

# Fact Sheet for Agencies — Ombudsman Inquiries Frequently asked questions

## Purpose of this fact sheet

This fact sheet explains the role of the NSW Ombudsman in our general public sector jurisdiction and sets out our expectations when we are making inquiries with government agencies. It explains how we do our work and answers some common questions. We hope it will be particularly helpful for agency staff who are nominated as contact officers for our inquiries.

### 1. What does the NSW Ombudsman do?

The NSW Ombudsman is an independent watchdog with responsibility for investigating complaints from members of the public about the administrative processes of public sector agencies. We can also initiate inquiries into matters of public interest of our own motion. Our objective is to assist organisations within our jurisdiction to perform their administrative functions properly and improve their delivery of services to the public. As a general rule, the Ombudsman gives preference to matters identifying:

- systemic deficiencies in administration;
- cases of serious abuse of power;
- significant public interest issues;
- failures by agencies to properly deal with complaints or public interest disclosures;
- issues which, if investigated, are likely to lead to recommendations resulting in significant changes or amendments to law or policies.

### 2. What does the Ombudsman's office want to achieve?

Our objective is to assist state and local government agencies to adopt good administrative practices, fair decision-making and high standards of service delivery and customer service.

When we make inquiries we want to find out what happened and why. As well as trying to resolve individual complaints where possible, where we find that things have gone wrong we try to identify why this occurred and whether something needs to be done to avoid the same problem happening again. This means that even if an agency takes action to fix a particular complaint, we may still make inquiries about what caused the problem and examine if processes and procedures need to be changed to stop it happening again.

### 3. What powers does the Ombudsman have?

Our powers in our general public sector jurisdiction are contained in the *Ombudsman Act 1974*. These powers include the right to:

- make preliminary inquiries with an agency for the purposes of identifying whether a complaint raises issues that we might choose to investigate;
- require a public authority to give the Ombudsman a statement of information or to produce documents and information;
- summon and question witnesses using our Royal Commission powers; and
- enter and inspect any premises occupied or used by a public authority as a public authority, and inspect any document or thing in or on the premises.

### 4. Is the Ombudsman an advocate?

The Ombudsman is not an advocate for either complainants or government. We are not on the side of the complainant or the agency complained about. We make inquiries to find out what happened. Our focus is on what is in the public interest.

### 5. Does the Ombudsman's office take action on every complaint it receives?

The Ombudsman Act gives us the discretion to decide what matters we will look at. We can decline to act on a complaint for a number of reasons, including if it is not in our jurisdiction or it appears to have limited merit.

We generally expect complainants to first complain to the agency concerned, to give it the opportunity to fix a problem or provide an explanation. However, sometimes we accept complaints before this happens if we believe a situation is urgent and there may be serious consequences or they concern the CEO or a senior manager of an agency. We also recognise that some members of the community need help to ensure their complaints are heard and appropriately dealt with and we may accept those complaints immediately.

### **6. Does the Ombudsman have to receive a complaint to make inquiries?**

The Ombudsman Act gives the Ombudsman the ability to make inquiries whether or not we have received a complaint. For example, we may become aware of a problem from community visits, from analysis of trends and patterns in complaints or from other sources. We can decide to make those issues the subject of inquiries of our 'own motion'.

### **7. What sort of information will Ombudsman staff ask for?**

We can either make informal inquiries into a complaint or undertake a formal investigation where we exercise powers of compulsion. Our preference is to adopt an informal approach where possible, however we will use our formal powers where we consider it appropriate depending on such matters as the level of cooperation we receive from the agency and its staff, the seriousness of the conduct alleged, where the matter was formally referred to us by a Minister, etc.

What we ask for depends on the particular matter. When conducting informal inquiries, we usually contact agencies by telephone or email. Generally we want to understand what happened. This means that as well as talking to or emailing relevant agency staff who are familiar with the circumstances of a case, we may also ask for copies of correspondence, policies and procedures, file notes or minutes of meetings and any other documents that provide evidence of what happened. We also expect agencies to provide us with any other information that will help explain what happened. If we need more detailed information we may put a request in writing.

