

# Ombudsman WA Publications

The following guidelines, information sheets and forms are available in the Publications section of our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au). If you require any assistance with our publications, please contact the Publications Manager on (08) 9220 7555.

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## Ombudsman Western Australia

Level 2, Albert Facey House, 469 Wellington Street Perth WA 6000 • PO Box Z5386 St Georges Terrace Perth WA 6831  
 Tel 08 9220 7555 • Freecall (free from landlines) 1800 117 000 • Fax 08 9220 7500  
 Email [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au) • Website [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)



#### 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, among other functions:

- Receives, investigates and resolves complaints about the administrative decision making and practices of the public sector, local government and universities; and
- Reviews certain child deaths and family and domestic violence fatalities.

#### Why have I been asked to come for an interview?

The interview is an opportunity for the Ombudsman's office to ascertain background information, gather facts and substantiate or disprove complaints and allegations. Under the *Parliamentary Commissioner Act 1971* and *Royal Commissions Act 1968*, we have the power to obtain information and interview people for an investigation.

#### Do I have to attend an interview?

Yes, attendance of witnesses is required under the *Parliamentary Commissioner Act 1971* and the *Royal Commissions Act 1968*.

#### What can I expect?

You may be asked to take an oath or affirmation. You will be given more information on the subject of the investigation and advised of relevant provisions of the *Parliamentary Commissioner Act 1971* and the *Royal Commissions Act 1968*, including confidentiality.

The proceedings may be recorded or video-taped.

#### Confidentiality

It is important that you are aware that interviews are private and that Ombudsman's investigations are subject to the relevant confidentiality provisions of both the *Parliamentary Commissioner Act 1971* and the *Royal Commissions Act 1968*.

#### Do I have to answer the questions at the interview?

You must answer questions frankly, truthfully and not mislead the investigator/reviewer.

#### Questions

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



In assessing whether a complaint is a matter the Ombudsman can and should investigate, we are governed by the *Parliamentary Commissioner Act 1971* (the Act), which sets out our powers and responsibilities. The key matters we consider are as follows:

### 1. Basic jurisdiction issue – agency complained about

First, we ascertain whether the agency complained about is within the Ombudsman's jurisdiction – i.e. a state government department or authority, or local government. Certain agencies are outside our jurisdiction, as are decisions made by Cabinet or Ministers or the actions of legal advisers. For more information on our jurisdiction, see the Complaints section of our website at [www.ombudsman.wa.gov.au/Complaints/Making\\_complaints.htm](http://www.ombudsman.wa.gov.au/Complaints/Making_complaints.htm).

### 2. Other key jurisdiction issues

We assess whether:

- the action or decision complained of relates to “a matter of administration”;
- the action complained of was in the exercise of a power or function;
- the complainant is personally affected by the action or decision;
- the complaint has been made within 12 months of the action or decision complained of; and
- the complainant has or had a legal remedy or a right of review or appeal.

### 3. Discretion whether or not to investigate

We can exercise our discretion whether or not to investigate in situations where:

- ‘special circumstances’ exist for matters over 12 months old;
- the complainant has a legal remedy or right of review or appeal, in which case we consider whether it is reasonable to expect the complainant to resort to that remedy;
- a complaint appears to us to be frivolous, trivial, vexatious, or not in good faith;
- an investigation does not appear to be warranted in the circumstances, such as where the agency is still investigating the complaint or a complaint has not yet been made to the agency; or where another complaint-taking body may be more appropriate; or
- the complainant does not have a sufficient personal interest in the matter.

### 4. Referral to other body

If a complaint is out of our jurisdiction we try to find another body which might be able to assist the complainant. For complaints within jurisdiction but where there is a more appropriate body to do the investigation, we refer it to that body (after having exercised our discretion not to investigate).

### 5. Action once decision is made

If we decide to investigate a complaint, we advise the agency and the complainant accordingly. As part of this process, we identify the issues raised by the complainant (along with any other issues that we consider material), and identify the specific heads of maladministration for each allegation. We can also choose to conduct either a formal or an informal investigation.

If we decide not to investigate, the complainant is advised of this, along with the reasons for our decision.

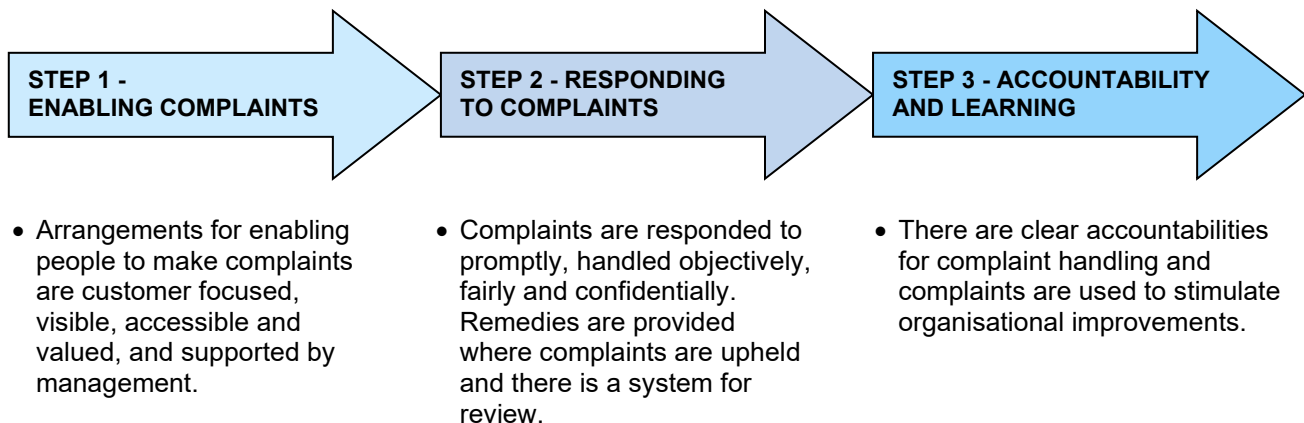
### 6. Prioritising investigations

The majority of our investigations are conducted informally. In prioritising these we have regard to a number of factors. For instance, we assess whether any particular urgency attaches to the outcome of the complaint. For complex matters, we consider conducting a more detailed investigation where there is significant public interest in the matter complained about; or the complaint has significant public policy implications, or raises systemic policy, procedural or legislative issues.



### Effective complaint handling systems

An effective complaint handling system is one that provides confidence that complaints are dealt with effectively through the following three steps:



### Fit for purpose

An effective complaint handling system should be a 'fit for purpose' system. This is a system that is varied to fit an organisation's circumstances and is proportionate to the number and type of complaints it receives. Decisions about building a 'fit for purpose' system could incorporate the following considerations:

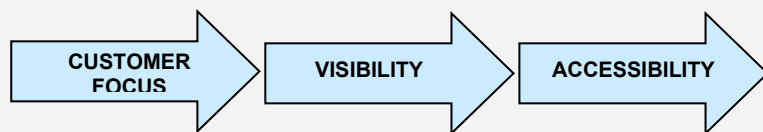
- The number and demographics of the organisation's customers, and how they generally communicate with the organisation;
- The nature and breadth of the organisation's interactions with the public;
- The level of complaints that is considered reasonable for the organisation (by examining trends in its level of complaints over time and industry benchmarks);
- The organisation's risk management strategy – complaints are an important way of monitoring and mitigating any risks;
- The value the organisation derives, or wishes to derive, from complaints to improve its operations over time, as well as other information needs of management; and
- The cost of operating a complaint handling system.

### Checklist for complaint handling systems

The following checklist sets out ten good practice principles for complaint handling. When using the checklist, consider the type of system that will meet your needs. Not all components of the checklist will apply to your organisation. They are prompts to guide your decision making in designing the right type of system for you. Some aspects of the principles may be more relevant to your organisation than others and different organisations may be able to meet the complaint handling principles in different ways.

Organisations can use this checklist in conjunction with the Ombudsman's guideline for [\*Effective handling of complaints made to your organisation – An overview\*](#) to assess their complaint handling system against the key features of an effective system. This Guideline, along with more detailed guidelines about the steps within the complaint handling process, are available on the Ombudsman WA website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).

## Step 1 - Enabling Complaints



### Customer focus

**Principle:** The organisation is committed to effective complaint handling and values feedback through complaints.

- ☐ Do you have customer service standards and a complaint handling process that is valued, supported and followed by management?
- ☐ Is your organisation open to feedback from customers, including through complaints?
- ☐ Are the benefits of complaints and the complaint handling process communicated to staff, including new staff at their induction?

### Visibility

**Principle:** Information about how and where to complain is well publicised to customers, staff and other interested parties.

- ☐ Is information about how to make a complaint and how it will be handled readily available, for example, on your website and front counter?
- ☐ Are the contact details for making complaints prominently displayed, for example, in brochures, on your website, or on posters?
- ☐ Are front-line staff aware of the complaint handling process and the contact details for your complaints officer?
- ☐ Does your complaint handling system identify alternative external parties the complainant can go to with a complaint?

### Accessibility

**Principle:** The process for making a complaint and investigating it is easy for complainants to access and understand.

- ☐ Are complaints handled at no charge to the complainant and is this information clear in publications about how to make a complaint?
- ☐ Can complaints be made in a number of different ways verbally and in writing, for example, in person, over the phone, and in writing via email, fax, SMS and letter?
- ☐ Do you provide access to translating and interpreting services for non-English speaking people to assist them to make a complaint?
- ☐ Is the process for making a complaint accessible and easy to use by all members of the community including Indigenous Australians, children and young people, people living in regional and remote areas, people with disabilities and people from culturally and linguistically diverse backgrounds?

The Ombudsman WA publication [Making your complaint handling system accessible](#), may assist you in making your complaint handling system accessible to all members of the diverse Western Australian community.



## Step 2 - Responding to Complaints



### Responsiveness

**Principle:** Complaints are acknowledged in a timely manner, addressed promptly and according to order of urgency, and the complainant is kept informed throughout the process.

- ☐ Do you provide guidance to staff on how to respond to and prioritise complaints (for example through guidelines) and does this cover:
  - who will be responsible for handling the complaints;
  - how to assess complaints to decide what can be resolved easily and what requires investigation;
  - how and when the complainant will be kept informed during the process;
  - how to identify, handle and, if necessary, refer public interest disclosures and complaints about misconduct and corrupt behaviour?
- ☐ Is each complaint acknowledged promptly (within a specified timeframe) and is the complainant (and, if applicable, the person who is the subject of the complaint) kept informed throughout the process?
- ☐ Are complaints addressed promptly and in order of urgency and do you have performance targets which set out the timeframe for resolving complaints?
- ☐ Are front-line staff empowered to resolve certain complaints at the earliest point of contact with the complainant?
- ☐ Does your organisation have special arrangements for responding to complaints from particular client groups, for example, Indigenous Australians, children and young people, people living in regional and remote areas, people with disabilities and people from culturally and linguistically diverse backgrounds?

### Objectivity and Fairness

**Principle:** Complaints are dealt with in an equitable, objective and unbiased manner. This will help to ensure that the complaint handling process is fair and reasonable. Unreasonable complainant conduct is not allowed to become a burden.

- ☐ Do you ensure that your staff are aware of, and given guidance on, conflict of interest requirements and how to make declarations where required?
- ☐ Are relevant staff given guidance or training in complaint resolution and evidence based investigation techniques and effective handling of unreasonable conduct by complainants or people who are the subject of a complaint?
- ☐ Is the complainant (and, if applicable, the person who is the subject of the complaint) given:
  - sufficient opportunity to present their position and is the information they provide given adequate consideration, taking into account all relevant material and factors;
  - the opportunity to comment on any adverse findings; and
  - reasons for the decisions made about the outcome of a complaint?
- ☐ Where appropriate, is there a process in place for a suitable colleague or superior to review the decision made by the person handling the complaint prior to finalisation?

The Ombudsman WA publications [Conducting administrative investigations](#), [Investigation of complaints](#), [Procedural fairness](#) and [Dealing with unreasonable complainant conduct](#) may assist your staff when handling complaints.

## Step 2 - Responding to Complaints (continued)



### Confidentiality

**Principle: Personal information related to complaints is kept confidential.**

- ☐ Do you advise staff about confidentiality requirements when handling or involved in complaints?
- ☐ Are the personal details of the complainant kept confidential and only used for the purposes of addressing the complaint?
- ☐ Are the personal details of any people who are the subject of the complaint kept confidential and only used for the purposes of addressing the complaint and any follow-up actions?

### Remedy

**Principle: If a complaint is upheld, the organisation provides a remedy.**

- ☐ Do you support and give guidance to staff on providing remedies when complaints are upheld?
- ☐ Are responsibilities for providing remedies clearly defined and at the appropriate level in the organisation, for example, are front-line staff empowered to provide appropriate remedies?
- ☐ Do you give guidance to staff on the appropriate use of remedies?
- ☐ Are the reasons for decisions relating to remedies provided to the complainant?

The Ombudsman WA publication [Remedies and redress](#) may assist you to provide appropriate remedies when resolving complaints.

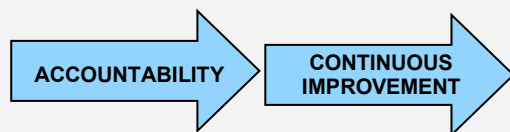
### Review

**Principle: There are opportunities for internal and external review and/or appeal about the organisation's response to the complaint, and complainants are informed about these avenues.**

- ☐ Do you provide complainants with access to an independent internal review of the handling of their complaint by someone who was not involved in dealing with the complaint?
- ☐ Do you provide the complainant with information about external review or appeal options, such as the Ombudsman, at the conclusion of the complaint process?

The Ombudsman WA has publications on how to make a complaint to the Ombudsman on their website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au). You may wish to direct complainants to these publications or the website.

## Step 3 - Accountability & Learning



### Accountability

**Principle:** Accountabilities for complaint handling are clearly established, and complaints and responses to them are monitored and reported to management and other stakeholders.

