

Complaints: Good Practice Guide for Public Sector Agencies

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enabling, responding, learning and improving

ombudsman VICTORIAN

If you have any questions about this guide, please contact:

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222 or 1800 806 314 (Regional)
Fax 03 9602 4761
Email ombudvic@ombudsman.vic.gov.au

Contents

Introduction	2
1. Enabling complaints	4
2. Responding to complaints	8
3. Learning and improving from complaints	20
References	23
Appendix 1 - model policy template	24
Appendix 2 - complaint handling organisations	31
Appendix 3 - complaint handling flowchart	33
Appendix 4 - acknowledgment letter example	34
Appendix 5 - outcome letter example	35

Introduction

This guide aims to help you and your agency handle complaints well.

It outlines the guiding principles and practical steps involved in the three key stages of good complaint handling shown below.

You can use the advice in this guide to create or review the complaint handling system at your agency, and to help you respond to individual complaints.

If you are working in the public sector today, you will probably need to deal with complaints at some point.

Members of the public rightly expect high quality, timely services from government and decisions that are transparent and fair.

Handling complaints is part of core business and good service delivery. The challenge for public sector agencies is to do it well.

Well-handled complaints offer real benefits. They can:

- restore trust with members of the public when things have gone wrong
- lead to better services and outcomes for individuals
- identify ways to improve services for the public.

Complaints are free feedback about what people think of your agency's services and decisions. They can highlight the need for changes to your practices, or the need to explain them to members of the public in a different way.

Poorly handled complaints have the opposite effect. They can:

- damage relationships with the public
- damage your agency's reputation
- escalate and draw in managers, ministers or independent complaint bodies, or generate costly legal disputes
- compromise your agency's integrity
- lead to missed opportunities to improve performance.

The Victorian Ombudsman has over 40 years' experience dealing with complaints about state government agencies and local councils. In many cases the people who approach our office are upset, not just about the agency's decision or actions, but with the agency's response to their complaint. Common issues include failure to respond to complaints at all, delays and poor communication.

This guide aims to share that experience to improve complaint handling across the public sector.

It reflects the revised Australian and New Zealand standard for complaint handling, Victoria's public sector values and the *Charter of Human Rights and Responsibilities Act 2006*. You will find references to these and other resources to help you manage complaints on page 23 of this guide.



The terms used in this guide

This guide uses the terms ‘complaint’, ‘complainant’ and ‘complaint handling system’ to describe the work of handling complaints.

The Victorian Ombudsman’s preferred definition of a complaint is as follows:

A complaint is an expression of dissatisfaction with:

- *the quality of an action taken, decision made or service provided by an agency or its contractor*
- *a delay or failure in providing a service, taking an action, or making a decision by an agency or its contractor.*

The term ‘complainant’ is used to refer to a person, organisation or representative who makes a complaint.

The term ‘complaint handling system’ refers to all policies, procedures, practices, officers and resources an agency deploys to manage complaints.

1. Enabling complaints

Guiding principles – Good complaint handling systems enable complaints by:

- demonstrating a **commitment** to complaint handling
- providing **visible** and **transparent** information about how and where to complain
- being **accessible** and **free** to everyone
- ensuring there is **no detriment** to people who complain.

This section outlines the practical steps that your agency can take to enable complaints.

In our experience, agencies with the best complaint handling practices actively encourage and welcome feedback about their performance.

While none of us like to get negative feedback about our work, these agencies recognise that enabling complaints:

- gives them a chance to resolve problems first, before they are escalated to ministers or other bodies
- generates information they can use to improve their services
- promotes the public sector values of integrity and accountability.

The steps in this section are the minimum standards the Victorian Ombudsman looks for when a person approaches us about the way an agency dealt with their complaint.

1.1. Develop and implement a policy

A complaint handling policy demonstrates that your agency is committed to dealing with complaints.

A policy lays the foundation for good complaint handling by giving your officers information about how to respond to complaints well. It also ensures all officers apply the same standards, regardless of where they work in your agency.

Good complaint handling policies cover:

- how, where and to whom complaints can be made
- how the complaint will be handled and the steps involved
- the mechanisms for review if the complainant is dissatisfied with the outcome
- key performance indicators, such as response times
- external bodies that may provide assistance or review matters if the complainant remains dissatisfied e.g. the Victorian Ombudsman.

You can find an example policy at Appendix 1 on page 24. It can be adapted to suit your agency including:

- statutory or regulatory requirements
- the value you seek to derive from complaints to improve your operations
- your financial, operational and other organisational requirements
- the number and demographics of the people using your services
- the nature and breadth of your interactions with the public
- the number and types of complaints you receive
- input from your officers and other interested parties.

1.2 Foster a receptive culture

Agencies that are committed to complaint handling also take the time to build a culture that is open and receptive to feedback.

Members of the public want to be listened to and treated with respect when they have a problem. They are unlikely to feel confident about approaching your agency if they get a defensive or unhelpful response when they contact your officers.

Leaders and managers in agencies can set the tone by:

- ensuring the agency has a complaint handling policy
- appointing officers skilled in customer service and complaint handling
- empowering officers to resolve complaints by delegating appropriate authority
- providing adequate resources for officers, such as training and support
- seeking regular reports about how the complaint handling system is working.

Skilled, knowledgeable officers are the most valuable resource in any complaint handling system.

All officers in your agency need at least to be aware of your policy and what to do if someone approaches them with a complaint. Induction and regular training is a good way to achieve this.

Your organisation also needs a range of specialist skills and personal qualities in its complaint handling officers. They include empathy, patience, resilience, problem solving, communication, investigation skills, the ability to remain impartial, knowledge of your agency's people and work, and the ability to work with vulnerable communities.

Complaint handling can be difficult and stressful at times and these officers need support to maintain a healthy, positive attitude. This can take the form of access to debriefing or support networks.

Tip: Training for complaint handlers

Complaint handlers can benefit from training in these areas:

- case and time management
- communication and rapport building
- problem solving
- investigating complaints
- understanding the *Charter of Human Rights and Responsibilities Act 2006*
- conflict of interest
- exercising discretion
- managing unreasonable complainant conduct
- writing in plain English
- stress management.

Case study: A receptive culture?

In 2015 two Victorian newspapers ran stories about a departmental manager's response to a complaint.

The complainant had reportedly emailed the department criticising some planned action.

The manager's comments, intended for a colleague, reportedly described the email as 'rubbish' and said 'I presume you will not respond back as this is a direct attack on our organisation and our staff. Delete it or file it.'

Instead of sending the comments to his colleague, the manager accidentally sent them to the complainant.

