

# POLICY

## Role of the Ombudsman

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<b>Responsible officer</b>	Assistant Ombudsman, Executive Office

Policy Statement.....	4
What is an Ombudsman? .....	4
What is the Ombudsman’s purpose? .....	5
Roles and Responsibilities .....	7
Document Management .....	8
Compliance .....	8
Document approval.....	8
Document review.....	8
<b>APPENDIX A: Related documents</b> .....	9

## POLICY STATEMENT

The Ombudsman seeks to ensure fairness for Victorians in their dealings with the public sector and improve public administration.

In performing the functions of the office, the Ombudsman aims for excellence in providing a quality service to the public.

## WHAT IS AN OMBUDSMAN?

1. The modern conception of the Ombudsman as an arbiter of administrative fairness is consistent with its Swedish origin in 1809, where the institution was established to assist citizens in defending against governmental maladministration and abuse of power (the Swedish ombud, derived from the Old Norse umboosmaor, or 'representative').
2. This should not be confused with the notion of the Ombudsman as an advocate for citizens.
3. The Victorian Ombudsman is an independent officer of the Victorian Parliament whose principal functions are to resolve complaints about, enquire into and investigate administrative actions taken in or by Victorian state government and public organisations, including departments, statutory bodies and local councils. The office was established in 1973.
4. Parliamentary ombudsmen such as VO are in essence a consequence of 'responsible' government, which holds that the elected government as a representative of the will of the people must:
  - be accountable to the public for its actions and decisions
  - institutionalise governmental accountability by providing the public with the means to complain about deficient government administration.
5. The *Ombudsman Act 1973* (Vic) is the source of the Victorian Ombudsman's authority, and the means by which we are also held accountable. The office of the Victorian Ombudsman:
  - acts as a kind of quality assurance mechanism for government and public organisations
  - holds the composite position of being an oversight body of government, while being subject to the same standards of integrity and fairness (i.e. administrative law principles) used to assess the performance of government

- must lead by modelling excellence in public administration.
- 6. There are approximately 150 parliamentary ombudsman offices across the globe, including at a commonwealth level and in each state and territory of Australia and across the Asia Pacific region. While the emphasis of any local ombudsman is necessarily guided by the cultural and social priorities of the state in question, the core function of investigating grievances against the state is retained.
- 7. With the privatisation and outsourcing of essential services has been a tangential rise of private industry-based ombudsmen, who monitor and resolve industry specific issues, in telecommunications, or electricity services, for example.
- 8. Whether the context be a private industry scheme or a parliamentary democracy, the term 'ombudsman' has in effect come to symbolise 'complaint handler'.
- 9. When dealing with all matters, we use our (publicly funded) resources judiciously, and prioritise enabling vulnerable groups in the community to access administrative justice.

## WHAT IS THE OMBUDSMAN'S PURPOSE?

10. The Ombudsman has oversight of government and public organisations for the purpose of fostering administration that is guided by the public interest.
11. The Ombudsman can draw on complementary mechanisms that each seek to encourage better administration by targeting different points in the administrative process. These mechanisms can be reactive (examination by enquiry or investigation), proactive (alternative dispute resolution, review of an authority's complaint handling systems or through sharing key information) or preventative (education provided to government and public organisations).
12. Collectively, these support the Ombudsman's core objectives (Ombudsman Act, section 2A):
  - to provide a timely, efficient, effective, flexible and independent means of resolving complaints about government and public organisations
  - to identify, investigate, expose and prevent maladministration
  - to assist in the identification, investigation, exposure and prevention of improper conduct and corrupt conduct
  - to support improvements in the quality of administration and complaint handling practices and procedures of authorities, and
  - to promote the functions of the Ombudsman to the Victorian community and public sector.

13. The Ombudsman's primary role is to form opinions regarding the matters brought to the attention of the office. To do this, the Ombudsman draws on discretions embedded in the Ombudsman Act, which allow us to make decisions and form views about the merit of complaints and administrative action.
14. An Ombudsman's currency is reasoning, and our decisions are guided and bound by the limits of the Ombudsman Act (and, in matters of conduct, the *Public Interest Disclosures Act 2012* (Vic)).
15. The Ombudsman Act provides a broad range of opinions that the Ombudsman can reach about administrative actions. For example, that an administrative action is 'contrary to law', 'unreasonable, unjust, oppressive or improperly discriminatory' or simply 'wrong'. Similarly, the Ombudsman Act provides scope for the Ombudsman to recommend action to address the deficiency.
16. Beyond the roots of legislative authority, the Ombudsman's power is conspicuous in the impact of the execution of our core functions. For example:
  - through the informal and efficient resolution of complaints, individual members of the public can experience the benefits of our intervention and agencies are given opportunities to improve their practices
  - in our public reports to parliament, we articulate systemic administrative failure and recommend remedial action, which harnesses the power of our reputation as an integrity agency to secure the cooperation of a respondent agency to improve.
17. It is crucial for both the public and the government to have confidence in the impartiality and independence of the Ombudsman. It is important for the public to be aware and trust that the Ombudsman is free from government direction and interference in our scrutiny of public administration. It is equally important for the government to have confidence in the Ombudsman's integrity and impartiality in the discharge of the Ombudsman's statutory functions and powers.
18. The Ombudsman is not a court of law; and although the office is vested with significant powers, the Ombudsman is not able to enforce the office's decisions or recommendations for administrative change. The Ombudsman must draw on the power of persuasion through authoritative and reasoned argument and rely on the integrity and reputation of the office, to effect administrative improvement across government. By offering proposals or recommendations for change, the role of the Ombudsman evolves along with the social context which gives it relevance.

## ROLES AND RESPONSIBILITIES

Role	Responsibility
<b>Assistant Ombudsman, Executive Office</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 compliance with 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</i> (Vic)	Available at <a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
<i>Ombudsman Act 1973</i> (Vic)	