- ☐ Are staff aware of their responsibilities for handling complaints and the responsibilities of specific nominated complaint handling staff, if applicable?
- ☐ Are reasons for complaint decisions and any remedies recorded and are any remedial actions and proposed improvements to practices followed up, acted on and reported to management?
- ☐ Do you have a 'fit for purpose' information system for recording and tracking complaints and can it provide information about the demographic make-up of complainants compared to the Western Australian community or your customer base?
- ☐ Do you ensure that all correspondence relating to feedback and complaints is managed in accordance with the organisation's record keeping plan, policies and procedures?
- ☐ Is standardised and consistent data from complaints reported to the Corporate Executive along with proposed or actual improvements to your organisation's practices?
- ☐ Is the effectiveness of complaint handling monitored through appropriate quality assurance or internal audit processes and reported to the Corporate Executive along with recommended improvements to the complaint handling system?

The Ombudsman WA publications [Guidance for Complaint Handling Officers](#) and [Good record keeping](#) may assist you to identify, empower and train staff in their responsibilities when handling complaints

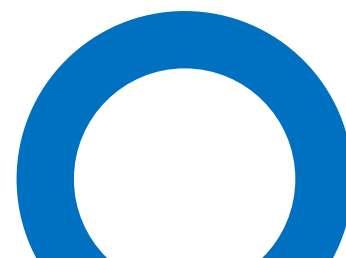
### Continuous Improvement

**Principle:** Complaints are a source of improvement for organisations.

- ☐ Do you use analysis of feedback and complaints data to identify:
  - Recurring themes that may highlight systemic issues;
  - Service, process and information inadequacies; and
  - Opportunities for improvements?
- ☐ Is the analysis of feedback and complaints reported to the Corporate Executive and used to identify and implement improvements to practices?
- ☐ Where appropriate, is analysis of feedback and complaint information used to identify and implement improved practices for particular customer groups including Indigenous Australians, children and young people, people living in regional and remote areas, people with disabilities and people from culturally and linguistically diverse backgrounds?

## Other resources

The Ombudsman's Report [2009-10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors](#) along with further information about the role of the Ombudsman and guidance for organisations, is available on our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).



### Ombudsman Western Australia

PO Box Z5386 St Georges Terrace Perth WA 6831

Phone 08 9220 7555 • Freecall (free from landlines) 1800 117 000 • Fax 08 9220 7500 • Interpreter 131 450

National Relay Service Quote 08 9220 7555 • TTY 133 677 • Voice-only (speak and listen) 1300 555 727 • SMS Relay Text 0423 677 767

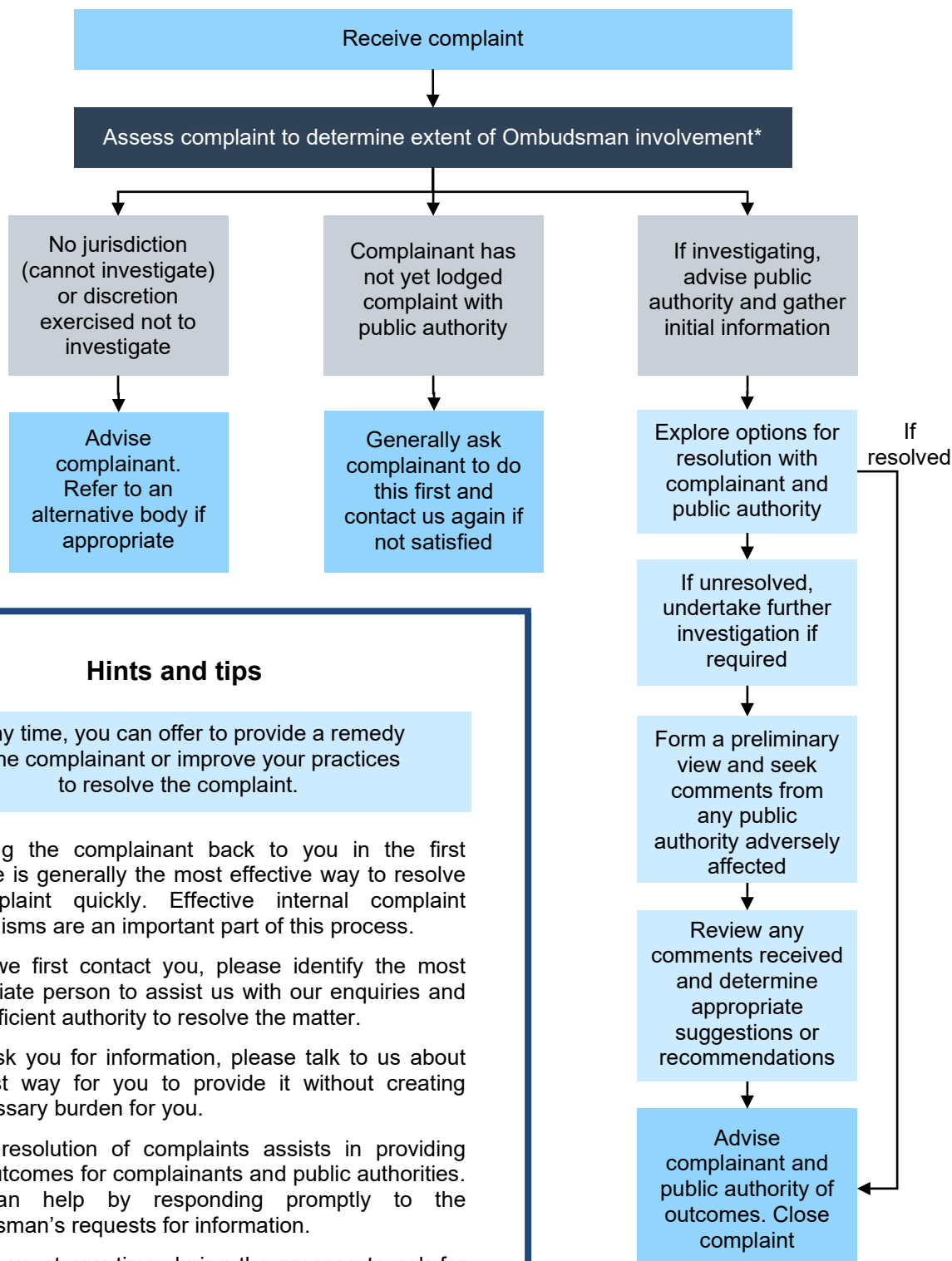
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# Ombudsman's complaint resolution process Information for public authorities

Revised  
October 2016

The term 'public authority' refers to State Government departments, prisons, hospitals, schools and technical colleges, local governments, public universities and relevant boards and tribunals.



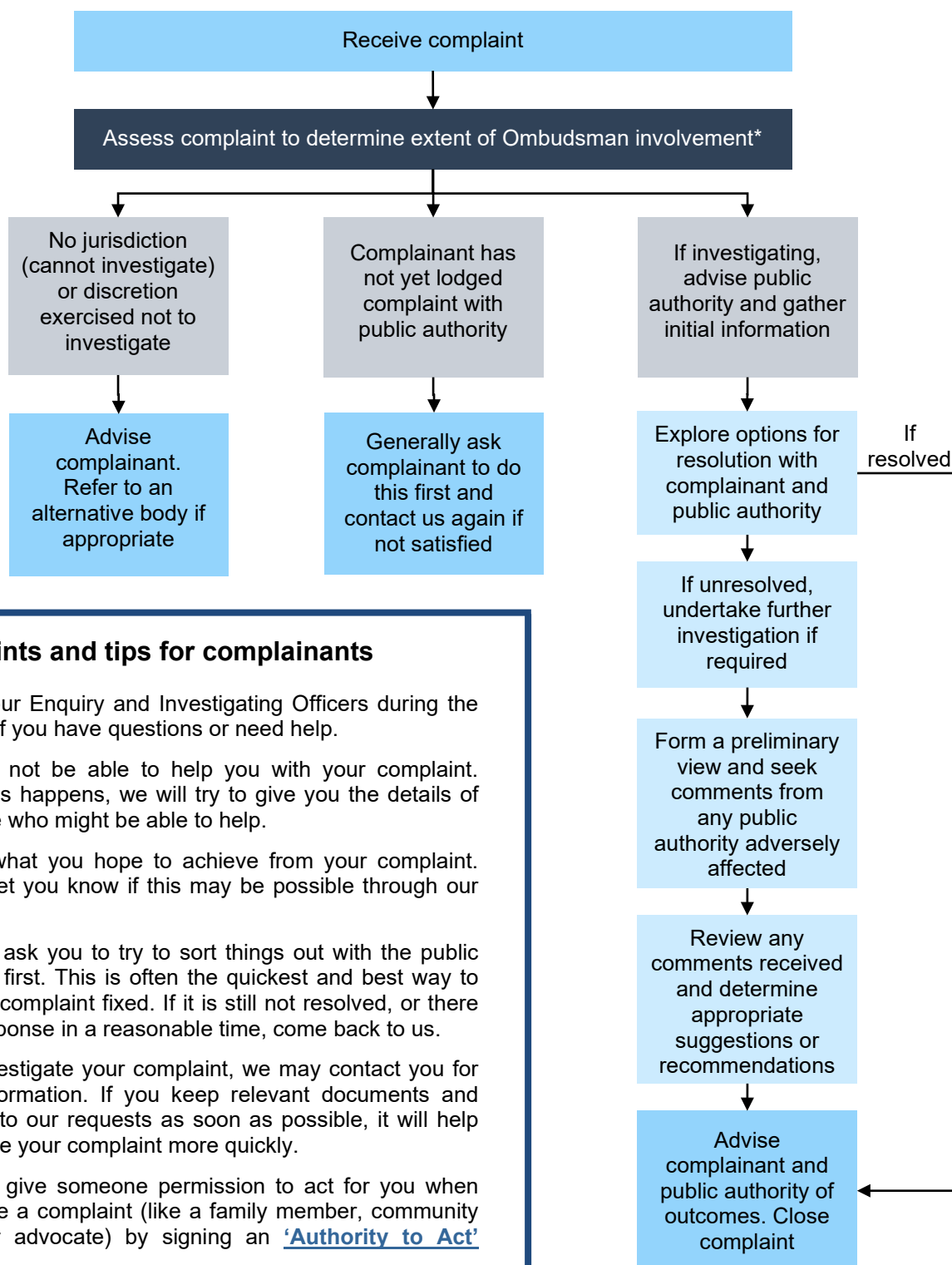
### Hints and tips

At any time, you can offer to provide a remedy for the complainant or improve your practices to resolve the complaint.

- Referring the complainant back to you in the first instance is generally the most effective way to resolve a complaint quickly. Effective internal complaint mechanisms are an important part of this process.
- When we first contact you, please identify the most appropriate person to assist us with our enquiries and with sufficient authority to resolve the matter.
- If we ask you for information, please talk to us about the best way for you to provide it without creating unnecessary burden for you.
- Timely resolution of complaints assists in providing good outcomes for complainants and public authorities. You can help by responding promptly to the Ombudsman's requests for information.
- Contact us at any time during the process to ask for clarification or advice.

\* For a full explanation of the assessment process, see the Ombudsman's information sheet *How we assess complaints*





### Hints and tips for complainants

- Talk to our Enquiry and Investigating Officers during the process if you have questions or need help.
- We may not be able to help you with your complaint. When this happens, we will try to give you the details of someone who might be able to help.
- Tell us what you hope to achieve from your complaint. We will let you know if this may be possible through our process.
- We may ask you to try to sort things out with the public authority first. This is often the quickest and best way to get your complaint fixed. If it is still not resolved, or there is no response in a reasonable time, come back to us.
- If we investigate your complaint, we may contact you for more information. If you keep relevant documents and respond to our requests as soon as possible, it will help us resolve your complaint more quickly.
- You can give someone permission to act for you when you make a complaint (like a family member, community group or advocate) by signing an 'Authority to Act' form.

Remember, the Ombudsman is independent and does not act for either party.

\* For a full explanation of the assessment process, see the Ombudsman's information sheet *How we assess complaints*





Overseas students who are in higher, vocational or school education and on a student visa who have a problem they cannot fix with their Western Australian education provider (university, college, institute or school) can make a complaint to:

- The **Western Australian Ombudsman** if it is about **Western Australian public education providers**. This Information Sheet provides further information for complaints to the Western Australian Ombudsman; or
- The **Overseas Students Ombudsman** about **private education providers**. The Commonwealth Ombudsman is the Overseas Students Ombudsman. For more information, visit the Overseas Student Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## MAKING A COMPLAINT TO THE WESTERN AUSTRALIAN OMBUDSMAN

If you are an overseas student who has a problem with your Western Australian public education provider or your enrolment has been suspended or cancelled, you can complain if you feel you have been treated unfairly or wrongly. All students can ask for an internal and external review of the matter.

Before you complain to the Western Australian Ombudsman for an external review you must first exhaust all internal review options with your public education provider. The Western Australian Ombudsman's website at [www.ombudsman.wa.gov.au/Complaints/Overseas\\_Student\\_Complaints.htm](http://www.ombudsman.wa.gov.au/Complaints/Overseas_Student_Complaints.htm) has contact details for Western Australian public education providers.

### Step 1 - Complain to your public education provider (Internal Review)

#### What you can complain about

You can make a complaint about a decision made by your education provider that has affected you and which you believe is unfair or wrong.

The Australian Government has put in place the *National Code of Practice for Providers of Education and Training to Overseas Students 2018 (the National Code)* that sets out the standards all education providers must follow in delivering education and training courses to overseas students. You can complain or appeal against an education provider's decision or action where you believe these standards have not been followed. You can view the National Code 2018 Factsheets at <https://internationaleducation.gov.au/Regulatory-Information/Pages/National-Code-2018-Factsheets-.aspx>.

The National Code requires all education providers to have an internal complaints handling and appeals process that you can use to make a formal complaint if you are unable to resolve a problem informally. You will need to act quickly as there will be a time limit (determined by education providers) to lodge your complaint and have it considered under the National Code.

#### Contact the international student advisor for advice

If you do not know what to write in your complaint, who to complain to or what the deadline is, contact the international student advisor at your public education provider for advice and help. It is important that when you make a complaint that you attach all the information and documents or evidence you have about the issue.