The newspapers quoted a departmental spokesperson as saying that the manager had apologised, and the agency 'values its relationship with the community and considers seriously the feedback it receives'.

Source: *The Age; Herald Sun*

1.3 Publicise how to complain

In order to complain, people need to know how to contact you. This can be achieved by:

- publishing your complaint handling policy online and making it available in hard copy upon request
- providing information about your complaint handling system in any service delivery statements
- ensuring your website search tool retrieves your policy and related information when a person types the words 'complain' or 'complaint'
- including a prominent link on your home page
- including information about your complaint process in welcome packs or induction materials for your clients or customers.

1.4 Make your complaint handling system free and accessible

Not everyone can make a written complaint or call your agency in business hours. We live in a diverse community where people have different communication preferences and needs. Barriers such as language, disability, homelessness or shift work can inhibit access to your agency.

You can make your complaint handling system accessible by:

- accepting complaints by telephone, letter, email, online and in person
- offering free access to a translation and interpreter service
- using the national relay service to communicate with people with hearing or speech impairments
- providing information in accessible formats. You can find information about accessibility in the Victorian Government Accessible Communication Guidelines referenced on page 23 of this guide.
- providing support to members of the public to make a complaint if needed
- accepting complaints from authorised representatives if a person is unable or does not want to complain themselves.

Sophisticated complaint handling systems also recognise that accessibility is about more than means of communication. Some parts of the community may be less likely to complain for cultural or other reasons. You can identify this by comparing the demographics of the people who use your services, and the demographics of those who complain, to see whether some groups are under-represented. Options include engaging with stakeholder and advocacy groups and outreach activities in under-represented communities.

1.5 Ensure there is no detriment for making a complaint

People sometimes tell our officers that they have not complained to an agency direct because they fear reprisal. This can be a particular problem where people depend on the agency for their daily living needs.

You can make it clear in your complaint handling policy and public information that you do not tolerate reprisals against complainants. This can also be reinforced in training for officers.

Any evidence that a person has experienced detriment needs to be dealt with promptly.

Tip: Anonymous complaints

Members of the public sometimes seek to lodge complaints anonymously, or ask you not to disclose their identity.

People can have valid reasons for not wanting to disclose their identity. The Victorian Ombudsman accepts these complaints and deals with them on their merits.

We recognise that in some cases it is not practical to investigate a complaint if you cannot contact the complainant for further information or disclose their identity. You can warn people about this in information about your complaint handling system so members of the public can consider their options.

2. Responding to complaints

Guiding principles – Good complaint handling systems respond to complaints by:

- acknowledging and dealing with complaints in a **timely** way
- providing **transparent** information about how complaints are handled
- protecting the **privacy** of information as far as possible
- treating everyone involved in a way that is **objective, respectful** and **fair**
- considering and respecting **human rights**
- promoting **accountability** for decisions.

The responsibilities of the Victorian public sector are diverse and there is no ‘one size fits all’ response to complaints.

There are some practices, however, that are common to good complaint handling in every organisation. This section outlines these practices and how you can incorporate them in your work.

2.1 Acknowledge complaints quickly

Every year the Victorian Ombudsman receives hundreds of complaints about delays in complaint handling by agencies. It was the fourth most common complaint to our office in 2014-15.

These types of complaints can be avoided if you acknowledge and respond to complaints promptly.

The Victorian Ombudsman expects public sector agencies to respond to all complaints unless:

- the complainant is not seeking a response
- you have previously told the complainant that you may not respond (the section on ‘Managing unreasonable complaint conduct’ on page 18 discusses when this might be appropriate).

It is good practice to acknowledge complaints within 10 business days, unless the complaint is urgent and needs a faster response. You can find an example acknowledgement letter at Appendix 4 on page 34.

2.2 Make an initial assessment

Not all complaints require the same level of investigation or priority. It helps to ‘triage’ complaints at an early stage to determine their priority, and how and who should respond.

Factors to consider include:

- the seriousness of the issues raised
- the complexity of the complaint
- any need for urgent action, for example where there are health or safety concerns for any person
- whether the complaint raises systemic issues, and the impact on the person and broader community
- the potential for the complaint to escalate
- whether the complaint is about an officer/s, and needs to be handled by an independent, impartial person
- whether the complaint involves other agencies
- whether the complaint is subject to special statutory requirements e.g. a protected disclosure under the *Protected Disclosure Act 2012*.

As part of your assessment, you may need to speak to the complainant to clarify the details of the complaint and the outcome they are seeking.

If a complaint falls outside your agency’s responsibilities, it is helpful to inform the complainant as soon as possible and refer them to other agencies that may be able to assist. You will find a list of key complaint handling organisations at Appendix 2 on page 31.

Tip: Is it a protected disclosure?

Most agencies have a Protected Disclosure Coordinator who is nominated to:

- receive potential protected disclosures
- ensure the welfare of disclosers
- work to make sure agency officers are aware of the protected disclosure legislation.

A disclosure can be a report about:

- the improper conduct of a public body or public officer
- detrimental action taken by a public body or public officer against a person in reprisal for them (or another person) making a protected disclosure, or cooperating with the investigation of a protected disclosure.

If you believe the conduct contained in a complaint could be a protected disclosure, you must refer the complainant to your agency's Protected Disclosure Coordinator without delay. If your agency does not have a Coordinator, you can refer the complainant to the Independent Broad-based Anti-corruption Commission (IBAC).

You can find more information about protected disclosures at <www.ibac.vic.gov.au>.

Tip: Disputes about responsibility

In some cases there may be confusion or a dispute about which agency is responsible for a complaint.

The Victorian Ombudsman is sometimes contacted by members of the public who have been referred back and forth between two agencies, both of which claim the other agency is responsible. It is understandably frustrating for complainants to be caught in the middle of these disputes.

It is better practice for the agencies to reach agreement between themselves, rather than leaving it to the complainant to resolve. You may need the complainant's permission to share their personal information with the other agency prior to discussing their complaint.

Case study: Who is responsible?

A local resident complained to his council that surface water was not draining from a reserve behind his property causing damage to his garage. The local council advised the complainant that the matter was the responsibility of another government agency. The other government agency told the complainant it was the responsibility of the council.

The Victorian Ombudsman investigated the complaint to establish which agency was responsible for maintaining the reserve and the drain located on it. All parties met onsite and agreed to engage an independent surveyor to establish the cause of the damage.

In this case, it would have been preferable for the council and agency to engage with each other to reach an agreement about how the complaint would be handled. Had they done so, the complaint could have been resolved without escalation to the Ombudsman.

