scrutinise to be aware of their responsibilities to the public, act reasonably and comply with the law and best practice in administration.

Priorities

As a general rule, the Ombudsman gives preference to matters identifying:

- systemic (eg. structural or procedural) deficiencies in administration
- individual cases of serious abuse of powers
- individual cases raising serious concerns as to people's safety and well being (for example of people receiving community services, and people in correctional and juvenile justice centres)
- significant public interest issues
- issues which, if investigated, are likely to lead to recommendations resulting in significant changes or amendments to law or policies
- significant cross-jurisdictional issues (eg. issues involving or concerning the conduct or policies of two or more agencies or their staff that are within jurisdiction)
- sensitive issues which are unlikely to be, or be seen to be, properly addressed by the agencies concerned (for example, if the staff who are the subject of the allegations are senior, if there appear to be conflicts of interests, if the complainants are particularly vulnerable), or
- issues concerning the treatment of internal reporters.

In all cases, the Ombudsman focuses on complaints about issues which, if sustained, could lead to recommendations resulting in practical and measurable changes.

Further information

For further information, see the main legislation conferring jurisdiction on the Ombudsman:

- *Ombudsman Act 1974*
- *Police Act 1990*
- *Community Services (Complaints, Reviews & Monitoring) Act 1993*
- *Law Enforcement (Controlled Operations) Act 1997*
- *Telecommunications (Interception) (NSW) Act 1987*
- *Witness Protection Act 1995*
- *Public Interest Disclosures Act 1994.*

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.

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