#### Your public education provider should assess your complaint

Once your complaint has been received, your public education provider should look at the information provided to decide if the issue you have raised has been dealt with properly. Once the public education provider has finished looking at your complaint, it should advise you in writing of its decision and reasons.

## Step 2 - Complain to the Western Australian Ombudsman (External Review)

If, after completing the internal review process, you are still unhappy with the original decision and you believe that something went wrong in making that decision, you can ask the Ombudsman for an independent external review. You can make a complaint by letter, email, facsimile or using the complaint form available on our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).

When you complain to us, you need to tell us what you think your public education provider has done wrong - it would help if you could tell us if you think your public education provider has:

- Failed to follow a policy or process;
- Not followed the standards in the National Code; or
- Done something which is unfair.

You may like to talk to us before you submit a complaint. Please see our contact details below.

### What the Western Australian Ombudsman can do

Under the *Parliamentary Commissioner Act 1971*, we can look at whether the public education provider followed a fair and reasonable process when making its decision about you and your enrolment and whether the decision was reasonable under the circumstances.

This can include checking if the public education provider has followed the standards in the National Code and any policies or processes that relate to the issues you told us about in your complaint. The types of issues we look at include delays, not following policy, unfair procedures and improper behaviour of staff.

### What happens when you make a complaint

We will write to you to let you know that we have received your complaint. We are impartial and do not act for either party and our processes are informal and as timely as possible. We will contact the public education provider to get more information about your concerns. We may also contact you for more information and will listen to both you and your public education provider.

The length of time it takes to investigate can vary. For more complex matters, it can take some time for us to collect all the relevant information. Once we have received a response from the public education provider and had the opportunity to consider all the information, we will determine the outcome of your complaint.

### Outcome of your complaint

We will advise you and the public education provider of the outcome of your complaint in writing. If warranted, we may recommend that the public education provider take some action to remedy the situation such as a review of the decision, changes to administrative practices or an apology. The Ombudsman can only make recommendations to public education providers. We cannot direct action to be taken. However, public education providers generally accept and implement our recommendations.

## Contact Ombudsman Western Australia

**Call us** 08 9220 7555 or **Freecall** 1800 117 000 (free from landlines)



Interpreter 131 450



National Relay Service Quote 08 9220 7555

TTY 133 677    Voice-only (speak and listen) 1300 555 727    SMS Relay Text 0423 677 767

**Email us at** [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au)    **Website** [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

**Visit us at** Level 2, Albert Facey House, 469 Wellington Street Perth WA 6000

**Write to us at** PO Box Z5386 St Georges Terrace Perth WA 6831

**Translations** This Information Sheet is available in other languages on our website.

## Guidance

To promote effective complaints management across the sector all agencies should:

- have in place a complaints management system that conforms to the principles of the Australian and New Zealand Standard, AS/NZS 10002:2014 *Guidelines for Complaint Management in Organizations* (as, from time to time, reviewed, amended or replaced with new editions);
- have a direct link on the front page of their website to information assisting people to make a complaint about that agency (those agencies with websites); and
- where complaints remain unresolved at the agency level, refer people to appropriate external bodies such as the Ombudsman.

Agencies should review their complaints management processes against AS/NZS 10002:2014 and determine what action is needed to meet or exceed the Standard.

AS/NZS 10002:2014 states:

To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published.

## Guidance objectives

This guidance forms part of a broader strategy designed to increase:

- community access to complaints mechanisms;
- community knowledge of complaints mechanisms and what to expect regarding complaints procedures;
- capacity of agencies to meet an appropriate standard of complaints management, including suitable commitment and resources; and
- monitoring and evaluation of complaints processes and data received by agencies to ensure service delivery improvement.

The Western Australian Ombudsman will be actively monitoring agencies' compliance with this guidance and can undertake a range of activities to promote effective complaints management, including, undertaking own-motion investigations.

## Applicability of guidance

The definition of 'complaint' in AS/NZS 10002:2014 is an 'expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.'

Certain matters are not considered complaints under this system, such as matters of administrative law, appeal decisions and judicial decisions. Nor is it intended to include complaint-handling processes that are an agency's core function, for example, consumer complaints lodged with the Department of Commerce, although complaints concerning the way in which the agency exercises that particular function would be within the scope of this guidance.

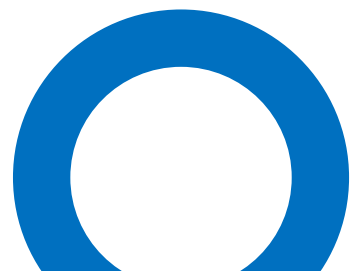
Further information on the applicability of this guidance and on complying with AS/NZS 10002:2014 can be found at [www.ombudsman.wa.gov.au/Agencies/Agencies.htm](http://www.ombudsman.wa.gov.au/Agencies/Agencies.htm).

## Implementation tools

AS/NZS 10002:2014 can be purchased from SAI Global Limited at: <http://www.saiglobal.com/shop>

Address: GPO Box 5420  
SYDNEY NSW 2001  
Telephone: 131 242  
Fax: 1300 65 49 49

The Ombudsman Western Australia's website contains a suite of tools to assist agencies with their complaint handling role at [www.ombudsman.wa.gov.au/Agencies/Agencies.htm](http://www.ombudsman.wa.gov.au/Agencies/Agencies.htm)



These guidelines have been developed to help Government agencies conduct administrative investigations. They are designed to contribute to fairness, integrity and good public administration.

The guidelines provide direction on key matters to be considered in the preparation and course of an investigation raising administrative or disciplinary issues only. They must be read in conjunction with any statutory provisions and guidelines applicable to the particular investigation being undertaken.

In addition to listing the key steps to be followed in an investigation, we have also included tips to help the investigator navigate some of the more complex challenges which arise in any investigation.

The investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct must be referred to the appropriate authority.

## Step 1: Assess the complaint

Not every complaint requires investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level or through other processes such as mediation. Many complaints involve communication problems or misunderstandings that can be resolved by discussion between the parties or with a supervisor.

Relevant factors to take into account in assessing the complaint include:

- whether an alternative and satisfactory means of redress is available;
- whether the complaint is trivial, frivolous or vexatious;
- the time that has elapsed since the events the subject of the complaint took place;
- how serious the complaint is and the significance it has for the complainant and the agency;
- whether it indicates the existence of a systemic problem; or
- whether it is one of a series of complaints, indicating a pattern of conduct or a widespread problem.

Some investigations are subject to particular legislative requirements. The assessment of the complaint and determination of the nature of the investigation must be undertaken within the relevant framework and having regard to the particular requirements. Examples include:

- the *Public Interest Disclosure Act 2003*, which sets out requirements for the investigation of “public interest disclosures” (see also the guidelines issued by the Office of the Public Sector Standards Commissioner)
- disciplinary investigations as a result of complaints about police officers, which are governed by the *Police Force Regulations 1979* and the Commissioner’s Orders and Procedures
- the *Public Sector Management Act 1994*, which sets out the procedures for dealing with suspected or alleged breaches of discipline by public sector employees.

## Step 2: Determine the nature of the investigation

This includes determining whether it is about:

- policies, procedures and practices, or
- conduct of individuals.

The nature of the investigation has a bearing on the powers necessary to conduct it, the resources needed, whether any authorisation may be required, and the nature of the possible outcome.

At this stage a decision should be made as to whether the complaint needs to be investigated internally or should be referred externally.

### Step 3: Determine powers of investigation

The effectiveness of an investigation is influenced by the available powers. Investigators must be aware of their power to require witnesses to talk, to obtain information from people about policies, procedures and practices, and to access relevant records.

If lack of sufficient powers is an issue, the investigator should consider referring the investigation to some other person or body with the necessary powers.

### Step 4: Develop the investigation framework

It is critical that one person be responsible for the conduct of the investigation, and thus for establishing the framework for the investigation. This framework should include:

- the appropriate authorisation to conduct the investigation;
- terms of reference which establish a focus and set limits on the investigation; and
- an investigation plan.

Ensuring that this planning stage is well done will have a major influence on the ultimate success of the investigation.

### Step 5: Gather evidence

The task of an investigator is to prove or disprove, if possible, any matter or matters of fact raised by a complaint. The investigator does this by gathering evidence. In an investigation, the main sources of evidence are:

- oral evidence (recollections);
- documentary evidence (records);
- expert evidence (technical advice); and
- site inspection.

Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration is desirable.

If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence. A basic awareness of these rules is useful to ensure that the evidence obtained is the best available and, where applicable, will be admissible in any subsequent legal proceedings that may arise.

### Step 6: Apply the appropriate standard of proof

In disciplinary and administrative investigations, allegations must be proved “on the balance of probabilities”. It must be more probable than not that the allegations are made out.

This standard of proof is that found in the often-cited case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. The Briginshaw test (or Briginshaw standard as it is often called) possesses a measure of flexibility, so that the more serious the allegation the higher the degree of probability required.

### Step 7: Record and store information appropriately

Investigators must maintain a central investigation file, which is a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file must be stored securely to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

## Step 8: Prepare the investigation report

This must be done at the conclusion of the investigation. The report will be for the records of the agency concerned, and may be subject to outside scrutiny. Ensure you have observed procedural fairness in preparing your final report.

## Step 9: Close the investigation

Complete and file all paperwork. It is best practice to conduct a review of the investigation, preferably done by someone more experienced than the investigator and independent from them. This enables the investigation to be assessed and may highlight some improvements in investigative mechanisms for future reference.

An investigation may lead to one of a range of possible outcomes, including:

- disciplinary action
- dismissal of a disciplinary charge
- referral of a matter to an external agency for further investigation or prosecution
- introduction of administrative policies, procedures or practices
- changes to administrative policies, procedures or practices
- redress for the complainant.

## Tips for a successful investigation

### The role of the investigator

There are two key tasks for the investigator:

- Ascertain all relevant facts pertaining to the complaint; and
- At the conclusion of the fact-finding exercise, report findings; the reasons for the findings, referring to the material on which they are based; and, if appropriate, make relevant recommendations.

### Recognise and avoid conflict of interest

All investigations must be conducted without bias, in an impartial and objective manner. No-one with an actual or perceived conflict of interest should be appointed or remain the investigator.

The more serious the complaint, the more important it is that the investigator be someone as independent of the events being investigated as possible.

Ensure you have addressed this issue at an early stage in the investigation process.

### Ensure confidentiality

Make sure you abide by any confidentiality requirements applying to the investigation. Likewise, impress upon all witnesses their obligation to keep details of the investigation confidential.

### Observe procedural fairness

Due process must be observed in every investigation. Procedural fairness requires you as investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them, and give them an opportunity to respond;
- provide all parties with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- consider all submissions carefully;
- make reasonable inquiries or investigations before making a decision;
- take into account all relevant factors and no irrelevant factors;



- ensure that no person decides a case in which they have a direct interest;
- act fairly and without bias; and
- conduct the investigation without undue delay.

## Deciding whether to allow the person who is the subject of the complaint to inspect documents related to the investigation

As investigator, be aware of any statutory rights of access the person who is the subject of the complaint may have (e.g. under the FOI Act) as well as any statutory exemptions or obligations of confidentiality which may apply. Where no statutory guidance is available, you will need to make a careful assessment based on the following competing interests:

- the right of the person the subject of the complaint to know the case against them
- the wish of any third party to have their identity remain confidential
- the general interest in ensuring the integrity of the investigation.

## Dealing with the parties involved

### The complainant

Manage the complainant's expectations to ensure they are based on a realistic understanding of what the complaint can achieve.

Ensure their confidentiality and explain the importance of confidentiality generally.

Provide them with support, information, and regular feedback.

Inform them of the outcome of the complaint or other action, and the reasons.

### The person who is the subject of the complaint

Before approaching the person who is the subject of the complaint, satisfy yourself that the allegations have some substance. If they have no substance and the person is unaware, then little is gained from raising the matter with them.

Where there is a case to answer, ensure you provide the person with procedural fairness.

### Other witnesses

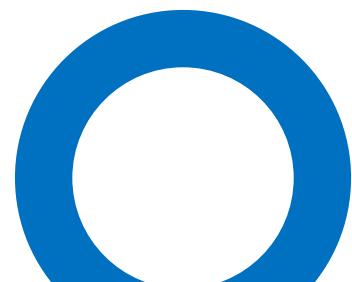
Be sensitive to the needs of other witnesses, for instance in supporting them through any trauma they may experience as a result of being involved in the investigation process.

Impress on them the requirements of confidentiality.

Only tell them as much about the investigation as is strictly necessary for the purpose of obtaining the required information.

### Acknowledgement

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for allowing us to draw upon their excellent publication "*Investigating complaints - A manual for investigators*" in the development of these Guidelines, and for their ongoing advice and assistance.



### Ombudsman Western Australia

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Since its establishment in 1972, Ombudsman Western Australia has dealt with thousands of complaints. Over time, we have observed that some complainants are difficult to satisfy and take up a disproportionate amount of time for agencies attempting to deal with their complaints.

This fact sheet provides practical information to help agencies handle complainants whose behaviour makes them a challenge to deal with. It is intended to contribute to good public administration in complaints handling.

In cases where the complaint has arisen as a result of matters under the agency's control, such as agency error, remedial action should be taken as promptly, courteously and efficiently as possible. Where matters raise questions of law or are contentious, further professional or legal advice should be sought.

## Understanding complainant behaviour

As a general rule, when a person approaches an agency with a request, application, concern or complaint they first need to be heard, understood and respected. They need to:

- Have the matter dealt with quickly, fairly and properly;
- Be given information or an explanation;
- Be given an apology, if required; and
- Have action taken to address their concern or fix their problem.

For the small percentage of individuals whose conduct is genuinely unreasonable to deal with, special measures outside the agency's standard complaint handling policies and procedures are required.

Unreasonable complainant conduct tends to fall into three broad groupings, as follows:

- Habitual or obsessive conduct. This includes behavior by a person who:
  - Cannot 'let go' of their complaint;
  - Cannot be satisfied despite the best efforts of the agency; and
  - Makes unreasonable demands on the agency where resources are substantially and unreasonably diverted away from its other functions or unfairly allocated (compared to other customers);
- Rude, angry and harassing conduct; or
- Aggressive conduct.