Source: *Victorian Ombudsman*

2.3 Adopt a tiered approach

The most effective and efficient complaint handling systems use a tiered approach:



Frontline complaint resolution by the officer or area delivering the service is usually the quickest and most effective way to resolve the majority of complaints.

You can encourage and empower frontline officers to resolve complaints through your agency's complaint handling policy, and by investing in training and resources for officers.

There will be some complaints that need to be escalated for investigation. Your agency's complaint handling policy can spell out when complaints should be escalated. This might include where:

- the complaint cannot be resolved by frontline officers
- the complaint is complex and requires detailed consideration
- the complaint is about an officer and needs to be handled independently.

If the complainant is dissatisfied with the outcome of this process, the matter can be escalated further, either within the agency or to an external body.

The flowchart at Appendix 3 on page 33 shows how this approach can work in practice.

2.4 Explain your process

It is good practice to explain your complaint handling process to complainants at the start so they know:

- who is handling their complaint and how to contact them
- how the complaint will be dealt with
- what issues you are considering
- their likely involvement in the process
- when they can expect a response
- the possible or likely outcomes.

This promotes transparency and ensures the complainant knows what to expect.

In some cases it can help to confirm your advice in writing, for example where the complainant's expectations are unrealistic.

Tip: Managing expectations

Dissatisfaction with complaint handling often stems from differing expectations about how a complaint will be handled or the likely outcome. When you first contact the complainant, it is useful to:

- **ask the complainant what they want to achieve**
- **assess whether their expectations are reasonable and achievable**
- **explain what your agency can and cannot do, or will and will not do**
- **identify any issues over which your agency has limited control, such as statutory requirements or budget constraints**
- **if you cannot meet the complainant's expectations, try to shape realistic ones by explaining what you can do and providing alternative avenues.**

If you are unable to meet your agency's standards for any reason, speak to the complainant and explain the reasons. Complainants are less likely to contact a body like the Victorian Ombudsman if you keep them informed about what is happening with their complaint.

2.5 Address complaints promptly

In our experience, complaints get harder to manage the longer they stay open. Complainants can become frustrated with delays. Their expectations of a significant outcome sometimes increase, or they can start to raise new issues.

The Victorian Ombudsman expects agencies to respond to straightforward complaints within 28 days.

If this is not possible because the complaint is complex or needs more detailed investigation, give the complainant an expected timeframe and update them on progress regularly.

It is advisable to review complaints that are older than 28 days and escalate them if necessary to expedite a resolution.

If the complainant does raise new issues, they need to be assessed on their merits. You may need to treat them as a new complaint to avoid delaying your process.

2.6 Protect privacy

Complaints usually involve personal information about:

- the complainant
- the officers who are the subject of the complaint, if any
- in some cases, third parties.

This information needs to be managed in accordance with relevant privacy laws.

As a general rule, the Victorian Ombudsman would expect agencies to:

- only use information to deal with the complaint, or to address any systemic issues arising from the complaint
- only share personal information with officers on a 'need to know' basis
- if information about complaints is released to the public, de-identify the information before publication.

2.7 Treat everyone fairly and respectfully

For many complainants, being treated fairly during the complaint handling process is just as important as the outcome. This guide has already discussed some of the ways you can demonstrate fairness, including protecting complainants from detriment, being transparent about your processes, and protecting privacy.

You can also promote fairness by:

- giving the complainant sufficient opportunity to present their position. Checking information and asking questions shows that you are listening.
- dealing with any conflicts of interest e.g. if the complaint is about a particular officer, ensuring the complaint is handled by someone independent
- if possible, putting your agency's decision or actions on hold until the complaint is finalised.

Tip: 'Foreshadowing' outcomes

Complainants often appreciate an opportunity to discuss or comment on your preliminary findings before you finalise their complaint.

This promotes fairness by giving them another opportunity to be heard. It can also lead to better outcomes:

- **The complainant may have extra information or evidence that you have not considered previously.**
- **It can be easy to misunderstand or overlook parts of complex complaints, and the complainant may be able to clarify the issues.**
- **The complainant may dispute some of your facts and findings. If you can address areas of disagreement before you finalise the complaint, the complainant may be less likely to escalate the matter.**

Your officers are also entitled to be treated respectfully if someone complains about them. Subject to any legislative restrictions like those in the *Protected Disclosure Act 2012*, officers are entitled to be:

- informed of complaints about them
- given an opportunity to be heard
- kept informed of progress and the final result.

The focus of the complaint handling process should be about resolving the problem, not assigning blame. Any disciplinary processes should be separate from the complaint handling process.

2.8 Consider fairness and human rights

When the Victorian Ombudsman looks at complaints about public sector agencies, we do not just look at whether the agency's processes and decisions comply with its laws and policies. We also consider whether the agency's actions are fair and whether they comply with Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

The Charter is a law that requires public authorities in Victoria (including private companies performing functions on behalf of government) to act compatibly with 20 human rights when delivering services or making decisions.

It is unlawful under the Charter for a public authority to fail to consider relevant human rights when making a decision. Any limitation placed upon a person's human rights has to be in accordance with the law.

You can find more information about the Charter at <www.humanrightscommission.vic.gov.au>.

Your handling of a complaint is more likely to withstand scrutiny if you ask yourself the following questions:

- Does the outcome meet the minimum standards in your laws and policies?
- Have you considered any discretion available to you under laws or policies in arriving at the outcome?
- Is the outcome fair and reasonable?
- Have you and your agency considered and acted compatibly with the Charter?

You may also be asked to demonstrate that you thought about:

- Are any human rights raised by the decision or action?
- Did the decision or action limit these human rights?
- Were the limitations reasonable?

The following case studies illustrate the importance of considering fairness and the Charter.

Case study: Considering fairness

A 22-year-old migrant to Australia required urgent medical treatment and was transported to hospital by ambulance. As he did not have a Centrelink or similar concession, he was charged a fee of \$924 for this trip.

His employment ceased shortly after and he requested that the fee be waived on the basis of financial difficulties. The agency refused to waive the fee on the basis that he was not a concession or health care card holder at the relevant time. He had been granted Centrelink assistance one week after the invoice for the ambulance service was issued.

Although the agency had acted in accordance with its policy for waiving fees, the Victorian Ombudsman considered it had not exercised its discretion in the spirit of the policy to assist those in financial need. Following enquiries, the agency agreed to waive the fee.

Source: *Victorian Ombudsman*

Case study: Considering fairness

A homeless person with a learning disability had driven a friend, who also had a disability, to a conference at a local church. He parked in a designated disabled parking bay, displaying a valid permit.

