

# POLICY

## Enquiries

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<b>Responsible officer</b>	Principal Policy Officer

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## POLICY STATEMENT

The Ombudsman may conduct an enquiry into the administrative actions of an authority, which includes Victorian state government departments, local councils, administrative offices, public organisations or specified entities, as a consequence of receiving a complaint, a referral, or by own motion. The Ombudsman conducts an enquiry to decide whether an investigation should be conducted, or whether a complaint may be resolved informally.

The Ombudsman may also conduct an enquiry into improper conduct or detrimental action involving an authority or a public interest disclosure entity on receiving a referral of a public interest complaint from the Independent Broad-based Anti-corruption Commission (IBAC), in order to determine whether an investigation should be conducted.

We conduct our enquiries efficiently in a manner that is respectful, impartial, consistent with our statutory obligations and discretion, and a proportionate use of public resources.

## CONDUCTING ENQUIRIES INTO ADMINISTRATIVE ACTIONS

1. An officer may conduct enquiries (Ombudsman Act, section 13A) into an administrative action as a consequence of a complaint received, on receipt of a referred complaint or matter, or by own motion.
2. Conducting enquiries may involve, but is not limited, to:
  - obtaining and reviewing information from the complainant, the relevant authority, or another party
  - conducting research
  - gathering information and intelligence through open source searches
  - meeting with involved parties
  - inspecting files, documents and systems or examining the processes or practices of an authority
  - undertaking a site visit
  - negotiating a resolution to address the complaint or a matter otherwise identified by VO as requiring further attention.

## Contacting an authority

3. Often enquiries will involve VO contacting the authority for information about how it has dealt with a complaint or matter.
4. VO will usually inform the complainant of our intention to contact an authority before initiating contact.
5. A complainant's name and other information (such as an address, or phone number) may be provided to an authority to assist it in responding to us. A complainant may request that their details not be disclosed to an authority; however, this may limit our ability to obtain relevant information.
6. We may request a verbal or written response to enquiries from an authority. The principal officer of the authority must assist us with our enquiries (Ombudsman Act, section 13A(3)).
7. VO may suggest that an authority take certain action where there is reason to believe that by doing so:
  - the complaint may be resolved, or
  - the authority will remedy a deficiency, and VO decides that a formal investigation is not warranted.

## Assessment of enquiries

8. After an enquiry, VO can reach a decision that:
  - the complaint or matter may be informally resolved
  - an investigation should be conducted, or
  - an investigation is not warranted.

## Informal resolution

9. We may determine that a matter may be informally resolved because we consider:
  - the complaint or matter may be more appropriately handled by another agency and the complaint formally referred (see our policy on 'Referrals and Notifications'), or the complainant informally redirected, to that agency
  - the authority has not had sufficient opportunity to respond to and resolve the complaint
  - the authority is already taking action to try to resolve the complaint (such as future meetings between the complainant and the authority, or other planned action by the authority)
  - the authority has voluntarily agreed to take further steps to deal with a complaint or matter (see our policy on 'Recommendations and proposals'), or

- the complaint is withdrawn.

## Deciding to investigate

10. As a consequence of conducting enquiries we may decide that an investigation should be conducted (see our policy on 'Investigations').

11. VO has a general discretion to decide when an investigation of an administrative action should be conducted (Ombudsman Act, sections 15B, 16A), but generally takes into account the gravity and impact of the administrative action, in the context of public interest. For example, an investigation is more likely to be conducted where the administrative action:

- extends beyond an individual's interests (that is, it impacts on groups of individuals or the wider population)
- is known to have occurred on numerous occasions previously without remedy
- is likely to arise again
- is of a serious nature (this may be where it places a person's safety or welfare at risk, or indicates a possible incompatibility with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*)
- resulted in significant personal loss or detriment
- could be redressed by VO making recommendations that lead to meaningful outcomes for a complainant (or affected party), or improvements to public administration.

12. VO also considers whether the administrative action has already been investigated by another agency, and if further investigation would add value.

13. VO may form the view that an investigation is not warranted because VO is unable to establish that the administrative action falls within the 'errors' set out in section 23(1) of the Ombudsman Act.

14. We may also decide that an investigation is not warranted because there is likely to be little or no benefit or practical outcome to be achieved in conducting an investigation (for example, where the 'error' is very minor and has no lasting effect).