## Agency options for responding to unreasonable complainant conduct

- Let staff and customers know about expected standards of courtesy and behaviour.
- Adopt and publicise a policy stating that correspondence to the agency containing personal abuse, inflammatory statements or material clearly intended to intimidate will be returned to the sender and not acted upon.
- Where such comments or statements are made in telephone conversations or interviews, these may be terminated at the discretion of agency staff after warning callers of that intention.
- Consider limiting access to agency staff and resources.

## Hints for agency staff

- Don't be rude or abusive to customers, even when provoked.
- Avoid making or recording inappropriate statements or comments about complainants. Stick to objective, descriptive comments such as "he spoke rapidly, with increased volume, and shook his finger at me" rather than "he was crazy and threatening".

## Administrative controls

Deciding to restrict, withhold or withdraw the provision of service to complainants whose conduct is unreasonable is a serious step to take. Before doing so, these threshold tests should be met:

- The agency's complaint procedure must have been correctly implemented and no material element of the complaint overlooked or inadequately addressed;
- The behaviour of the complainant must have become so habitual, obsessive or intimidating that it constitutes an unreasonable demand on the agency's resources; and
- All internal review or appeal procedures have been exhausted.

## Balance empathy with objectivity

Empathy for an individual whose complaint is motivated by tragic events or significant incidents must not compromise an agency's responsibility to uphold the public interest, which requires matters to be considered objectively.

If the agency decides to restrict access to its services for a complainant showing unreasonable conduct, this decision should only be made by the CEO (or a senior delegate in large agencies). This senior officer should also approve and sign any letters to that effect. This step should only be taken in extreme situations, where a failure to do so would compromise the agency's obligations as an employer or divert resources from other complaints deserving attention.

## Types of administrative controls

When the complainant makes constant calls or visits:

- Only take calls at specific times on specific days; and
- Require an appointment to meet with staff.

Where all internal appeals have been exhausted but the complainant will not accept the agency's decision:

- Notify them of their right to take the matter to the Ombudsman;
- Consider limiting all future dealings to writing; and
- Advise that you will only respond to future correspondence which provides significant new information about the complaint or raises new issues which the agency believes requires fresh action.

At all times maintain adequate documentary records.

## Angry complainants

Manage the anger first. It is only possible to deal with key issues once the complainant's emotion has been diffused. Staff members confronted with an angry complainant must keep in mind that the anger is not about them personally, but about the complainant's circumstances. Their task will be to solve the problem, not get involved in responding to a highly emotive situation.

In these circumstances, it is useful to:

- Obtain details about the complaint and then about the complainant;
- Seek to understand what the person is looking for;
- Be direct and clear about what can be done, how long it will take and what it will involve; and
- Give clear and valid reasons why requests cannot be met, if this is the case.

At all times, take detailed file notes.

## Aggressive behaviour

Aggressive behaviour may be at any point along the scale from verbal aggression to actual physical violence. For behaviour at the lower end of the scale, try to put aggressive people at ease and calm them down. If the behaviour continues however, they should be calmly told that such behaviour is totally unacceptable, the interview terminated and the person asked to leave the premises.

Staff should never continue or persevere with interviews when they feel distressed or threatened.

## Recommended actions for agencies

Develop a policy outlining your general commitment to public access, but describe why this may be restricted in particular circumstances, such as where full access would be likely to:

- Compromise the agency's obligations as an employer;
- Be an unreasonable invasion of a person's privacy;
- Be excessively wasteful of agency resources; and/or
- Encourage or allow behaviour which disregards the rules of common courtesy.

Adopt a policy which defines aggression and guides staff in how to deal with it, ensuring the safety of staff and other customers is paramount. Develop and promote your approach to dealing with people who threaten, harass or intimidate staff, whether in writing or on the phone.

Nominate a senior officer to maintain a list of people whose access to the agency has been restricted, including specific directions for each person. Appropriate notations should be inserted on all relevant hard copy or computerised case records.

## Resources

### Managing Unreasonable Complaint Conduct Practice Manual

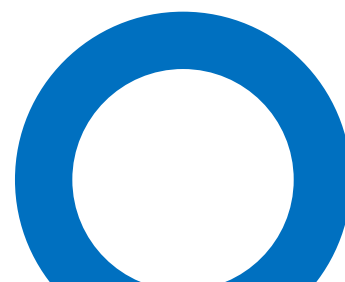
Ombudsman Western Australian has been involved in a national research project coordinated by the New South Wales Ombudsman to develop better strategies for managing complainants whose behaviour is challenging. The result of this project is the [Managing Unreasonable Complainant Conduct Practice Manual](#) which provides information, strategies and practical tools, including scripts, to help agencies deal with unreasonable complainant conduct.

### Other Ombudsman Western Australia Publications

The following Ombudsman Western Australia publications provide further details that may be useful in the development of complaint handling systems and for staff involved in handling complaints:

- [Effective handling of complaints made to your organisation – An overview](#)
- [Making your complaint handling system accessible](#)
- [Complaint handling systems checklist](#)
- [Guidance for Complaint Handling Officers](#)
- [Investigation of complaints](#)
- [Conducting administrative investigations](#)
- [Procedural fairness](#)
- [Remedies and redress](#)
- [Good record keeping](#)

For further information about the role of the Ombudsman and guidance for complaints management, visit our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).



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# Effective handling of complaints made to your organisation - An Overview

Revised  
September 2020

## Benefits of good complaint handling

Complaints are an important way for the management of an organisation to be accountable to the public, as well as providing valuable prompts to review organisational performance and the conduct of people that work within and for it.

A complaint is an “expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required”<sup>1</sup>. As a matter of guidance, complaints can be made directly to an organisation by members of the public and/or customers, or through alternative pathways such as to Members of Parliament or statutory officers but otherwise about the organisation.

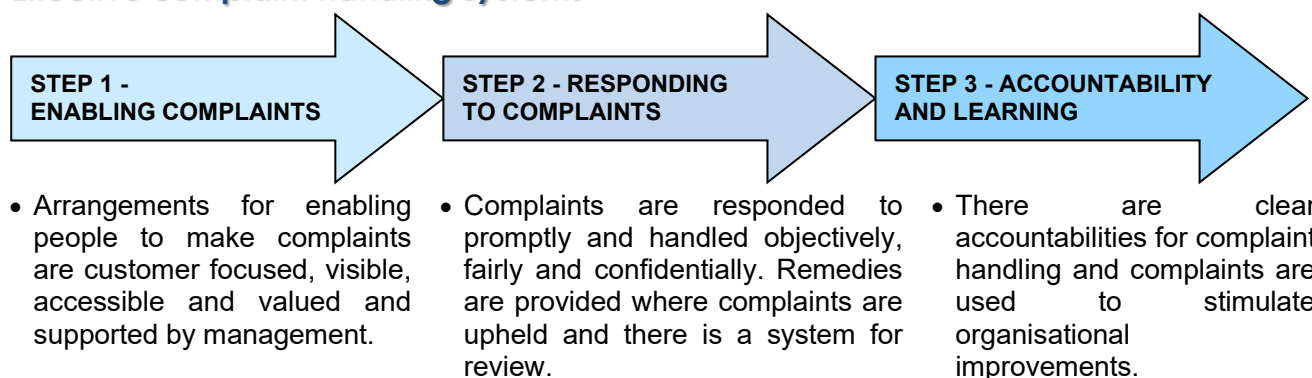
An effective complaint handling system provides three key benefits to an organisation:

- It resolves issues raised by a person who is dissatisfied in a timely and cost-effective way;
- It provides information that can lead to improvements in service delivery; and
- Where complaints are handled properly, a good system can improve the reputation of an organisation and strengthen public confidence in an organisation’s administrative processes.

**Effective complaint handling is fundamental to the provision of a quality service.**

The public wants:	The organisation needs:
<ul style="list-style-type: none"><li>• a user friendly complaint handling system</li><li>• to be heard and understood</li><li>• to be respected</li><li>• an explanation</li><li>• an apology</li><li>• action as soon as possible</li></ul>	<ul style="list-style-type: none"><li>• a user friendly system for accepting feedback</li><li>• clear delegations &amp; procedures for staff to deal with complaints and provide remedies</li><li>• a recording system to capture complaint data</li><li>• to use complaint data to identify problems and trends</li><li>• to improve service delivery in identified areas</li></ul>

## Effective complaint handling systems



<sup>1</sup> See Australian/New Zealand Standard AS/NZS 10002:2014 *Guidelines for Complaint Management in Organizations* (as amended) at [www.standards.com.au](http://www.standards.com.au).

## Ten Principles for an Effective Complaint Handling System

### Enabling complaints

Having a customer focused system that is visible and accessible, with a demonstrated commitment from the organisation's management.

<b>Customer focused</b>	<p><b>Principle: The organisation is committed to effective complaint handling and values feedback through complaints.</b></p> <ul style="list-style-type: none"> <li>Organisations should be open to feedback and committed to seeking appropriate resolution of complaints and addressing policy and process inadequacies highlighted by them. This commitment should be communicated to all staff, stakeholders and clients, for example through documents such as values statements or customer service standards.</li> <li>Organisations should have a clearly communicated complaint handling process and management that values the benefits of an effective complaint handling system and supports the process.</li> </ul>
<b>Visibility</b>	<p><b>Principle: Information about how and where to complain is well publicised to customers, staff and other interested parties.</b></p> <ul style="list-style-type: none"> <li>Information about how and where to complain should be well publicised through a variety of service delivery points including publications, websites, at offices and at front counters.</li> <li>Front-line staff should be aware of the complaint handling process and the contact details of the organisation's Complaint Handling Officer(s).</li> <li>The information about how to complain should identify any appropriate alternative external parties the complainant can go to with their complaint.</li> </ul>
<b>Accessibility</b>	<p><b>Principle: The process of making a complaint and investigating it is easy for complainants to access and understand.</b></p> <ul style="list-style-type: none"> <li>Complaints should be handled at no charge and this should be made clear in information provided about the complaint handling process.</li> <li>Information about the complaints process should be available in a variety of forms of communication, formats and languages appropriate to the needs of the customer.</li> <li>Complaints and all supporting documents provided during a complaint resolution or investigation process should be accepted in a number of different ways including in person, over the phone, and in writing via email, fax and letter, and, where appropriate, access to translating and interpreting services for non-English speaking people should be provided.</li> <li>Complaint handling systems should be accessible to members of the public who may require additional assistance such as Indigenous Australians, children and young people, people living in regional and remote areas, people with disabilities and people from culturally and linguistically diverse backgrounds.</li> </ul> <p>For more information, see the Ombudsman WA Guidelines <a href="#"><u>Making your complaint handling system accessible</u></a>.</p>

## Responding to complaints

Complaints are handled objectively and fairly with appropriate confidentiality, remedies are provided where complaints are upheld and there is a system for review for finalised complaints.

<b>Responsiveness</b>	<p><b>Principle: Complaints are acknowledged in a timely manner, addressed promptly and according to order of urgency, and the complainant is kept informed throughout the process.</b></p> <ul style="list-style-type: none"> <li>• Guidance should be provided to staff on how to respond to and prioritise complaints. They should be aware of internal complaint handling processes including how to assess complaints which may be resolved quickly and those which require investigation.</li> <li>• Complaints should be acknowledged promptly. Complainants and, if applicable, the person who is the subject of the complaint, should be kept informed of progress and the outcome of the complaint.</li> <li>• Complaints should be addressed promptly in order of urgency and staff should be aware of any target timelines for resolving complaints.</li> <li>• Complaint Handling Officers should be empowered to either resolve complaints or be aware of, and have access to, the person who has the authority to do so.</li> <li>• Where appropriate, special arrangements for responding to particular client groups should be put in place, for example, Indigenous Australians, children and young people, people living in regional and remote areas, people with disabilities and people from culturally and linguistically diverse backgrounds.</li> <li>• Staff should be able to identify matters that may be public interest disclosures and refer them to the appropriate process, and should refer any identified misconduct and corrupt behaviour to the Corruption and Crime Commission (<a href="http://www.ccc.wa.gov.au">www.ccc.wa.gov.au</a>) for serious misconduct or the Public Sector Commission (<a href="http://www.publicsector.wa.gov.au">www.publicsector.wa.gov.au</a>) for minor misconduct <sup>2</sup>.</li> </ul>
<b>Objectivity and fairness</b>	<p><b>Principle: Complaints are dealt with in an equitable, objective and unbiased manner. This will help to ensure that the complaint handling process is fair and reasonable. Unreasonable complainant conduct is not allowed to become a burden.</b></p> <ul style="list-style-type: none"> <li>• Complaint Handling Officers should deal with all complaints on their merit in an equitable, objective and unbiased manner. They must ensure that any conflicts of interest are declared.</li> <li>• Complaint Handling Officers should ensure the complainant and, if applicable, the person who is the subject of the complaint, is given sufficient opportunity to present their position, to comment on any adverse findings and is provided with reasons for decisions on the outcome of the complaint.</li> <li>• Complaint handling systems should have a review process in which the Complaint Handling Officer's decision is reviewed by a suitably experienced colleague or superior before the complaint is finalised. There should also be an independent internal review or appeal process.</li> <li>• Officers receiving and handling complaints should receive appropriate guidance or training, including for dealing with unreasonable conduct by the complainant or the subject of the complaint.</li> </ul> <p>The Ombudsman WA publications <a href="#">Conducting administrative investigations</a>, <a href="#">Investigation of complaints</a>, <a href="#">Procedural fairness</a> and <a href="#">Dealing with unreasonable complainant conduct</a> may assist your staff in handling complaints with objectivity and fairness.</p>

<sup>2</sup> See Corruption, Crime and Misconduct Act 2003 at [www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_207\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_207_homepage.html)



<b>Confidentiality</b>	<p><b>Principle: Personal information related to complaints is kept confidential.</b></p> <ul style="list-style-type: none"> <li>The personal information of the complainant and any people who are the subject of a complaint should be kept confidential and only used for the purposes of addressing the complaint and any follow up actions.</li> </ul>
<b>Remedy</b>	<p><b>Principle: If a complaint is upheld, the organisation provides a remedy.</b></p> <ul style="list-style-type: none"> <li>Mechanisms should exist for enabling appropriate remedies to be provided when complaints are upheld and staff should be familiar with them. Staff should be able to give the complainant reasons for decisions relating to remedies.</li> <li>Staff should be empowered to provide these remedies at the appropriate level, for example some appropriate remedies may be provided by front-line staff.</li> </ul>
<b>Review</b>	<p><b>Principle: There are opportunities for internal and external review and/or appeal about the organisation's response to the complaint, and the complainants are informed about these avenues.</b></p> <ul style="list-style-type: none"> <li>There should be an independent internal review or appeal process.</li> <li>Details of external rights of review or appeal for unresolved complaints should be made available to complainants.</li> </ul>

### Accountability and Learning

There are clearly established accountabilities for complaint handling and continuous improvement opportunities are identified and implemented, as appropriate.

