

Being formally interviewed by the Ombudsman

If you are asked to attend a formal interview as part of an investigation by the Ombudsman, this fact sheet explains the process and outlines what you can expect.

It is important to note that:

- The process is strictly confidential;
- You can bring a support person;
- If your interview is transcribed you can ask for a copy; and
- Your input is important for the Ombudsman's investigation.

This Guide does not apply to all interviews conducted for investigations and in particular, not for those whose primary purpose is administrative improvement. If uncertain about the application of this guidance material please seek clarification from our staff before the interview commences.

What is the Ombudsman's role?

The Ombudsman is an independent officer of Parliament with responsibility to investigate the actions of State Government departments and public authorities. The Ombudsman's office has two principle functions, which are:

1. To assist Western Australians to resolve complaints with State public authorities; and
2. To improve the standard of public administration through:
 - Investigation and resolution of complaints;
 - Investigations initiated by the Ombudsman about significant public sector issues; and
 - Provision of advice and guidance to public authorities.

The Ombudsman also has jurisdiction:

- To investigate disclosures made under the *Public Interest Disclosure Act 2003* where the disclosure concerns matters within the Ombudsman's jurisdiction under that Act; and
- To conduct an investigation following the death of a child known to the Department for Child Protection. These investigations examine the role of the Department for Child Protection, and any other departments involved with the administration of services to children and their families. The Ombudsman does not investigate the cause of death.

Why have I been asked to come for an interview?

The interview is an opportunity for the Ombudsman's office to gather facts. Under the *Parliamentary Commissioner Act 1971* we have the power to obtain information and interview people for an investigation.

If you are asked to attend a formal interview, it is because Investigating Officers of the Ombudsman's office believe you may have information that could help get to the truth of the matter, or that you have experience or knowledge that is crucial in helping us identify and address systemic issues.

Do I have to attend an interview?

While the Ombudsman can summons witnesses, we prefer not to have to exercise this power. Generally, we will write to you to request your presence at an interview.

Why is the interview so formal?

The *Parliamentary Commissioner Act 1971* and the *Royal Commissions Act 1968* give the Ombudsman the power to conduct investigations and follow a formal process. As such, a certain level of formality is involved at the interview that is normal for these types of investigations.

What can I expect?

You may be asked to take an oath or affirmation before the Ombudsman or a delegated officer. You will be given more information on the subject of the investigation, and advised of relevant provisions of the *Parliamentary Commissioner Act 1971*, including confidentiality.

You will be asked to provide all information that you know on the subject of the investigation.

You may be asked questions about specific matters and/or questions for the purpose of clarifying information you have already provided to the investigator.

You may refer to any documents you possess which may assist your recollection.

You will also have the opportunity to say anything else you wish to say prior to the interview being completed.

The proceedings may be recorded, but recordings are not always transcribed. If your interview is transcribed you can ask for a copy. If you do, one will be provided as soon as possible after the interview, although this may take some time.

What about procedural fairness?

If we are considering making an unfavorable comment about you in any way, you will be given the opportunity to read and comment on that matter. The Ombudsman will consider your comments before forming a final view on the matter.

Do I have to answer the questions at the interview?

You must answer questions truthfully and not mislead the interviewer.

Secrecy provisions that may apply in other circumstances do not apply to providing information to the Ombudsman. However you will not be required to give any evidence or produce any document that you would not be obliged to give in a court.

The *Parliamentary Commissioner Act 1971* protects you from any civil action if you have provided your information to us in good faith. It is also an offence for you to be victimised by another person because you have assisted the Ombudsman.

How will I be treated at interview?

We will treat you with courtesy, fairness and respect. The interview process is likely to be of most benefit to all parties involved if you:

- Remain calm;
- Listen carefully;
- Speak clearly; and
- Avoid using jargon.

It will also help if you bring any documents that may assist your recollection.

Can I bring support?

Yes, you can bring a support person to your interview such as a friend, lawyer or union representative. *The support person's role is to observe the interview process; they cannot speak on your behalf or answer any questions for you.* The same confidentiality conditions will also apply to them.

What can happen after the investigation?

When a view is reached about the facts of an investigation (where that is possible), the Ombudsman then considers whether the agency complained about has:

- Acted contrary to law;
- Acted unreasonably, unjustly, oppressively, or been improperly discriminatory;
- Made a decision for an improper purpose, or on irrelevant grounds or has failed to consider relevant considerations;
- Failed to provide reasons for a decision when reasons should have been given;
- Based a decision wholly or partly on a mistake of law or fact; or
- Acted wrongly.

If the Ombudsman does form such an opinion then recommendations may be made to the agency for action to remedy the situation. This may include a review of the decision, changes to administrative practices, an apology or an ex-gratia payment, if warranted.

It is important to understand that the Ombudsman can only make recommendations to agencies or departments and cannot demand that action be taken. The Ombudsman may send a report about the investigation to the relevant Minister, the Premier, table a report in Parliament, or place the report on its website.

If you have any questions about this process, please contact us.



Ombudsman Western Australia