The driver knew he needed to move the car after two hours, which he did. However, a trailer was blocking the only other disabled parking bay. He had to stay with his friend at the conference, so he parked in a permit zone.

While parked in the permit zone, he received an \$87 parking fine. He asked the agency twice for an internal review of the matter. The agency declined both times because a disabled parking permit did not allow a person to park in a permit zone.

The agency said it was acting within the law.

Normally, this matter would proceed to court, but in this instance, we contacted the agency because it wasn't reasonable to expect this person to take legal proceedings when he was homeless and had a learning disability.

The council in question had acted within its powers: technically, the car was parked illegally.

We asked the council to reconsider its position on the fine in light of the driver's circumstances, and it agreed to do so.

Source: *Victorian Ombudsman*

2.9 Provide clear reasons

Providing clear reasons for decisions displays fairness, transparency and accountability. It helps the complainant understand why you made your decision, whether or not you upheld their complaint.

When we make enquiries with agencies about complaints, we often find they provide us with convincing explanations for their actions. If this information had been communicated to the complainant, they might not have escalated the complaint to us.

As a general rule, the Victorian Ombudsman expects public sector agencies to provide an outcome letter for all complaints where an investigation has been undertaken.

Good outcome letters:

- briefly describe the complaint and identify the issues
- use plain English and avoid bureaucratic language, acronyms and jargon
- explain the steps you took to investigate or resolve the complaint
- set out any relevant laws or policies in simple language
- clearly identify the outcome and, if you have substantiated the complaint, the remedies you are offering
- provide reasons for your decision
- give the name and telephone number of an officer the complainant can contact to discuss the outcome
- advise the complainant of the Victorian Ombudsman and any other relevant review rights
- are translated into a language other than English where appropriate.

You can find an example of a letter that takes this approach at Appendix 5 on page 35.

Tip: Template letters

Public sector agencies often use template letters to respond to common issues. While these letters can save time and resources, they are also the source of many complaints to the Victorian Ombudsman. Template letters that are not customised to the complainant's specific concerns and circumstances:

- **may not actually explain the reasons for your decision**
- **can exacerbate the complainant's sense of grievance by creating the impression that you have not listened to their concerns.**

If your agency uses template letters, it is good practice to tailor them to each complaint.

Case study: better communication

A complainant alleged that a government agency failed to investigate his concerns about occupational health and safety in a theatre he had recently performed in.

The Victorian Ombudsman made enquiries with the agency. It provided evidence to show that it had investigated the concerns, including conducting an inspection on the same day it received the complaint. It had formed a view that remedial action was not required.

We advised the complainant that on the basis of this evidence, we were satisfied that the agency had taken appropriate action in response to his complaint.

If the agency had communicated better with the complainant about its investigation and outcomes, he may not have felt the need to escalate his complaint to us.

Source: *Victorian Ombudsman*

2.10 Find a solution

To be accountable, public sector agencies need to be prepared to admit mistakes and correct them.

It is appropriate to offer a remedy if your agency's decision, or the process leading up to the decision, was unfair or could have been communicated better.

Options for redress include:

- acknowledging and apologising for the error
- providing a better explanation for your agency's decision or actions
- explaining why the error occurred and the steps your agency is taking to prevent it happening again
- reversing your agency's decision
- an ex gratia payment or compensation
- disciplinary action against an officer
- other means of redress sought by the complainant.

The remedy should be fair and practical and proportionate to the seriousness of the issue.

Case study: a fair remedy

An agency had deducted a payment plan instalment from a complainant's bank account twice. It acknowledged the mistake but told her it wouldn't process the refund until it had a number of similar requests, so its finance department could process them all at once.

The complainant told the Victorian Ombudsman she was a single mother on a pension and now had only \$14 left in her bank account.

We made enquiries and the agency agreed to issue a cheque that day and speak to its bank to speed up the cheque's clearance.

Source: *Victorian Ombudsman*

2.11 Explain options for review

As complaint handlers, we are also accountable for our decisions and should submit ourselves to appropriate scrutiny.

Good complaint handling systems allow complainants to request an internal review of the complaint outcome. Your complaint handling policy can document the process. At the Victorian Ombudsman, we ask complainants to:

- submit the request within 60 days of being informed of the final outcome
- explain why they believe we have made an error, and include any supporting evidence.

Reviews are conducted by senior experienced officers who have not been involved in the matter previously. This ensures the process is as independent as possible.

In appropriate cases, you might also consider using alternative dispute resolution, such as mediation, to try to resolve the complaint.

The Victorian Ombudsman expects agencies to inform complainants of any external avenues of complaint or appeal if they remain dissatisfied with the outcome. These include:

- the Victorian Ombudsman
- specialist complaint bodies e.g. the Victorian Equal Opportunity and Human Rights Commission if the complaint concerns discrimination, or the Health Services Commissioner if the complaint is about a health provider
- statutory rights of appeal such as merits review at the Victorian Civil and Administrative Tribunal.

You can also include information about internal and external avenues for review in information about your complaint handling system.

Tip: Referring complainants to the Victorian Ombudsman

We recommend the following text if you are referring a complainant to the Victorian Ombudsman:

If you are unhappy with the outcome of this process, you may wish to complain to the Victorian Ombudsman by completing the online complaint form at <www.ombudsman.vic.gov.au> or by calling (03) 9613 6222 or 1800 806 314 in regional areas.

2.12 Manage 'unreasonable complainant conduct'

People can be angry and frustrated when they make a complaint, sometimes for good reasons.

One of the skills involved in complaint handling is dealing with these emotions, while also maintaining a reasoned, evidence-based approach to the complaint.

In a small number of cases the complainant's conduct can, because of its nature or frequency, raise health or safety issues for officers, or consume a disproportionate amount of your agency's resources to the detriment of other complainants. Ombudsman offices have published a manual about this type of 'unreasonable complainant conduct' that may assist your officers.

The Victorian Ombudsman does not expect our officers, or officers in other public agencies, to tolerate behaviour that is offensive, abusive, threatening or consumes disproportionate resources.

The manual lists strategies for managing these situations. They aim to manage the impact of the conduct, while recognising that the complainant may still have a valid grievance that needs to be addressed.

We recommend that agencies:

- address how they manage unreasonable complainant conduct in their complaint handling policy
- train officers on how to deal with unreasonable complainant conduct
- support officers where the conduct is affecting their wellbeing.

Tip: How to avoid escalating conflict

Dealing with people who are angry and frustrated can be challenging for complaint handlers. In these situations, it can help to:

- focus on the issue and not the person
- ask questions about the facts to move the complainant from a 'feeling state' to a 'thinking state'
- find something to agree with, without necessarily agreeing with the complainant's point of view e.g. 'I agree that \$2000 is a lot of money to lose'.
- when in doubt, ask questions to clarify your understanding e.g. 'From what you tell me it seems ... is this correct?'
- not defend, deny or argue. Set aside your own personal views and feelings.