<b>Accountability</b>	<p><b>Principle: Accountabilities for complaint handling are clearly established, and complaints and responses to them are monitored and reported to management and other stakeholders.</b></p> <ul style="list-style-type: none"> <li>There should be clear responsibilities for handling complaints. This may include officers who are specifically assigned to deal with complaints and the names of these officers should be communicated to staff.</li> <li>Organisations should have a 'fit for purpose' centralised system for recording and tracking complaints along with reasons for any decisions. This system should be able to provide information on the demographic make up of complainants to enable an assessment of differing service delivery needs for people from a range of backgrounds. Complaints can be made directly to an organisation by members of the public and/or customers, or through alternative pathways such as to Members of Parliament or statutory officers but otherwise about the organisation.</li> <li>Complaints and actual or proposed improvements to practices should form part of the organisation's internal reporting and planning process through such channels as Corporate Executive meetings and Strategic and Operational Plans.</li> <li>Remedies and proposed improvements to practices should be followed up and acted on.</li> <li>All correspondence relating to feedback and complaints should be managed in accordance with the organisation's record keeping plan, policies and procedures. For more information, see the Ombudsman WA Guidelines <a href="#">Good record keeping</a>.</li> <li>The effectiveness of the complaint handling system should be monitored, for example, through quality assurance or internal audit processes and reported to Corporate Executive along with recommendations for system improvements.</li> </ul>
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**Continuous Improvement****Principle: Complaints are a source of improvement for organisations.**

- Organisations should analyse complaints data and feedback to identify recurrent themes that might identify systemic issues and use the information gathered through their complaint handling systems to identify service, process and information issues that need to be addressed.
- Where appropriate, analysis of feedback and complaint information should be used to identify and implement improved practices for particular customer groups including people with disabilities, people living in regional and remote areas, Indigenous Australians, children and young people, and people from linguistically and culturally diverse backgrounds.

Organisations may find the Ombudsman WA publication [Complaint handling systems Checklist](#) useful to assess their complaint handling system.

**Fit for purpose complaint handling system**

An effective complaint handling system should be a 'fit for purpose' system. This is a system that is varied to fit an organisation's circumstances and is proportionate to the number and type of complaints it receives. Decisions about building a 'fit for purpose' system could incorporate the following considerations:

- The number and demographics of the organisation's customers, and how they generally communicate with the organisation;
- The nature and breadth of the organisation's interactions with the public;
- The level of complaints that is considered reasonable for the organisation (by examining trends in its level of complaints over time and industry benchmarks);
- The organisation's risk management strategy – complaints are an important way of monitoring and mitigating any risks;
- The value the organisation derives, or wishes to derive, from complaints to improve its operations over time, as well as other information needs of management; and
- The cost of operating a complaint handling system.

**Complainants are more likely to be satisfied with the complaint handling system if the person dealing with their complaint is competent, objective and efficient.**

**Complaint Handling Officers**

Complaint handling is an important role in an organisation and should be recognised as such by management. Complaint Handling Officers are the most important factor in ensuring that an organisation's complaint handling is responsive to complainants. Complaint Handling Officers should be empowered to make decisions, or have access to someone who can make decisions.

An effective resolution at the earliest opportunity will enhance the complainant's view of the organisation and allow prompt improvement to practices. Complaints should be handled by people who have the appropriate skills and authority to resolve or investigate complaints and, where appropriate, provide remedies and identify improved practices.

Where possible, complaints are best handled by people at the point of service delivery. These people should be able to resolve complaints at first contact and should log complaint details for further analysis. More serious complaints, or complaints that cannot be resolved by front-line staff, should be referred to more senior staff or designated Complaint Handling Officers for investigation, resolution and any other appropriate action.

All staff should be made aware of their responsibilities in providing information to help investigate and resolve complaints, and to implement actions to provide remedies or systemic improvements arising from complaints. For more information see the Ombudsman WA Guidelines [Guidance for Complaint Handling Officers](#).

## Complaints investigation and resolution process

Complaints should be dealt with promptly, courteously and in accordance with their urgency. The essential steps in investigating and resolving a complaint are:

<b>1. Assess the complaint</b>	Clarify the issues of the complaint and what kind of resolution the complainant is seeking. If it is not a matter that can be handled by the complaints process, refer the complainant to a more appropriate process (e.g. an appeal process) or a more appropriate body such as the Ombudsman. For example, consider whether the matter is a public interest disclosure and should be handled under that process.
<b>2. Seek resolution</b>	Where appropriate and possible seek to achieve resolution. Where resolution is reached, document the agreed action. In this event it may not be necessary to continue with the investigation unless there are systemic issues that require further examination outside the complaint process.
<b>3. Select the appropriate investigative approach</b>	If the complaint is not resolved, determine what action is required, which may include options other than a formal investigation. This can depend on factors such as statutory requirements which may apply, the nature of the issue and the likely outcome of the investigation. Where possible, complaints should be resolved without the need for a formal investigation.
<b>4. Plan the investigation</b>	Define the issues to be investigated and develop an investigation plan.
<b>5. Ensure proper powers and authority</b>	Assess whether the Complaint Handling Officer has the necessary powers to obtain evidence from relevant witnesses and to access relevant records. Ensure they have the authority to conduct the investigation, make a decision and resolve the complaint, or have access to a person who can make decisions and offer remedies.
<b>6. Obtain evidence</b>	Carry out the investigation by gathering sufficient reliable information to enable the issue to be properly addressed by proving or disproving matters relevant to the issue being investigated, taking into account all relevant information and no irrelevant information. At this stage, it may be necessary to refer any matters that may be misconduct or corruption to the Corruption and Crime Commission.
<b>7. Reconsider resolution</b>	Consider whether resolution is now possible.
<b>8. Reporting and recommendations</b>	Prepare a document setting out the complaint, how the investigation was conducted, relevant facts, conclusions, findings and recommendations. Recommendations could include remedies for the complainant, action to improve the organisation's service delivery and action to address inappropriate conduct by an officer (e.g. through training, an appropriate disciplinary process or referral to an appropriate external authority).
<b>9. Decide on the complaint and action to be taken</b>	Refer the report to a person authorised to make a decision about the complaint and the action to be taken. After the decision is made arrange implementation of the agreed action and for follow up to confirm the action occurs.
<b>10. Inform the parties</b>	Upon completion of an investigation, the complainant (and, if applicable, the person who is the subject of the complaint) should be given: <ul style="list-style-type: none"> <li>• Adequate reasons for any decision made;</li> <li>• Any changes or action that have resulted from the complaint;</li> <li>• A remedy, where appropriate; and</li> <li>• Information on where to seek independent internal and external review (e.g. the Ombudsman).</li> </ul>

For more information see the Ombudsman WA Guidelines [Investigation of complaints](#) and [Conducting administrative investigations](#) which provide more detailed 'step-by-step' guidance.

## Providing remedies and redress

If an investigation of a complaint determines that the service provided by an organisation to an individual is unsatisfactory and the organisation has in some way contributed to this, the organisation should provide redress to remedy the situation.

Circumstances that warrant the provision of redress and remedies by an organisation to a complainant can arise in many ways, but in broad terms, are when any one, or a combination, of the following occurred:

- Poor communication resulted in misunderstandings or misapprehensions;
- An inadequate or unfair process was used to arrive at a decision or provide a service; or
- A decision or action was unfair, disproportionate or unreasonable in the circumstances.

The following principles and possible remedies may be useful in determining appropriate remedies:

<b>Principles involved in the consideration of redress</b>	<ul style="list-style-type: none"> <li>• Mistakes are admitted and put right;</li> <li>• A sincere and meaningful apology is offered;</li> <li>• Redress is fair and reasonable;</li> <li>• As far as possible, redress restores the complainant to their original position;</li> <li>• Decisions about redress are procedurally sound; and</li> <li>• Arrangements and reasons for providing redress are made transparent.</li> </ul>
<b>Possible remedies that may be offered to complainants</b>	<ul style="list-style-type: none"> <li>• An apology;</li> <li>• Reconsideration of a decision;</li> <li>• Amending or retracting documentation (e.g. publications, media statements, web pages);</li> <li>• An offer of non-financial assistance, as appropriate (e.g. providing information or contact details);</li> <li>• Appropriate compensation for loss;</li> <li>• Changed policies or practices to prevent a reoccurrence; and</li> <li>• Action to modify the behaviour of the staff member who the complaint was about, if applicable.</li> </ul>

For more information, see the Ombudsman WA Guidelines [Remedies and redress](#).

## Dealing with unreasonable complainant conduct

Most complainants act responsibly. However, some complainants are difficult to satisfy and occasionally the conduct of some complainants can be challenging because of:

- Unreasonable persistence;
- Unreasonable demands;
- Unreasonable lack of cooperation.
- Unreasonable arguments;
- Unreasonable behaviour; or

In these circumstances, special measures to deal with this conduct may be required. It is important to remember that, even where a person's conduct may be unreasonable, they may have a valid complaint and their complaint should be handled appropriately. Fair consideration must be given to the complaint while ensuring that there is not undue use of resources to investigate and resolve the complaint.

The subject of the complaint may also show unreasonable conduct and special measures may also be needed to handle their conduct while ensuring they are treated fairly.

For more information on how to handle unreasonable conduct, see the Ombudsman WA Guidelines [Dealing with unreasonable complainant conduct](#).

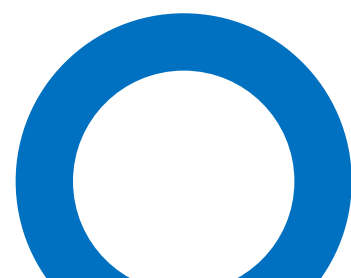
## Resources

### Other Ombudsman Western Australia Publications

The following Ombudsman WA publications are available on our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au) and provide further details that may be useful in the development of complaint handling systems and for staff involved in handling complaints:

- [\*Guidance for Complaint Handling Officers\*](#)
- [\*Complaint handling systems Checklist\*](#)
- [\*Making your complaint handling system accessible\*](#)
- [\*The principles of effective complaint handling\*](#)
- [\*Investigation of complaints\*](#)
- [\*Conducting administrative investigations\*](#)
- [\*Procedural fairness\*](#)
- [\*Dealing with unreasonable complainant conduct\*](#)
- [\*Remedies and redress\*](#)
- [\*Good record keeping\*](#)

The Ombudsman's Report [\*2009-10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors\*](#) also provides further information on complaint handling practices in public authorities.



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# Exercise of discretion in administrative decision making

## What is the exercise of discretion?

Administrative decisions often include the exercise of discretion. Discretion exists when the decision maker has the power to make a choice about whether to act or not act, to approve or not approve, or to approve with conditions. The role of the decision maker is to make a judgement taking into account all relevant information.

## Powers to act and to exercise discretion

For public sector decision making, legislation generally provides the lawful authority for action to be taken and for decisions to be made. Public sector decision making may be undertaken:

- As part of fulfilling responsibilities to ensure the efficient and effective management and performance of a public authority, eg, under the general public sector legislation; or
- As part of taking action or making decisions under agency or department specific legislation relating to the services delivered by the public authority.

Legislation often compels a decision maker to act in a particular way. Where the words 'shall' or 'must' are used in legislation, there is usually no discretion available to the decision maker. For example, if the legislation states that an application must be received by a specific date, the decision maker must refuse the application if it is not received by that date. However, where the legislation uses the word 'may', the decision maker is given a discretionary power to deal with a matter and has a choice to make. This choice will often involve an element of judgment about the decision.

**The exercise of discretion requires the exercise of good judgement.**

## Can the power to exercise discretion be delegated?

The legislation sets out who is given the power to make certain decisions, for example, a Chief Executive Officer (CEO). These powers, including powers to exercise discretion, may be delegated to others under a power of delegation in the legislation. Usually, the power of delegation cannot be delegated.

Delegations are generally recorded in writing in a register, instrument or notice and may need to be set out in a Government Gazette.

Before taking action or making a decision, the decision maker should check to ensure they have the power to take the action or make the decision and the limits of any discretion that can be exercised.

Those who delegate powers to others should consider the following factors:

- Which actions and decisions should be delegated and which should not;
- That accountability and transparency are not compromised in decision making; and
- That efficiency and quality in decision making is maintained.

## Policies and guidelines to guide the exercise of discretion

Agencies should develop policies and guidelines to assist and provide guidance to decision makers to exercise discretion. Unlike legislation, policies and guidelines do not have the force and effect of law and they should not be inconsistent with the legislation. If they are, the legislation takes precedence

Not every situation needs a policy or guideline and they may not cover all circumstances. However, they are an important means of providing guidance to decision makers who are required to exercise discretion when delivering a government service and in making decisions and to those with an interest in the decisions. Policies and guidelines assist to ensure decisions are made consistently and fairly.

Before preparing a policy or guideline, it is important to weigh up the costs and benefits of what outcomes might be achieved as a result. If better service delivery and decision making is likely to be achieved, there is likely to be an overall net benefit outcome.

**Policies and guidelines assist to ensure decisions are made consistently and fairly.**

To ensure policies and guidelines are most effective they should:

- Contain a clear purpose of what the policy or guideline is intended to achieve;
- Be flexible to cover a range of circumstances under which discretion is to be exercised;
- Set out the relevant considerations to be taken into account by the decision maker;
- Be expressed clearly to allow easy application and interpretation;
- Be transparent;
- State how they relate to relevant legislation;
- Be communicated to relevant staff; and
- Be made available to members of the public.

