

Boards and tribunals may have questions about the role of the Ombudsman and where the Ombudsman's jurisdiction may impact on their operations. These guidelines clarify how Ombudsman Western Australia responds when a complaint is received about a board or tribunal.

### What is the Ombudsman's role?

The Ombudsman is an independent and impartial person who investigates complaints about Western Australian government departments, statutory authorities and local governments. The *Parliamentary Commissioner Act 1971* describes the Ombudsman's jurisdiction - what the Ombudsman can and cannot investigate. The Ombudsman reports directly to the Parliament of Western Australia, not to the government of the day.

The Ombudsman's main role is to help the people of Western Australia resolve disputes with State public sector agencies and help those agencies be accountable for and improve the standard of their administrative decision-making, practices and conduct.

The Ombudsman's office does this by:

- providing an effective and efficient system for handling and resolving complaints about the administrative practices of public sector agencies;
- identifying the causes of problems and making recommendations for changes to procedures, practices, policies or legislation to prevent similar problems; and
- encouraging public sector agencies to establish internal complaint handling systems in the interests of good public administration.

We also investigate disclosures made under the *Public Interest Disclosure Act 2003* where the disclosure concerns matters within the Ombudsman's jurisdiction under that Act.

### What types of complaints about boards or tribunals does the Ombudsman investigate?

The Ombudsman investigates complaints from those personally affected by the actions of a board or tribunal where those actions:

- were performed in the course of the board or tribunal exercising its powers and functions; and/or
- relate to a matter of administration.

Although the Ombudsman has a wide jurisdiction, we do not usually investigate 'quasi-judicial' proceedings, such as where a board or tribunal is holding a formal hearing, calling witnesses, taking evidence on oath and making determinations on fact and law. Where a board or tribunal makes a decision based on expert knowledge or professional expertise, we do not seek to substitute our judgement for that of the board or tribunal.

The Ombudsman considers whether the complainant can apply to the State Administrative Tribunal or a court for the decision to be reviewed. Except in special circumstances, the Ombudsman cannot investigate matters which can be remedied through a tribunal or court of law.

We can investigate whether the administrative actions of a board or tribunal were fair, reasonable and in accordance with the law. For example, we can look at the application and collection of fees and charges, the receipt and processing of documents, and policies and procedures for providing general information to parties to disputes and arranging hearings.

## How does the Ombudsman deal with complaints?

The Ombudsman acts impartially and in a way that is fair to all parties. We are not advocates for either the complainant or the board or tribunal. Generally, we do not take up complaints unless the person has been unsuccessful in resolving the matter with the board or tribunal.

When a complaint is received, the Ombudsman's Investigating Officer will contact a member of the board or tribunal or their staff to obtain information about the complaint, including background details.

Some complaints are relatively straightforward and can be resolved quickly and informally. Others however, raise serious or complex issues that need to be investigated in some depth.

In an investigation, we ask the board or tribunal to comment on the complaint and provide background information and documents. Usually we ask for a response in writing but may make contact in person to address matters quickly and effectively. We may also gather information from other relevant agencies and individuals.

If necessary, we can enter premises, compel agencies to produce documents and take evidence on oath. However, we rarely need to use these powers. Any documents prepared for an investigation and sent to or by the Ombudsman cannot be used in any legal proceedings.

Once we have established the facts we can determine if there is substance to the complaint. At the end of an investigation we try to identify the cause of the issue that gave rise to the complaint and, where appropriate, recommend changes to procedures, practices, policies or legislation to prevent similar problems recurring.

The Ombudsman may also recommend that action be taken to remedy the situation for the complainant, such as a review of the decision, an apology or an ex-gratia payment, if warranted.

We operate in accordance with the principles of procedural fairness. If we have prepared a report that contains comments that affect or are adverse to a person or to the board or tribunal, we will provide opportunity for comment before finalising our view.

In most cases we do not disclose information about our investigation or findings, other than to the complainant and the agency concerned. However, the Ombudsman may send a report to the relevant Minister, the Premier, or table a report in State Parliament.

## What can we do to help?

Even the most effectively managed public agency will find that things go wrong occasionally.

The Ombudsman can help boards and tribunals understand their responsibilities to act fairly, reasonably and to comply with the law. We can also help them find practical ways to improve their administrative practices.

Our experience shows that intervention by the Ombudsman can help resolve disputes between complainants and boards and tribunals. It can also lead to simple, practical suggestions for ways in which boards and tribunals can improve the standard of their administrative decision-making, practices and conduct.



### Ombudsman Western Australia