Tip: Limiting contact

When other strategies for managing unreasonable complainant conduct have failed, agencies may consider limiting the complainant's contact with the agency.

Options include limiting:

- **who the complainant can contact**
- **what issues you will respond to. For example, you might decline to respond further to a specific complaint unless the complainant raises new issues that warrant investigation.**
- **when a complainant can contact you**
- **where a complainant can have contact**
- **how a complainant can contact you.**

Before limiting contact, we would expect agencies to:

- **consider the *Charter of Human Rights and Responsibilities Act 2006* and any other legal obligations¹**
- **ensure the limits are proportionate to the problem. Generally, the decision not to respond to further contact should be specific to a particular matter, not a total ban on all correspondence.**
- **make any decision to cease responding at a senior level**
- **inform the complainant and provide reasons**
- **review any limits on contact at least every 12 months to consider whether it is appropriate to retain the restriction.**

2.13 Complaints about contractors

Your agency is ultimately responsible for all complaints about your services, irrespective of whether those services are delivered by you or a third party contractor.

You can set out how you manage complaints about contractors in your complaint handling policy.

Some agencies, particularly in the community services sector, are required by legislation to oversee third party service providers.

In other cases, it is still good practice to monitor the way contractors deal with complaints and have clear oversight of their complaint handling process. This includes:

- reviewing and approving the contractor's complaint handling process. Ideally, it should be consistent with your own policy.
- ensuring you audit the contractor's complaint handling
- requiring the contractor to collect complaint data, which your agency can access, monitor and report on as part of your own complaint handling system
- ensuring any systemic issues regarding the contractor's performance are identified and promptly addressed
- requiring the contractor to inform complainants that your agency can review their complaint if they remain dissatisfied. The contractor should provide information about where and how to complain to your agency.

¹ In *Slattery v Manningham City Council* [2013] VCAT 1869, the Victorian Civil and Administrative Tribunal found that a declaration banning a person from any building owned, occupied or managed by a council discriminated against the person on the grounds of disability and breached his human rights under the Charter.

3. Learning and improving from complaints

Guiding principles – Good complaint handling systems use complaint information to:

- foster **continuous improvement**
- ensure **accountability** in complaint handling performance.

Your agency will get the most value from complaint handling when you use information from complaints to improve services for the community as a whole.

Complaints are a form of feedback about your agency's decisions and services, just like client and community surveys or evaluation reports. By linking your agency's complaint handling system with quality management processes, you can promote accountability and identify where you need to make changes.

This section looks at the practical steps involved.

3.1 Record complaints

Unless you have an effective system for recording complaints, it will be difficult to harness complaint information to improve your services.

A central database is the best way for officers to record and track complaints, regardless of where they work in your agency.

The database can suit your agency's size and resources and the number of complaints you receive. Smaller agencies that receive few complaints might use a spreadsheet. Larger agencies that receive many complaints may need specialised case management software, or to integrate complaint handling into existing customer service systems.

Your officers will need to know when and how to record complaints so there is consistent practice across your agency.

The Victorian Ombudsman encourages agencies to record as many complaints as possible. Our preferred definition of a complaint, which is set out on page 3, covers any expression of dissatisfaction, regardless of how or to whom it is made.

The more complaints you capture, the more representative your data will be, and the more information you will have about what people think about your services.

Tip: What to record

It is good practice to record the following information for every complaint:

- the complainant's personal details
- how the complaint was received
- when the complaint was received
- a description of the complaint
- the complainant's desired outcome
- the officer responsible for handling the complaint
- any action taken, including contact with the complainant, the outcome of the complaint and any remedies
- when the complaint was finalised
- any recommendations for improvement arising from the complaint, and who is responsible for implementing the recommendations
- relevant demographic information that could help your agency improve its service.

3.2 Analyse complaints regularly

Analysing complaint information regularly will help you identify areas where your agency's services may need to improve.

It is useful to consider:

- the number of complaints and any trends over time
- the types of issues or services involved
- the outcomes of the complaints
- the demographics of complainants.

It is good practice to provide quarterly reports to senior managers about complaints, along with any recommendations about how to improve services. It is also good practice to report on complaints in your annual report.

Care needs to be taken when interpreting complaint data. An increase in complaint numbers following a change in your agency's complaint handling practices may show that your complaint handling system is working well, not that service levels have dropped.

3.3 Assess your complaint handling performance

Your agency's complaint information can also be used to assess and improve your complaint handling system.

Options for monitoring performance include:

- measuring your complaint data against key performance indicators
- quality auditing
- assessing complainant satisfaction e.g. through surveys.

You can show you are committed to dealing with complaints by publicising your performance against your key performance indicators, and any service improvements you have made as a result of complaints.

Tip: KPIs for complaint handling

This guide shows that a well-handled complaint is made up of many elements. Your key performance indicators could measure:

- **complaint outcomes e.g. decisions upheld, partially upheld or not upheld**
- **time taken to resolve matters**
- **any service changes resulting from complaints**
- **the number of complaint outcomes altered following internal review**
- **customer satisfaction with your complaint handling system**
- **the number of complaints escalated to the head of your agency or your minister**
- **the number of complaints escalated to the Victorian Ombudsman, resulting in changes to your decisions, policies or practices.**

3.4 Review your system

Leaders and managers can demonstrate commitment to good complaint handling by monitoring the performance of their agency's system. They may need to change resources, systems and training from time to time to ensure complaints are handled well.

The Victorian Ombudsman recommends that agencies conduct regular in-depth reviews of their complaint handling system. The review might consider:

- any changes to statutory or regulatory requirements
- changes to your agency's functions, resources or organisational structure
- technological changes
- current good practice
- the views of your officers
- feedback from complainants.

This will ensure that your complaint handling system remains effective and up to date with good practice.

References

The following publications were referred to in developing this guide. They are recommended reading for officers with responsibility for complaint handling.