### How should decision makers exercise discretionary powers?

Decision makers must use discretionary powers in good faith and for a proper, intended and authorised purpose. Decision makers must not act outside of their powers. No decision maker has an unfettered discretionary decision making power.

It is not sufficient to exercise discretion and approve an application simply because it seems the right thing to do. When exercising discretion, decision makers need to act reasonably and impartially. They must not handle matters in which they have an actual or reasonably perceived conflict of interest.

It is important to apply the values that the legislation promotes, professional values and the values of the agency, not personal values.

In exercising discretionary powers, decision makers should have regard to any specific requirements as well as satisfy general administrative law requirements. Some of the general principles relevant to the exercise of discretion are:

- Acting in good faith and for a proper purpose;
- Complying with legislative procedures;
- Considering only relevant considerations and ignoring irrelevant ones;
- Acting reasonably and on reasonable grounds;
- Making decisions based on supporting evidence;
- Giving adequate weight to a matter of great importance but not giving excessive weight to a matter of no great importance;
- Giving proper consideration to the merits of the case;
- Providing the person affected by the decision with procedural fairness; and
- Exercising the discretion independently and not under the dictation of a third person or body.

A failure to act within the power provided or to comply with general administrative law principles can result in a review and overturning of a decision.



## Factors to consider when exercising discretion

The act of exercising discretion can add a level of complexity into the decision making process as the decision to be made may not be clear cut. It may be necessary for the decision maker to consider and weigh up a number of factors and evidence.

The legislation may state that certain matters must be taken into account in the decision making process. When stated, these matters must be considered. The use of the word 'includes' or a list which ends with a catch-all expression such as 'any other matters that in the opinion of the decision maker are relevant' indicates that guidance from other sources will be necessary to determine what other factors might be relevant.

If the legislation does not specify the matters to be taken into account, it is important to consider the underlying purpose of the decision making power and what factors might be relevant to achieving that purpose.

Guidance can also be obtained from:

- Agency policies;
- Previous decisions;
- Court or tribunal decisions; and
- The overall objectives of the legislation under which the decision is made.

**It is important to consider each case on its merits.**

Although the decision maker may take guidance from these sources, it is important to consider each case on its merits.

It is important that adequate weight is given to a matter of great importance and that excessive weight is not given to a relevant factor of no great importance. When exercising discretion, there may be one critical or turning key factor in the decision. That is, if one factor was different, the decision would be different. It is vital that this factor is identified in the decision making process.

## Keeping people informed and advising on the outcome

It is important to keep people informed in the decision making process. Decision makers also have a responsibility to inform the relevant parties of the outcome. There may also be a requirement to provide reasons for the decision reached.

## Ten key steps to be considered when exercising discretion

A ten step guide has been developed to assist decision makers in exercising discretion. The aim of the ten steps is to simplify the process of exercising discretion. As the decision maker will ultimately need to make a judgement about the matter under consideration, the ten steps provide guidance to reach that point to ensure accountability and transparency in the decision making process, and to provide quality outcomes. Details are contained at page four of these guidelines.

Acknowledgement: Ombudsman Western Australia wishes to thank the NSW Ombudsman for allowing us to draw upon their publication *Public Sector Agencies Fact Sheet No. 4. Discretionary Powers* in the development of these Guidelines.

Ten key steps to be considered when exercising discretion	
<b>Determine that the decision maker has the power</b>	Check the relevant legislation and agency policies and guidelines to ensure that the person has the power to act or to make the decision.
<b>Follow statutory and administrative procedures</b>	It is important that the person who is responsible for exercising discretion follows statutory and administrative procedures. For example, there may be pre-conditions to the exercise of discretion such as requiring consultation with a range of people or to advertise a proposal and to receive and consider submissions before a decision is made.
<b>Gather information and establish the facts</b>	Before exercising discretion, it is necessary to gather information and establish the facts. Some facts might be submitted with an application made to the decision maker. Others might be obtained through inquiries or investigation. This may require the decision maker to: <ul style="list-style-type: none"> <li>• Review documents;</li> <li>• Undertake a site inspection; or</li> <li>• Seek specialist advice.</li> </ul>
<b>Evaluate the evidence</b>	It is important to evaluate and weigh up the evidence, to determine the relevant considerations and key facts. A key fact is something whereby the existence or non-existence of the fact can affect the decision. The evidence must be relevant to the questions before the decision maker and accurate so that any material facts can be established. When evaluating the evidence, the decision maker must ignore irrelevant considerations.
<b>Consider the standard of proof to be applied</b>	In administrative matters, the standard of proof to be applied is generally 'on the balance of probabilities'. It must be more probable than not that the matter or allegations are proven. In general, the more serious the matter and the consequences arising, the higher the standard of proof that is necessary. This standard of proof is that found in the often-cited case of <i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336. The <i>Briginshaw</i> standard possesses a measure of flexibility, so that the more serious the allegation the higher the degree of probability required.
<b>Act reasonably Act fairly and without bias</b>	The person taking action or making a decision must act reasonably. The decision maker needs to act impartially. They must not handle matters in which they have an actual or reasonably perceived conflict of interest.
<b>Observe the rules of procedural fairness</b>	Before taking certain action or making some decisions, the decision maker may be required to provide procedural fairness to anyone who is likely to be adversely affected by the outcome.
<b>Consider the merits of the case and make a judgement</b>	Although policies, previous decisions, and court and tribunal decisions may exist to guide the decision maker, it is still important to consider the matter or application on its merits and to make a judgement about the matter under consideration.
<b>Keep parties informed, advise of the outcome and provide reasons for the decision</b>	The decision maker should keep relevant parties informed during the decision making process; they should inform the relevant parties of the outcome; and provide reasons for the decision reached.
<b>Create and maintain records</b>	It is vital that records are created and maintained about the issues that were taken into account in the process and why, the weight given to the evidence and the reasons for the decisions made.

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### Benefits of giving reasons for decisions

Giving reasons for administrative decisions provides the following benefits:

- More public confidence in the decision;
- More consistency in decision making; and
- Fairness and transparency in decision making.

### Why should reasons for decisions be given?

When a decision is made, there is at least one alternative decision that could have been made. Giving reasons should enable the people affected by the decision to understand why a particular decision was made.

**Giving reasons should enable the people affected by the decision to understand why a particular decision was made.**

Giving reasons is important:

- To inform a person why a decision was made and to explain the decision;
- To meet any requirements under the legislation under which the decision was made;
- To help the person affected by the decision make a choice about exercising their right of review or appeal; and
- To comply with public authority customer service charters.

Giving reasons also demonstrates transparency, accountability and quality of decision making as follows:

<b>Transparency</b>	<p>A person affected by a decision is better able to see:</p> <ul style="list-style-type: none"><li>• The facts and reasoning that were the basis for the decision;</li><li>• That the decision was not made arbitrarily or based on speculation, suspicion or on irrelevant information;</li><li>• To what extent any arguments put forward have been understood, accepted or formed a basis for the decision;</li><li>• Whether they have been dealt with fairly; and</li><li>• The issues they will need to address if they decide to request a review of the decision or to lodge an appeal on the decision.</li></ul>
<b>Accountability</b>	<ul style="list-style-type: none"><li>• When required to give reasons, there is a greater incentive for decision makers to base their decisions on acknowledged facts;</li><li>• Supervisors and managers are better able to see if legal requirements, agency/government policies and standard practices have been complied with; and</li><li>• People or bodies with an external review role are in a better position to assess the decision, for example, whether it was reached lawfully, based on relevant considerations and based on the merits of the case.</li></ul>
<b>Quality</b>	<ul style="list-style-type: none"><li>• When required to give reasons, there is a greater incentive for decision makers to rigorously and carefully identify and assess relevant issues and to justify recommendations and decisions; and</li><li>• Other decision makers are able to apply decisions to future cases by using the reasons as guidance for the assessment or determination of similar issues.</li></ul>

## Should reasons be given in all cases?

There is no general duty at common law, or general rule of procedural fairness, that requires decision makers to give reasons for their decisions, although such a duty may arise in special or exceptional circumstances<sup>1</sup>. Special circumstances might include decisions relating to unfair dismissal or where giving reasons would assist someone when exercising a right of appeal. The courts hold the view that, generally, the question about whether reasons should be given is better determined by legislation.

Sometimes the requirement to give reasons is derived from the legislation which provides for the right of review of the decision, which may not be the same legislation which provided for the actual decision to be made.

## Circumstances when reasons are particularly important

There are circumstances when giving reasons is particularly important. These include when:

- The decision is not in accordance with a relevant established policy or guideline;
- The decision is likely to detrimentally affect the rights or interests of an individual or organisations to any material extent; and/or
- To explain the conditions imposed on an approval, consent, permit, or licence.

Where a decision maker makes a decision which is not in accordance with a relevant established policy or guideline, the reasons for the decision and the reasons for not following the policy should be recorded, either in the minutes of the meeting where the decision was made, in a report on the proposal in which the decision was recommended, or in a file note or memorandum attached to the relevant file.

## How and when should reasons be communicated?

The legislation under which the decision is being made may provide details about the form in which the reasons are required to be provided. For example, a prescribed form may exist in Regulations that must be used to communicate the decision. Generally, reasons are communicated in writing. This might form part of a document in which the decision is communicated rather than forming a separate statement.

Reasons should be drafted with the potential audience in mind:

- Reasons for decisions should be written in a style that can be easily understood by the person receiving it so that they understand the reasons for the decision and why the decision was made;
- Sentences should be short and plain English should be used;
- The language should be clear and unambiguous; and
- Technical terms and abbreviations should be avoided if they are not likely to be understood by the person receiving the statement of reasons.

**Reasons should be drafted with the audience in mind.**

Providing written reasons is always desirable. In some cases, reasons may not be required under legislation when the decision is made. For example, for some decisions that are reviewed by administrative appeal tribunals, the decision maker is not required to provide the reasons for a decision until requested by the tribunal after an appeal or request for a review of the decision is received. However, in such cases, providing written reasons at the time the decision is made is good administrative practice.

## What should written reasons contain?

The information contained in the written reasons may to some extent be proportional to the type of decision made and what requirements might be imposed by the legislation.

**Written reasons should deal with the substantial and key issues upon which the decision was made.**

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<sup>1</sup> *Public Service Board of NSW v Osmond* (1986) 9 ALN N85

For a decision that was simple and quick to make, the reasons may be relatively brief but the information set out in the reasons for the decision is likely to be significantly greater where the decision making process has:

- Been lengthy and complex;
- Involved seeking the views of people likely to be affected by the decision, as well as seeking expert advice; and
- Involved weighing up of a number of key facts.

The reasons provided should deal with the substantial and key issues upon which the decision turns. It is not necessary to address each and every issue raised by the applicant or party to the proceedings<sup>2</sup>.

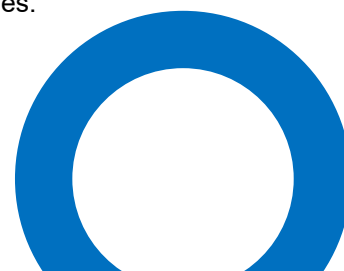
Consideration should be given to including the following types of information in the document containing the reasons for the decision made.

Information to be included in the document containing a statement of reasons	
<b>The decision</b>	The decision should be accurately described.
<b>Date of decision</b>	The date of the decision should be included. This is particularly important if there is a time limit for appeals on the decision to be made. If the date that the decision takes effect is different to the date of the decision, this should be included.
<b>The decision maker</b>	The name of the decision maker should be identified. This may be a person, committee or an organisation.
<b>Relevant legislation</b>	If the decision was made under legislation, this should be referred to. If the legislation specifies that certain actions be taken before a decision is made, for example, consultation with people that may be affected by the decision, reference to this may be required.
<b>Key steps taken in making the decision</b>	For more complex decisions, a list of the key steps taken in the decision making process should be included together with the documents and information considered, including any legislation or policies. Details of any essential procedural steps taken or pre-conditions that may have been necessary should also be included. This may be very brief for less complex decisions.
<b>Details of the evidence considered</b>	The evidence considered and the key facts that arise from the evidence should be included, along with the conclusions drawn from the facts. Key facts are those on which the decision turns. Details of whether the evidence in relation to key facts was accepted or rejected should be recorded. The person affected by the decision should be able to see how the facts link to the decision made.
<b>Details of rights of appeal or review</b>	Information should be included about rights of appeal or review including which body is responsible for handling appeals or reviews and any timeframes which apply.

## Acknowledgement

Ombudsman Western Australia wishes to thank the NSW Ombudsman for allowing us to draw upon their publication *Public Sector Agencies Fact Sheet No. 18. Reasons for Decisions* in the development of these Guidelines.

<sup>2</sup> *Mentink v Albeitz* (1999) QSC 9; *Total Marine Services Pty Ltd v Kiley* (1985) 51 ALD 635 at 640; *KO and KP v Commissioner of Police, NSW Police (GD)* (2005) NSW ADTAP 56.





### Why are records important?

Records tell us what, where and when something was done and why a decision was made. They also tell us who was involved and under what authority. They provide evidence of government and individual activity and promote accountability and transparency.

### What are the benefits of good record keeping?

Records:

- help you work more efficiently
- enable you to meet legal obligations applicable to your work
- protect the interests of the government and of your agency
- protect your rights as an employee and citizen
- demonstrate the cost and impact of your business
- enable review of processes and decisions
- retain the corporate memory of your agency and its narrative history
- help research and development activities
- enable consistency and continuity in your business.

### Who is responsible?

Making and keeping your agency's records depends on the cooperation of everyone in your agency. Whilst your agency's chief executive and its corporate records section (if appropriate to your agency) are responsible for meeting the requirements of the *State Records Act 2000*, effective record keeping ultimately depends on you.

Creating and looking after records is central to your responsibilities as a public official. As an individual government employee, it is possible to be charged with an offence under the *State Records Act 2000* if you fail to keep a record in accordance with your agency's Record Keeping Plan.