15. Prior, during or after enquiring into a matter, VO must refuse (Ombudsman Act, section 15) to deal with a complaint where:

- dealing with it would prejudice a criminal investigation or proceedings or an investigation by the Victorian Inspectorate, or IBAC (Ombudsman Act, section 13AB)

- it involves corrupt conduct, police personnel misconduct, or an action undertaken under the *Freedom of Information Act 1982*
- IBAC notifies VO that it is investigating or has referred to another body a matter involving corrupt conduct, except in limited circumstances
- it relates to an employment matter, unless VO is of the view that the matter merits investigation to avoid injustice
- a legal remedy, through a court, tribunal or board, is available to the complainant, unless it would be unreasonable to expect the complainant to pursue that remedy or VO is of the view that the matter merits investigation to avoid injustice.

16. Prior, during or after enquiring into a matter, VO may refuse (Ombudsman Act, section 15A) to deal with a complaint where it considers:

- the subject matter of the complaint is trivial
- the complaint is frivolous, vexatious, or not made in good faith, or lacks substance or credibility
- dealing or continuing to deal with the complaint is unnecessary or unjustifiable having regard to all the circumstances of the case
- the matter has already been dealt with by VO, or another investigative body
- the complaint was made more than 12 months after the complainant first became aware of the issue and the complainant does not provide a satisfactory reason for the delay in contacting VO, or
- the complainant has failed to provide a written complaint when requested by VO.

## Outcome of enquiries

17. VO encourages authorities to resolve complaints and matters and to support improvement in public administration.

18. Where we have conducted an enquiry as a result of a complaint, VO must inform the complainant of the result (Ombudsman Act, sections 13B and 24). We also provide information about:

- actions taken by VO in dealing with the complaint
- any steps that an authority has agreed to take
- a decision to conduct an investigation
- where we decide to take no further action, VO's reasons for the decision.

19. VO will also inform the authority of the outcome of our enquiries, where that authority has been contacted during the enquiries.

## CONDUCTING ENQUIRIES INTO PUBLIC INTEREST COMPLAINTS

20. VO may conduct enquiries (Ombudsman Act, section 13A(2)) into improper conduct or detrimental action involving an authority or a public interest disclosure entity as a result of receiving a public interest complaint referred from IBAC.
21. Generally, officers inform the discloser that enquiries are being made.
22. Officers ensure that the identity of the discloser is protected and that confidentiality is maintained as required by the *Public Interest Disclosures Act 2012* (Vic).
23. Enquiries on a public interest complaint aim to determine whether the Ombudsman should conduct an investigation and are conducted in much the same way as enquiries on an administrative action.
24. Prior, during or after enquiring into a public interest complaint, VO must refuse to investigate (Ombudsman Act, section 15D):
- where conducting an investigation would prejudice a criminal investigation or proceedings, or an investigation by the Victorian Inspectorate or IBAC
  - unless the Ombudsman is reasonably satisfied that the complaint shows or tends to show improper conduct or detrimental action.
25. Prior, during or after enquiring into a public interest complaint, VO may refuse to investigate a public interest complaint (Ombudsman Act, section 15E) if it is identified that:
- the subject matter of the public interest complaint is trivial
  - the public interest complaint is frivolous or vexatious
  - the public interest complaint lacks substance or credibility
  - the conduct which is the subject of the public interest complaint does not amount to improper conduct or detrimental action
  - the subject matter has already been dealt with by an integrity body, or another body with coercive powers to obtain evidence
  - the public interest complaint was made more than 12 months after the person first became aware of the matter and the person does not provide a satisfactory reason for the delay in making the disclosure.
26. When enquiries are complete, VO must inform the discloser of either a decision to:
- investigate (Ombudsman Act, section 17), or
  - refuse to investigate and the reasons why (Ombudsman Act, section 15F).



## ROLES AND RESPONSIBILITIES

Role	Responsibility
<b>Principal Policy Officer</b>	<i>Owner</i> – Accountable for maintaining policy drafting, reviews and authorisation from the Executive.
<b>Principal Legal Adviser</b>	<i>Legal compliance</i> – Responsible for ensuring compatibility with the <i>Charter of Human Rights and Responsibilities 2006</i> (Vic) and other legislation under which VO operates.
<b>Executive Committee</b>	<i>Authorisation</i> – Authorises policies and significant amendments.
<b>All staff, contractors and third parties</b>	<i>Implementation</i> – Responsible for acting in compliance with the policy, standards, procedures and associated documents.

## **DOCUMENT MANAGEMENT**

### **Compliance**

VO maintains a compliance management system. Compliance to this policy, including use of information and systems, is subject to regular monitoring and reporting to the Executive Committee. For further details on compliance checks please refer to the compliance management system.

### **Document approval**

This document was approved by the Governance Committee on 17 December 2015.

### **Document review**

This document is due for review upon major changes or three years from the date of the last review.

## APPENDIX A: Related documents

Title	Location
<i>Public Interest Disclosures Act 2012 (Vic)</i>	Available at <a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
<i>Ombudsman Act 1973 (Vic)</i>	
<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>	