Australian/New Zealand Standard™, *Guidelines for complaint management in organizations*, (AS/NZS 10002:2014)

Commonwealth Ombudsman, *Better practice guide to complaint handling*, April 2009

Department of Justice, *Charter of Human Rights and Responsibilities – guidelines for legislation and policy officers in Victoria*, July 2008

Independent Broad-based Anti-corruption Commission and Victorian Ombudsman, *Investigations guide: conducting internal investigations into misconduct*, June 2016

New South Wales Ombudsman, *Effective complaint handling guidelines*, 2nd edition, December 2010

New South Wales Ombudsman, *Managing unreasonable complainant conduct practice manual*, 2nd edition, May 2012

New South Wales Ombudsman, *Managing unreasonable complainant conduct – a model policy and procedure*, May 2013

New South Wales Ombudsman, *Complaint management framework and model policy*, June 2015

Ombudsman Western Australia, *Guidelines on complaint handling*, November 2010

Victorian Equal Opportunity and Human Rights Commission, 'Victoria's Charter of Human Rights and Responsibilities' webpage <www.humanrightscommission.vic.gov.au> (accessed May 2016)

Victorian Government, *Victorian Government accessible communication guidelines 2014*, January 2014

Victorian Ombudsman, *Councils and complaints – a good practice guide*, February 2015

Victorian Ombudsman, *Managing unreasonable complainant conduct practice manual*, 2nd edition, May 2012

Victorian Public Sector Commission, 'Public sector values' webpage <www.vpsc.vic.gov.au> (accessed January 2016)

Appendix 1 – model policy template

This model policy is intended for use as a guide only. Agencies are encouraged to tailor it to suit their individual circumstances.

How to use this document

Standard wording is in roman type. It is recommended that this text go into the agency's policy as it is written in this policy template.

Suggested wording is in *italics*. Agencies may need to tailor this text to suit their individual circumstances.

[Tips and instructions for drafting the policy are in blue italics and brackets]

Name of agency	
Title and version number	
Record number	
Effective date	
Responsible officer	
Date of Charter of Human Rights review	
Date of approval	
Review date	<i>[Review complaint handling system regularly, including procedures and key performance indicators]</i>
Relevant legislation	<i>Charter of Human Rights and Responsibilities Act 2006 Freedom of Information Act 1982 Independent Broad-based Anti-corruption Commission Act 2011 Privacy and Data Protection Act 2014 Protected Disclosure Act 2012</i>
Related policies	<i>[Insert all related policies, for example:</i> <ul style="list-style-type: none"> <i>• customer service policy/charter</i> <i>• protected disclosure policy</i> <i>• employee code of conduct</i> <i>• infringements policy</i> <i>• conflict of interest policy, etc.]</i>

Introduction

[In the introduction, agencies can:

- state that members of the public have the right to complain*
- include statements about the agency's commitment to complaint handling and creating a culture that encourages feedback and complaints*
- affirm that the agency will learn from complaints to improve its services*
- note any factors or demographics specific to the agency which are relevant to complaint handling]*

This policy includes... *[summarise what is in this document]*

Objectives

This policy aims to:

- put in place an open and transparent complaint handling system*
- specify the key performance indicators to which we will hold ourselves accountable*
- establish our timeframes for resolving complaints*
- clarify the roles and responsibilities of agency staff*
- ensure staff handle complaints fairly and objectively*
- set out how staff record and analyse complaint data to identify where we can improve our services.*

Guiding principles

This policy is based on seven principles.

1. Commitment

We are committed to resolving complaints and have a culture that recognises an individual's right to complain. We value complaints and recognise them as being part of our business of serving our communities and improving service delivery.

2. Accessibility

People with a range of needs can easily complain and staff actively assist them to navigate the complaints process.

3. Transparency

We make it clear how to complain, where to complain and how the complaint will be handled. The steps taken to respond to a complaint are recorded and will stand up to scrutiny.

4. Objectivity and fairness

Complaints are dealt with courteously, impartially, within established timeframes and are assessed on merit.

5. Privacy

Complaint information is handled according to privacy laws and other relevant legislation. We provide clear information about how we handle personal information. Complaint data is de-identified if reported on more widely.

6. Accountability

We are accountable internally and externally for our decision making and complaint handling performance. We provide explanations and reasons for decisions, and ensure that our decisions are subject to appropriate review processes.

7. Continuous improvement

Acting on, learning from and using complaint data helps us identify problems and improve services.

Scope

This policy applies to all agency staff. It also applies to third party contractors carrying out services on the agency's behalf.

Definitions

Complaint: *an expression of dissatisfaction with the quality of an action taken, decision made, or service provided by an agency or its contractor, or a delay or failure in providing a service, taking an action, or making a decision by an agency or its contractor.*

[Define any other key terms that your agency uses, including those closely related to 'complaint', such as 'service request', 'comments' or 'feedback']

Roles and responsibilities of agency staff and contractors

Frontline staff

Managers and directors

Chief Executive Officer

Third party contractors

[For each party, enter a general description of their role and responsibilities within the complaint handling system]

How to make a complaint

A person can make a complaint in a number of ways.

Mail: *[Insert name of agency and postal address]*

Telephone: *[Insert telephone number]*

Email: *[Insert email address]*

In person: *[Insert locations]*

Fax: *[Insert fax number]*

Internet: *[Insert web address. If you have an online feedback form, include instructions on how to access it from the homepage]*

Accessibility

Anyone who has been affected by a decision or action (including a failure to make a decision or take action) can make a complaint.

[Detail the processes/services the agency has in place to assist people with additional needs to make a complaint]

We accept and respond to anonymous complaints, provided we have received enough information to do so.

Complaint handling procedure

Overview

We take a four-tiered approach to complaint handling, as follows:

1. **frontline resolution:** frontline staff receive the complaint, assess it, and resolve it immediately, if possible
2. **investigation, if required:** if frontline staff cannot resolve the complaint, they will refer it to an officer for investigation
3. **internal review:** if the complainant is aggrieved with the process or outcome of the frontline resolution/investigation, they can request an internal review
4. **access to external review:** if the complainant is aggrieved with the process or outcome of the internal review, we inform them of any available external review options.

Procedures

[Tailor this section to your individual procedures]

Frontline resolution

- We will acknowledge all complaints within 10 days of receipt.
- Frontline staff will receive the complaint.
- Frontline staff will clarify the complaint and the outcome the complainant is seeking.
- Frontline staff will assess the complaint to determine how it should be dealt with. *[Consider including the criteria upon which complaints will be assessed]*
- If the agency is not the right organisation to respond to the complaint, frontline staff will advise the complainant of an organisation that may be able to help.

Investigation

- If frontline staff cannot resolve the complaint, it will be assigned to an officer for investigation.
- The officer handling the complaint will advise the complainant who the contact person is and how long it will take to respond to the complaint.
- Complaint handling staff will aim to resolve all complaints within 28 days.
- If it takes longer than 28 days to resolve a complaint, the contact person will contact the complainant prior to or at this time and explain why.