### What do we have to do?

#### Create records routinely as part of your work

Records may naturally arise in the course of your work, such as sending an email. In other cases, where the activity does not automatically result in the creation of a record, you need to create one. Examples of this include meetings, telephone conversations, informal discussions and the receipt of funds. It is important that the record accurately reflects the transaction or activity that has taken place.

#### File records into official records systems

Your agency has official systems for managing its records, whether they are created and received in paper or electronically. Failure to capture records into official records systems makes them difficult or impossible to locate when needed. They may even end up lost or destroyed.

Do not be tempted to hoard records in your own private store, separate from your agency's official records system. This also applies to emails: those you send or receive in the course of your employment are official records. If an email needs to be kept to document a transaction or decision, then it should be captured into your agency's official records system.

### Handle records with care

For paper records to survive and be available for as long as they are needed, they must be properly cared for. Avoid storing records near known hazards and try not to damage them.

Records are a corporate asset of your agency and do not belong to you. Do not remove them from official records systems for extended periods of time or take them out of your agency. It is important they remain available to other staff.

### Do not destroy records without authority

Your agency's records, whether paper or electronic, generally cannot be destroyed without proper authority from your agency's records staff. Some kinds of records have only temporary value and can be destroyed when no longer needed. Make sure you know which records are required long term and which are not. This information is part of your agency's Retention and Disposal Schedule, and records staff can provide information about this.

Failing to maintain records for the length of time they are needed puts you and your agency at risk of being unable to account for what has happened or been decided. This can result in problems for your agency's clients, monetary losses from penalties or litigation, embarrassment for your agency or the Government, or, in extreme cases, disciplinary action for you or your colleagues.

### Protect sensitive records from unauthorised access

Records can contain personal and confidential information which must not be disclosed to unauthorised persons. Ensure that records storage areas are secure, protect passwords and do not leave sensitive records lying around.

### Know your agency's policies and procedures for managing records

Every WA public sector body is required to establish policies and procedures for the management of their records in all forms. It is every public official's responsibility to create and keep records according to their agency's Record Keeping Plan. You can help support good record keeping in your agency by being familiar with these policies and procedures and applying them so you can better create and manage records in your daily work.

### What happens to records once the business need ceases?

Most of your agency's records, whether paper or electronic, can be destroyed with proper authority from your records staff. However, some records have permanent value to the State and to the people of Western Australia as evidence of your agency's activities and the role of government in our society.

These records will become State archives to be retained permanently and transferred to the State Records Office once they are 25 years old. Subject to certain restrictions, they will be made available to the public on request and to future generations of researchers who might use these records many years from now.

Make sure you know which records you deal with have continuing value. Good record keeping includes taking proper care of records which have archival value and will be retained permanently.

### Record keeping tips

#### Meetings

Delegate someone to make a record of the meeting, either minutes or a simple summary of decisions. Ensure decisions and dissent are clearly recorded. Circulate the minutes of the meeting to other participants and sign or confirm the accuracy of the record.

#### Conversations

Make a record of significant business you conduct via the telephone or face-to-face, such as:

- providing advice, instructions or recommendations
- giving permissions and consent
- making decisions, commitments or agreements.

Transcribe voicemail messages or capture the message directly into your agency's official records system.

### **Decisions and recommendations**

Document reasons for decisions or recommendations that you make.

### **Correspondence**

File or attach emails, letters, faxes and internal memos (sent or received) that relate to your work onto files within your agency's official records system.

### **Further information**

[Australian Standard AS15489 Records Management](#)

[State Records Act 2000](#)

[State Records Commission Principles and Standards 2002](#)

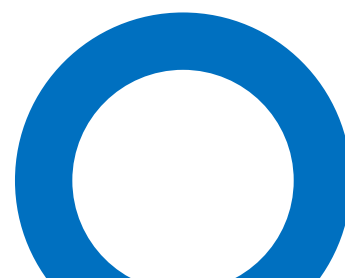
[State Records Office of Western Australia](#)

[Recordkeeping Responsibilities and You](#)

Your agency's Record Keeping Plan and Retention and Disposal Schedule

### **Acknowledgements**

We acknowledge material from the [NSW State Records Office](#) and [NSW Ombudsman](#), and advice from the [State Records Office of WA](#).







Complaint Handling Officers are the most important factor in ensuring that an organisation's complaint handling system is responsive to complainants. Complainants are more likely to be satisfied with the complaint handling system if the person dealing with their complaint is competent, objective and efficient.

### **The role of Complaint Handling Officers**

Complaint Handling Officers should:

- Have the skills to be able to act with sensitivity as well as be objective and impartial;
- Have knowledge of, and be able to advise on, all aspects of the organisation's internal complaint procedures and be trained to receive, investigate and deal with complaints about the organisation's products and services;
- Have access to rooms with adequate privacy to ensure the complainant's confidentiality is maintained and appropriate information technology equipment, with access to the organisation's complaint handling database and reference material;
- Ensure that they are not directly involved in the subject matter of the complaint, and raise the matter with a superior should such an issue arise;
- Be able to assist in the formulation of a written complaint for complainants who require additional assistance;
- Have access to staff at all levels of the organisation so that complaints can be resolved quickly; and
- Have clearly defined power to act and provide redress to complainants or to refer the matter to someone who has this power.

### **Empowering Complaint Handling Officers**

Complaint Handling Officers should be empowered to make decisions, or have access to someone who can make decisions, in order to deal with complaints promptly, and, where possible, to achieve early resolution. All organisation staff should be made aware of their responsibilities in providing information to Complaint Handling Officers to help investigate and resolve complaints, and to implement actions to provide remedies or systemic improvements arising from complaints.

### **Selection of and guidance for Complaint Handling Officers**

Complaint handling is an important role in an organisation and should be recognised as such by management. Staff who are responsible for responding to and/or resolving complaints should be given guidance or training in customer contact and communication skills. Management should determine the particular skills and aptitudes necessary for complaint handling and use selection and training procedures that are appropriate to recruit and retain the most suitable staff in complaint handling roles.

Guidance or training provided to staff should cover:

- The benefits of good complaint handling and the consequences of poor complaint handling;
- The policy and legal framework for complaint handling within which the organisation operates;
- The organisation's complaint handling procedures;
- Declaration of conflicts of interests;
- Evidence based investigation skills;
- Skills in alternative dispute resolution such as mediation or conciliation;
- Interpersonal skills, such as listening, questioning skills and conflict management;

- Communication skills for dealing with unreasonable complainant conduct or the unreasonable conduct of the person who is the subject of the complaint; and
- The organisation's record keeping plan, policies and procedures.

### Delivering an effective complaint management system

Complaint Handling Officers play a key role in ensuring that an organisation's complaint management system meets the key features required to make the system effective.

Complaint Handling Officers should apply the ten key principles for effective complaint handling when managing complaints. Effective complaint handlers should:

- Take a customer focused approach to handling complaints;
- Ensure that information about how and where to complain is kept up to date and available at all service delivery points;
- Ensure that the process for making complaints is easy to access and understand, particularly for members of the public that may require additional assistance or different approaches such as people with disabilities, people living in regional and remote areas, Indigenous Australians, children and young people, and people from linguistically and culturally diverse backgrounds;
- Acknowledge complaints in a timely manner, address complaints promptly and according to the order of urgency and keep the complainant informed throughout the process;
  - Manage the complainant's expectations by explaining the complaint handling process, what the organisation can and cannot do, the timeframes for dealing with the complaint and when they might expect a response;
- Deal with complaints in an equitable, objective and fair manner;
  - Declare any actual or potential conflicts of interest;
  - Clarify the key issues of the complaint with the complainant;
  - Act with courtesy, showing empathy and understanding but do not take sides;
  - Consult people within the organisation who have expertise relevant to the issue;
  - Ensure the principles of procedural fairness are maintained by providing the affected parties with an opportunity to give their side of the story and to comment on any adverse views;
  - Act without bias, reach conclusions and form views on the facts of the case, taking into account matters that are relevant and not those that are irrelevant;
  - Give reasons for any decisions made, any changes that have resulted from the complaint and details of any remedy;
- Keep personal information relating to complaints confidential;
- Ensure remedies are provided where appropriate;
  - Where possible, consider the use of alternative dispute resolution methods to resolve complaints at the earliest opportunity;
- Ensure complainants are informed of independent internal and external review or appeal processes;
- Ensure responses and outcomes of complaints are recorded, filed and reported to management and monitor implementation of remedies and actions to improve practices; and
- Analyse complaints to identify recurring themes and trends and report these to management to assist with organisational continuous improvement programs.

The Ombudsman WA publications [\*The principles of effective complaint handling\*](#), [\*Effective handling of complaints made to your organisation - An Overview\*](#), [\*Making your complaint handling system accessible\*](#) and [\*Complaint handling system Checklist\*](#) provide additional advice to assist Complaint Handling Officers.

## Dealing with unreasonable complainant conduct

Most complainants act responsibly. However, some complainants are difficult to satisfy and occasionally the conduct of some complainants can be challenging because of:

- unreasonable persistence;
- unreasonable demands;
- unreasonable lack of cooperation;
- unreasonable arguments; or
- unreasonable behaviour.

In these circumstances, special measures to deal with this conduct may be required. It is important to remember that, even where a person's conduct may be unreasonable, they may have a valid complaint and their complaint should be handled appropriately.

Fair consideration must be given to the complaint while ensuring that there is not undue use of resources to investigate and resolve the complaint.

For more information on managing unreasonable complainant conduct, see the Ombudsman WA Guidelines on [Dealing with unreasonable complainant conduct](#).

## Resources

### Other Ombudsman Western Australia Publications

The following Ombudsman WA guidelines provide further details that may be useful in the development of complaint handling systems and for staff involved in handling complaints:

- [Effective handling of complaints made to your organisation – An Overview](#)
- [Complaint handling systems Checklist](#)
- [Making your complaint handling system accessible](#)
- [The principles of effective complaint handling](#)
- [Investigation of complaints](#)
- [Conducting administrative investigations](#)
- [Procedural fairness](#)
- [Dealing with unreasonable complainant conduct](#)
- [Remedies and redress](#)
- [Good record keeping](#)

## Acknowledgement

Ombudsman Western Australia wishes to thank the NSW Ombudsman for use of their publication *Effective Complaint Handling, June 2004* in the development of these guidelines.



### Ombudsman Western Australia

PO Box Z5386 St Georges Terrace Perth WA 6831

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Email [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au) • Website [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)



When a complaint is made to Ombudsman Western Australia, we assess it to find out whether we can investigate, according to the *Parliamentary Commissioner Act 1971*. A decision is then made about whether we should investigate the complaint. These guidelines outline the process we follow and the factors we take into consideration when presented with a complaint, particularly with respect to our legislation.

## 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.

## Our assessment process

While we encourage people to initially make telephone enquiries so we can provide advice on the best way to proceed, the Ombudsman can only respond to written complaints. In some cases, we can make an assessment of whether we can deal with a complaint based on the information in a written complaint.

In other situations however, we need to make preliminary, informal enquiries to help assess whether we can deal with the complaint or other avenues that may be available to the complainant if we can't. When we advise the complainant if we will investigate, we will also let the complainant know if we have made any preliminary enquiries.

If a complaint is about something we can and should investigate, an Investigating Officer will write to the complainant. The Officer will describe their understanding of the complaint and either request confirmation that their understanding is correct or ask the complainant to clarify the issues. The complainant will also be advised of any action already taken or action that will be taken in response to the complaint. At that stage the complainant will be informed of the process the Officer will follow.

## What we can investigate

The Ombudsman investigates complaints from those personally affected by the actions of Western Australian government departments, statutory authorities and local governments where those actions:

- were or are performed in the course of the department or authority exercising its powers and functions; and
- relate to a matter of administration.

If a complaint is about a government department or authority, we can only investigate it if the complaint affects the complainant directly or personally. If someone wants to make a complaint but cannot act for themselves for any reason, they may nominate a representative and authorise us to deal with that person on their behalf.

### What we cannot investigate

It is important to understand that we cannot investigate certain matters because they are outside of the Ombudsman's jurisdiction, as described by our Act. We cannot investigate complaints about:

- private individuals or organisations;
- Members of Parliament, committees of Parliament, the Clerk or the Deputy Clerk of either House of Parliament, the staff of Parliament or electorate offices;
- any of the courts, judges, masters, registrars, deputy registrars, magistrates, commissioners of courts, coroners;
- the Governor or the Governor's staff;
- any of the organisations in Schedule 1 of the *Parliamentary Commissioner Act 1971* (these are listed on page 3 of these guidelines);
- any action taken by a person acting as a legal adviser or as counsel;
- decisions made by Cabinet or by a Minister of the Crown;
- a matter that the complainant became aware of more than 12 months before making the complaint (except in special circumstances);
- matters which can be remedied through appeal, review or legal proceedings (except in special circumstances);
- an action which has not directly affected the complainant.

### Complaints about matters more than 12 months old

If the complainant shows that special circumstances apply, we may investigate a complaint about matters more than 12 months old. If the complainant wants the Ombudsman to investigate such a matter, they will be asked to provide information about why it should be accepted and what they hope to achieve by having the complaint investigated.

In deciding whether to investigate, we will consider:

- if there is a good reason why the complainant did not make the complaint within time;
- the likelihood of being able to obtain evidence;
- the likelihood of any practical outcome for the complainant;
- the likelihood of any practical benefit to public administration; and
- the public interest in the investigation of the issues raised (note that this does not refer to public curiosity, but the potential benefit to the community as a whole).

### Complaints that can be dealt with by appeal, review or legal proceedings

We may investigate a complaint that could be dealt with by appeal, review or legal proceedings if we believe that it was not reasonable to expect you to have taken that course of action.

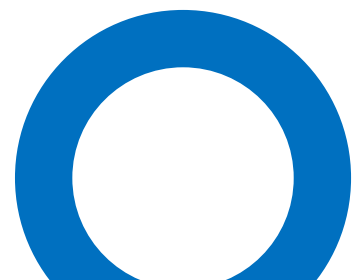
The cost of dealing with a complaint in this manner may not be sufficient reason for the Ombudsman to investigate. The Ombudsman is not an alternative to the court system and cannot make binding decisions in the way that a court or some other tribunals can.