Sometimes we organise an informal meeting with the agency to discuss the matters raised by a complaint. In that meeting we may also discuss possible ways to resolve the complaint. This means attendees should be officers of the agency who have the power to make or change the agency's decisions.

### **8. Do you have to provide the information?**

Section 13AA of the Ombudsman Act gives us a general power to make inquiries for the purpose of deciding whether to make particular conduct the subject of a formal investigation. If an agency does not provide information requested under section 13AA, we may decide to use our formal powers in the Ombudsman Act where we can, for example, compel agencies to provide information and documents or people to attending a hearing to give evidence on oath.

We use our formal powers sparingly, preferring to deal with matters as cooperatively as possible.

### **9. How do you know the caller is from the Ombudsman's office?**

If you have any concerns about whether someone calling you is really from our office, you can return the call via our main switch which is 9286 1000 and ask to speak to the officer.

### **10. How quickly must you provide the information?**

We want to resolve matters as quickly as possible but understand that agency staff are busy. If we are making inquiries on the telephone or by email we will generally discuss and agree a suitable time frame for the response. When we make inquiries in writing we usually ask for a response within 28 days. If for some reason it is not possible to comply with this request, we expect an agency to contact us before the deadline to talk about this and ask for an extension of time.

### **11. What about privacy legislation?**

Sections 13AA(4) and 13AA(5) of the Ombudsman Act permit agencies to disclose to the Ombudsman records to which the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* apply for the purposes of our preliminary inquiries.

### **12. What if you do not want the Ombudsman to give the information you provide to the complainant?**

If an agency believes there is a reason the Ombudsman should not provide all or part of its response to the complainant, agency staff should give reasons for that belief in the response. While we have the right to disclose information for the purpose of furthering the Ombudsman's legislated functions, we always consider any reasonable request for confidentiality.

### **13. What happens once you have provided information to the Ombudsman's office?**

We assess the information provided by an agency to see if it adequately answers all of our questions. We may decide to get more information from the complainant or the agency, or do further research about legislation, policies and/or procedures.

We may decide we are satisfied with the explanation provided by the agency about what happened and decide no further action is needed. Alternatively the agency may have already taken, or agrees to take, action to rectify a situation and we may agree this has or will resolve the complaint to our satisfaction.

Under the Ombudsman Act we can also make suggestions to an agency. This is a formal way of informing an agency of what we consider to be best practice or a better way of doing things. We ask agencies to respond to our suggestions with details of any action they agree to take in response to the suggestions, and if no action is to be taken the reasons for this.

The Ombudsman Act requires us to write to complainants giving reasons for our decisions.

### 14. What about formal investigations?

We formally investigate a relatively small proportion of complaints. If we decide to formally investigate the agency will be notified in writing of the investigation and will be required to produce documents or information to the Ombudsman by a certain date. In addition the Ombudsman may conduct hearings and summons witnesses to appear at those hearings and give evidence. If we are considering making detrimental comment about any particular individual, as part of the investigation we will provide a copy of that comment, and supporting information, to the person for their consideration and feedback. We will then produce a document setting out our preliminary findings and recommendations which will be sent to the head of the agency to allow the agency to respond. Any response will be considered and appropriate changes made before a draft report is sent to the relevant Minister, who will be given the opportunity to request a consultation with the Ombudsman or Deputy Ombudsman. The final report is required to be sent to the head of the agency and relevant Minister. A copy of the final report may be provided to the complainant.

### 15. What about confidentiality?

The Ombudsman Act requires that we carry out our work in the absence of the public. This means we do not hold public hearings and, unless the Ombudsman decides to table a report in Parliament, our investigation reports are not made public by us (but may be by the relevant Minister, the agency concerned or the complainant).

### 16. What if you have concerns about your interactions with Ombudsman staff?

If you have a complaint about a member of Ombudsman staff you can contact our office and ask to speak to their supervisor. If you are still unhappy you can put your concerns in writing to the Ombudsman.

## 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.