-
- *Complaints that are not resolved within 28 days may be escalated if necessary to ensure that a resolution is expedited.*
 - *The officer responsible for handling the complaint will write to the complainant to advise them of the outcome. The outcome letter/report will contain reasons for the decision made and the contact information for the responsible officer.*
 - *The officer handling the complaint may contact the complainant to discuss the outcome of their complaint prior to sending the outcome letter.*

Internal review

[Identify the staff member/s who are responsible for internal reviews – an internal review should be escalated to a staff member not involved in the original decision/action/investigation]

[Detail internal review process and timeframes]

An outcome letter signed by the senior officer responsible for the internal review will be provided to the complainant at the conclusion of every internal review.

The outcome letter will advise the complainant of any avenues of external review available in relation to the matter, such as the Victorian Ombudsman.

Complaints about contractors

We recognise that we retain a level of responsibility for services carried out by contractors on our behalf.

[Consider whether you will allow contractors to respond to complaints directly.

When deciding, consider whether you have (or can put in place) appropriate oversight mechanisms for any complaint handling carried out by contractors.

If contractors handle complaints, provide details of any oversight mechanisms and other requirements the contractor will be subject to]

If a complainant is not satisfied with the outcome of the complaint, he or she can ask the agency to review the decision.

All outcome letters written by contractors in relation to complaints will include the name and contact details of an agency staff member to whom the complainant may escalate their complaint if they are not satisfied with the outcome the contractor has provided.

Complaints about specific matters – alternative procedures

Complaints about allegations of corrupt conduct

Where a complaint involves allegations of corrupt conduct, it will be handled in accordance with the *[insert name of policy for handling protected disclosures]*.

Remedies

Where we have found that we have made an error, we will take steps to redress the situation. Possible remedies include, but are not limited to *[list the remedies and who is authorised to offer them]*

- *an explanation of why the error occurred and the steps taken to prevent it happening again*
- *a reversal of a decision*
- *an ex gratia payment or compensation*
- *disciplinary action taken against a staff member*
- *providing the means of redress requested by the complainant.*

Where we identify an error, we will consider offering a genuine apology to the complainant, in addition to any other remedies offered, irrespective of whether the complainant specifically requests this.

Privacy

When gathering information to respond to a complaint, we will only:

- use it to deal with the complaint or to address systemic issues arising from the complaint
- disclose it in a de-identified format when disclosing data to the public
- share it with staff on a need to know basis.

Recording complaints

All complaints are recorded in our *[complaint database]*.

[Insert process for recording complaints]

We analyse our complaint data and provide *[annual/more frequent]* reports to *[insert details of relevant parties to report to]* on how we can reduce complaints and improve services. Senior management is responsible for acting on the recommendations in these reports.

We record the following information for each complaint:

- *the complainant's details*
- *how the complaint was received*
- *a description of the complaint*
- *the complainant's desired outcome (if known)*
- *the agency officer responsible for handling the complaint*
- *any action taken, including contact with the complainant, response times and the outcome*
- *when the complaint was finalised*
- *relevant demographic information that could help improve services*
- *any recommendations for improvement, and who is responsible for implementing them.*

Any queries regarding the recording of complaints should be directed to *[insert name of responsible officer]*.

Reporting on performance

To measure our performance, we have the following key performance indicators:

[Insert KPIs associated with complaint handling. These KPIs may be related to:

- complaints upheld, partially upheld, not upheld*
- performance against timelines set by the agency i.e. average time to respond*
- number of changes made to services as a result of complaints*
- number of complaint outcomes overturned on internal review*
- customer satisfaction with the complaint handling system*
- complaints escalated to the Victorian Ombudsman's office where the agency's original decision has been overturned and/or proposals for action have been made by the Ombudsman]*

We will report against our complaint handling key performance indicators in our annual report, where we will also detail any service improvements made as a result of complaints received.

Unreasonable complainant conduct

[The New South Wales Ombudsman's Managing unreasonable complainant conduct model policy includes guidance for managing unreasonable complainant conduct, which agencies can tailor to their individual circumstances <www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/managing-unreasonable-complainant-conduct-a-model-policy-and-procedure>]

Appendix 2 – complaint handling organisations

Key Victorian complaint and dispute resolution bodies

Accident Compensation Conciliation Service

Provides an independent service to resolve workers compensation disputes in Victoria.

Commissioner for Privacy and Data Protection

The key body regulating the way Victorian government agencies and local councils collect and handle personal information.

Consumer Affairs Victoria

Promotes consumer protection and ethical trading and ensures that consumer protection laws are properly enforced.

Dispute Settlement Centre – Victorian Department of Justice and Regulation

Provides an informal, impartial, accessible, low cost dispute resolution service to the Victorian community.

Disability Services Commissioner

Deals with complaints about disability services in Victoria.

Health Services Commissioner

Deals with complaints about health services providers.

Local Government Investigations and Compliance Inspectorate

Investigates complaints of alleged breaches of the *Local Government Act 1989* by councillors, senior council officers and certain other persons.

Mental Health Complaints Commissioner

Deals with complaints about public mental health services providers.

Public Transport Ombudsman

Deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with the public transport operators.

Victorian Equal Opportunity and Human Rights Commission

Responsible for eliminating discrimination in Victoria. Offers information, education and consultancy services, conducts research and provides legal and policy advice.

Victorian Inspectorate

Key oversight body in Victoria's integrity system. It can take complaints about IBAC, Chief Examiner and Examiners, Victorian Ombudsman and Auditor General.

Victorian Ombudsman

Receives complaints about the administrative actions of Victorian government authorities and local councils.

Industry complaint and dispute resolution bodies

Energy and Water Ombudsman Victoria

Dispute resolution service for Victorian electricity, gas and water consumers.

Financial Ombudsman Service

Dispute resolution scheme for disputes concerning financial services, including banking and finance, home, contents, travel and life insurance, insurance broking, financial planning, managed funds, mortgage and finance broking, pooled superannuation funds, estate planning and management and traditional trustee services.

Private Health Insurance Ombudsman

Assists private health fund members to resolve disputes about health insurance.

Telecommunications Industry Ombudsman

Dispute resolution service for residential and small business customers who have a complaint about their telephone or internet service in Australia.

Tolling Customer Ombudsman

Alternative dispute resolution service for customers of CityLink and EastLink.

Public sector corruption and police misconduct

Independent Broad-based Anti-corruption Commission

Receives complaints and notifications about corruption and misconduct in Victorian government departments and agencies, councils, Victoria Police, the Parliament and the judiciary; assesses potential protected disclosures under the *Protected Disclosure Act 2012*.

Professional Standards Command, Victoria Police

Receives complaints about Victoria Police members.

Courts and tribunals

Victorian Civil and Administrative Tribunal (VCAT)

Magistrates' Court of Victoria

County Court of Victoria

Supreme Court of Victoria

Commonwealth and interstate ombudsman

Commonwealth Ombudsman

NSW Ombudsman

Queensland Ombudsman

Ombudsman South Australia

Ombudsman Western Australia

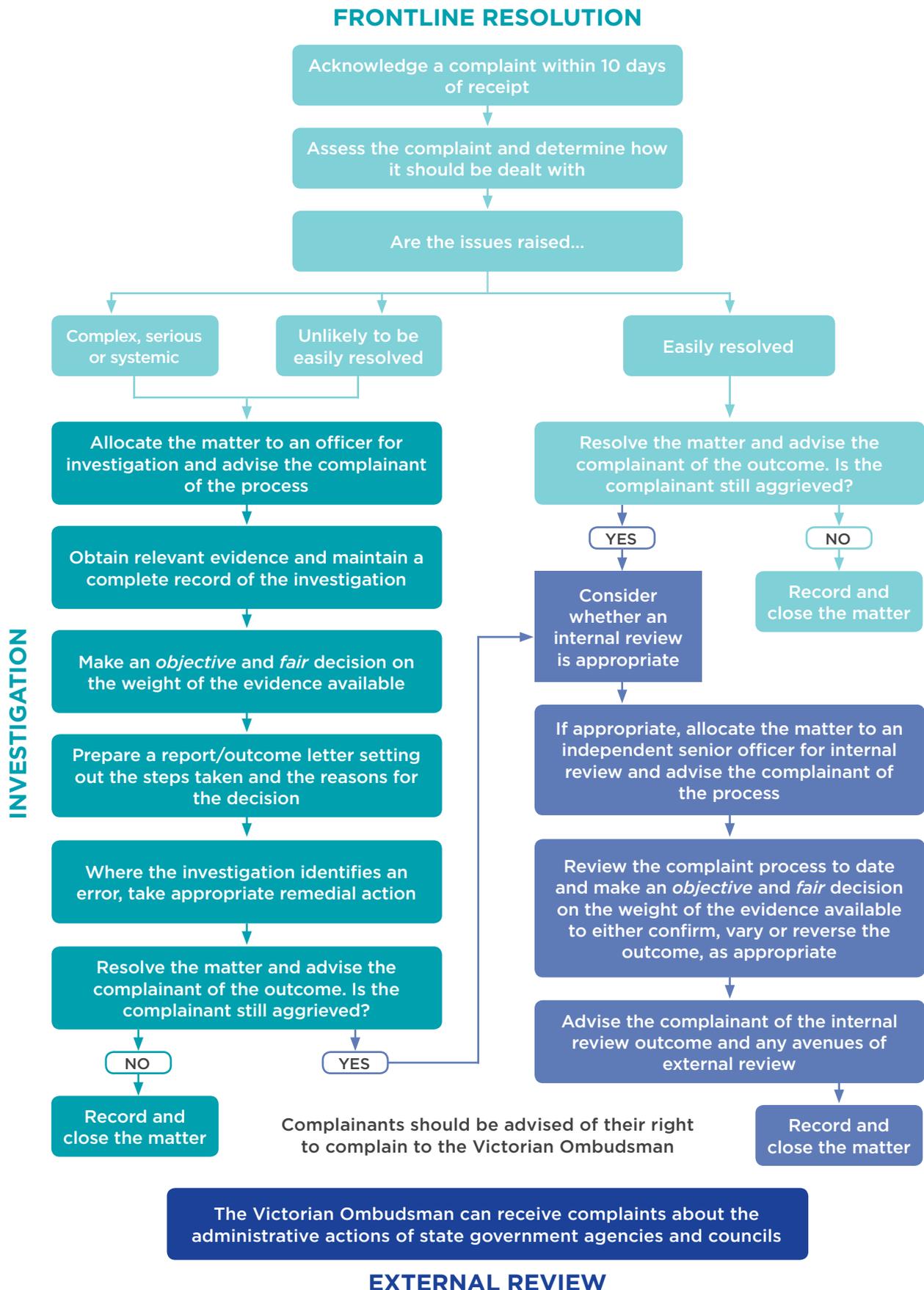
Ombudsman Tasmania

Ombudsman NT

ACT Ombudsman

Appendix 3 – complaint handling flowchart

This flowchart shows how a tiered approach to complaint handling can work in practice.



Appendix 4 – acknowledgment letter example

This is an example of an acknowledgement letter for a complaint.

Dear Mr Citizen

Your complaint about your licence application

Thank you for your email dated 1 January 2016 about the department’s decision not to approve your application for a licence.

I am considering your complaint and will contact you again when more information is available.

If you have any questions, you are welcome to contact me on 9555 5555.

Yours sincerely

Li Adams

Customer Service Officer

Appendix 5 – outcome letter example

This is a fictional letter that incorporates the elements of a good outcome letter set out on page 15, and takes a receptive attitude to feedback. Remember there is no ‘one size fits all’ response to every complaint, and tailor your letters to suit each complaint.

Dear Ms Citizen

Your complaint about your fine

Thank you again for your email dated 1 January 2016 about the service you received from one of our enforcement officers and her refusal to revoke your fine.

You complained that the officer refused to withdraw the fine even though you provided evidence that you did not commit the offence, and that she was rude and unhelpful.

We welcome feedback about our service and I would like to thank you for taking the time to contact us.

After reading your email, I considered the *Infringements Act 2006*, which sets out the law on infringements, and our internal policies. I also spoke to the officer involved.

Unfortunately our enforcement officers are not able to revoke fines once they have been issued. The enforcement officer advised me that she was trying to explain this to you, and did not intend to be rude or unhelpful.

The senior review officers in our Appeals section can review and revoke fines, and I have forwarded your letter to them for consideration. If you have any additional evidence to provide, you can send it to the Appeals section by writing to PO Box 999, Melbourne VIC 3000 or emailing <appeals@agency.vic.gov.au>.

I hope this resolves your concerns about what happened. If you have any questions, you are welcome to contact me on 9555 5555.

If you are not happy with my response, you can seek an internal review by writing to our Chief Executive Officer. Alternatively you may wish to complain to the Victorian Ombudsman by completing the online complaint form at <www.ombudsman.vic.gov.au> or by calling (03) 9613 6222 or 1800 806 314 in regional areas.

Yours sincerely

Li Adams

Customer Service Officer

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222
Fax 03 9602 4761
Email ombudvic@ombudsman.vic.gov.au
www.ombudsman.vic.gov.au