In deciding whether to investigate, we will consider:

- whether there are good reasons why you cannot deal with the complaint by appeal, review or legal proceedings
- whether the potential benefit would be substantially outweighed by the cost of it
- the particular nature of the matter
- the public interest in the investigation of the issues raised.

## Organisations the Ombudsman cannot investigate

- The Corruption and Crime Commission
- The Parliamentary Inspector of the Corruption and Crime Commission
- The Director of Public Prosecutions and the Deputy Director of Public Prosecutions
- The Economic Regulation Authority established by the *Economic Regulation Authority Act 2003* to the extent of its functions referred to in section 36(1) of the *Gas Pipelines Access (Western Australia) Act 1998* and section 20(1) of the *Railways (Access) Act 1998*
- The Electoral Commissioner within the meaning of the *Electoral Act 1907* to the extent of the Electoral Commissioner's functions other than that of chief executive officer of the Western Australian Electoral Commission
- The Deputy Electoral Commissioner within the meaning of the *Electoral Act 1907*
- The Commissioner for Equal Opportunity
- The Director of Equal Opportunity in Public Employment
- The Auditor General appointed under the *Financial Administration and Audit Act 1985* to the extent of the Auditor General's functions other than that of chief executive officer of the Office of the Auditor General
- The Information Commissioner
- The Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003*.
- The Ombudsman and Deputy Ombudsman.
- The Commissioner for Public Sector Standards under the *Public Sector Management Act 1994* to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act
- Racing and Wagering Western Australia established under section 4 of the *Racing and Wagering Western Australia Act 2003*
- Any Royal Commission constituted under the *Royal Commissions Act 1968* and any member of a Royal Commission
- The Solicitor-General
- The State Administrative Tribunal established under the *State Administrative Tribunal Act 2004*.







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.

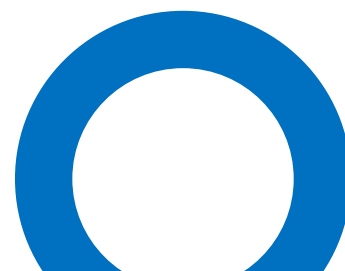
In most cases we do not disclose information about our investigation or findings, other than to the complainant and the agency concerned. However, the Ombudsman may send a report to the relevant Minister, the Premier, or table a report in State Parliament.

## 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

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What is an investigation?	What are the essential steps in an investigation?	TIPS	Procedural and evidentiary requirements
<p>A fact-finding process – a search for, gathering and examination of information in order to establish facts.</p> <p>It is one step in a decision making process which starts with an issue and ends with a decision.</p> <p>Its purpose is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response.</p> <p>The nature and scope of an investigation will depend on the circumstances of each case and any relevant statutory requirements that may apply.</p> <p>More detailed information on investigation of complaints is available in the Ombudsman WA Guidelines <i>Conducting administrative investigations</i>.</p> <p>Acknowledgement: We thank the Office of the NSW Ombudsman for allowing us to use their excellent publication “Public Sector Agencies Fact Sheets A-Z” in the development of this Information Sheet, and for their continuing advice and assistance.</p>	<p><b>STEP 1 ASSESS THE COMPLAINT</b></p> <p>Determine what action is required, which may include options other than a formal investigation.</p>	<p>You will need to consider a range of factors, such as:</p> <ul style="list-style-type: none"> <li>whether the complaint involves a communication problem that can be resolved through explanation or discussion</li> <li>whether a more appropriate means of dealing with the issue is available</li> <li>whether the complaint can or must be referred or notified to a relevant government agency</li> <li>how much time has elapsed since the alleged events occurred</li> <li>the significance of the issue for the complainant and/or the organisation.</li> </ul>	<p><b>Impartiality</b></p> <p>Investigators must be impartial, adopting an inquisitorial approach, attempting to ascertain the truth and uncover all relevant facts.</p> <p><b>Procedural fairness</b></p> <p>This is very important in an investigation that could result in an outcome that affects the rights, interests or reputation of an individual.</p>
	<p><b>STEP 2 SELECT THE APPROPRIATE INVESTIGATIVE APPROACH</b></p> <p>This can depend on factors such as statutory requirements which may apply; the nature of the issue; the likely outcome of the investigation.</p>	<p>Ask yourself whether the investigation is either evidence-focused or outcome-focused. Evidence-focused inquiries seek to pursue all lines of inquiry in a way that will meet all legal and procedural requirements. Outcome-focused inquiries are primarily directed at quickly identifying and remedying problems, and so seek to obtain sufficient information for a fair and informed judgement about the issues in question.</p>	<p><b>Confidentiality</b></p> <p>This can be very important in an investigation such as an evidence-focused investigation into the alleged conduct of an individual.</p>
	<p><b>STEP 3 PLAN THE INVESTIGATION</b></p> <p>Define the subject matter and develop an investigation plan.</p>	<p>Identify what questions need to be answered, what information is required to answer those questions, and the best way to obtain that information.</p>	<p><b>Communication</b></p> <p>As a general rule, keep both the complainants and person or bodies the subject of an investigation informed about the progress of the investigation.</p>
	<p><b>STEP 4 ENSURE PROPER POWERS AND AUTHORITY</b></p> <p>Assess whether the investigation has the necessary powers to obtain evidence from relevant witnesses and to access relevant records</p> <p>Ensure the investigator has the authority to conduct the investigation.</p>	<p>Distinguish between the right to ask and the power to demand.</p>	<p><b>Standard of proof</b></p> <p>In administrative investigations, allegations must be proved according to the balance of probabilities, that is, it must be more probable than not that the allegations are made out.</p>
	<p><b>STEP 5 OBTAIN EVIDENCE</b></p> <p>Carry out the investigation by gathering sufficient reliable information to enable the issue to be properly addressed by proving or disproving matters relevant to the issue being investigated.</p>	<p>If the investigation is major or sensitive, ensure you have approved terms of reference and adequate resources.</p>	<p><b>Rules of evidence</b></p> <p>The rules of evidence will not apply to the majority of administrative or disciplinary investigations.</p>
	<p><b>STEP 6 REPORTING</b></p> <p>Prepare your document setting out the complaint, how the investigation was conducted, relevant facts, conclusions, findings and recommendations.</p>	<p>Where possible separate the investigation and decision making functions.</p>	<p>Nevertheless it is useful for an investigator to understand the basic rules of evidence.</p>



# Making a complaint to a State Government agency

Revised  
April 2010

### Talk to the agency involved first

All public sector agencies should have complaint handling procedures. As a general rule, you should make your complaint directly to the agency involved to give them the opportunity to address your concerns. As well as helping resolve your complaint, bringing the matter to their attention may result in changes to their policies or procedures that will benefit other community members.

### Letter or telephone call?

A telephone call may be sufficient and quicker if you are complaining about an issue that is relatively simple or easily resolved. Phoning before writing may also help clarify an agency's complaint handling procedures.

We suggest you follow these steps:

- before calling, make notes about what you would like to discuss. You can use these notes to keep track of the points you make during your phone call;
- find out the name of the person who answers your call and their position in the agency;
- tell the person about your concerns, making it clear that you are seeking a resolution to your concerns and not simply providing feedback;
- ask if the person you are speaking to can help. If they can't, ask if there is someone else you can contact;
- note the time and date of the conversation and what was discussed;
- if an agreement is reached to resolve your complaint ask the person to write to you confirming this or write to the person yourself confirming your understanding of what was agreed; and
- if the person is unable to resolve your concerns ask them who you can address a written complaint to.

Even if you feel upset, stay calm and polite throughout the conversation. Staff of the agency you are dealing with should respond in a similar manner, treating you with courtesy and respect.

A written complaint is usually best if your complaint is more complex. However a phone call before you write may clarify some of the issues or help you understand the agency's complaint handling procedures. For example, some complaints may require a special form or a statutory declaration.

### Putting your complaint in writing

If you decide to write, send your letter to the agency's complaint handling officer. Make it clear in your letter that you are seeking a resolution of your concerns and not simply providing feedback.

Your letter should be clear and to the point. Summarise in a couple of sentences exactly what your complaint is about. Stick to the facts and don't go into excessive detail. Your letter should include:

- relevant dates, places and times;
- a description of the incident or problem;
- details of any phone conversations and meetings;
- any explanations you think are important; and
- copies of relevant documents.

If you have difficulty expressing yourself, ask for help from relatives, friends or a community organisation. The [WA Council of Social Services](#) can put you in touch with someone.

At the end of your letter state what action you think should be taken to resolve your problem. This might be an apology, an explanation of what happened or something else to put the matter right. Make sure your desired outcome is reasonable. If your request is realistic and within the power of the person you are writing to, your complaint is more likely to be resolved.

## Ask for an acknowledgement

Always ask to have your letter or phone call acknowledged in writing. Ask for an estimate of how long it will take to deal with your complaint. If there is a degree of urgency involved, let the agency know and explain why.

## Keep records

It is important you keep copies of all the letters you send and receive as well as details of all telephone calls. You may need to provide evidence of your dealings with the agency, particularly if you decide to refer the matter to another complaint handling body.

## Follow up on your complaint

If nothing happens, call the agency to check on the progress of your complaint. Make it clear to the person you speak to that you would like your complaint resolved.

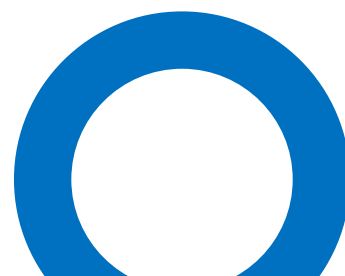
If the agency cannot resolve your concerns, ask if there is someone you can complain to next. This might be someone higher in the agency or an outside organisation or individual, such as your local Member of Parliament, the responsible Minister or another complaint handling or appeal body.

## What to do if unsuccessful

If your complaint is not properly resolved or not dealt with in a reasonable time, and the agency has not referred you to another appropriate complaint or review body, you may choose to take it to the Ombudsman. The names and addresses of other bodies that deal with complaints about government agencies are listed on the Ombudsman's website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).

### Acknowledgement

Information from the [New South Wales Ombudsman](#), [Queensland Ombudsman](#), [Commonwealth Ombudsman](#) and the [Parliamentary and Health Services Ombudsman \(United Kingdom\)](#) were used as a guide in preparing these guidelines.



## Ombudsman Western Australia

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**Write to us at** PO Box Z5386 St Georges Terrace Perth WA 6831

**Do you have a complaint about a Western Australian Government agency, local government or university that you can't fix with them? The Ombudsman may be able to help. Our services are free.**

The Ombudsman is an independent and impartial person who investigates and resolves complaints from members of the public about Western Australian public authorities. Public Authorities include:

- WA government agencies including departments, statutory authorities and boards;
- Local governments including cities, towns and shires; and
- Universities.

### What can the Ombudsman investigate?

The Ombudsman can investigate complaints about the decision making and practices of WA public authorities to find out if they are lawful, fair and reasonable.

These include complaints about public services such as:

- health
- education
- housing
- local government
- transport
- child protection
- prisons
- universities

### Is there anything the Ombudsman cannot investigate?

We cannot investigate complaints about:

- Private individuals or organisations such as banks, shops, trades people or neighbours;
- Decisions by Government Ministers, courts of law and some other officials; or
- Matters that can be dealt with by a court or tribunal or matters older than 12 months (some exceptions may apply).

If we cannot help you, we will try and put you in contact with someone who can.

The Ombudsman helps public authorities improve their administrative practices for the benefit of all Western Australians by identifying causes of problems and making recommendations for changes to procedures, practices, policies or legislation to prevent similar problems occurring.

The Ombudsman's services are free to everyone.

### Is your complaint confidential?

The Ombudsman's investigations are subject to strict confidentiality provisions under our governing legislation. The information you provide about the complaint and about yourself will only be used for assessing and investigating your complaint, or as required by law.

### How do you complain?

You can telephone our office to discuss the problem. Your complaint must be in writing. You can ask us or someone else to help you if it is hard to write your complaint. You will need to provide us with details of the issue you want to complain about and any relevant documents. A complaint form is available to print or complete online on our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au). You can also write to us or lodge your completed complaint form by post or email.



## What do we do with your complaint?

We will look at your complaint and decide whether to investigate. We will let you know the outcome. If we investigate, we don't take sides and will listen to both you and the public authority. If we find something is wrong, we will talk to you and the public authority about fixing the problem for you. We may also recommend that the public authority makes changes to the way it works to prevent the same thing happening to you or someone else in the future.

The Ombudsman seeks to resolve complaints as soon as possible but some more complex complaints can take longer.

## Making a complaint

**Do you have a problem a WA public authority?**



**Talk to someone at the public authority first.**



**If your problem is not fixed,**  
talk to the public authority's complaint section.

## If your problem is still not fixed, call the Ombudsman.

You can talk to us using the Interpreter Service or National Relay Service if you wish.

**If we think we can help,** we may ask you to write to us.  
You can ask us or someone else to help write down your complaint.



**We will look at your complaint** and tell you what we can do.  
Sometimes we are not the right people to help but we will help you find who can.



**If we can do something,**  
we may ask you or the public authority you are complaining about for more information.



**We will let you know the result.**  
If we find that something is wrong, we will talk to you and the public authority about fixing it.

## Ombudsman Western Australia

**Call us** 08 9220 7555 or **Freecall** 1800 117 000 (toll free from landlines)



Interpreter 131 450



National Relay Service Quote 08 9220 7555

TTY 133 677

Voice-only (speak and listen) 1300 555 727

SMS Relay Text 0423 677 767

**Use the online form at our website** [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

**Email us at** [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au)

**Write to us at** PO Box Z5386 St Georges Terrace Perth WA 6831



## Accessible complaint processes

The process for making a complaint and investigating it should be easy to access and understand. Information about the process should be available in a variety of forms of communications, formats and languages appropriate to the needs of all members of the diverse Western Australian community.

## Receiving complaints

Complaints and related correspondence during an investigation should be accepted in a number of different ways including in person, over the phone, and in writing via email, fax and letter. Access should be provided to translating and interpreting services for non-English speaking people to assist them to make a complaint.

## Complainants who require additional assistance

Organisations should pay particular attention to ensuring that their complaint handling system is accessible to members of the public that may require additional assistance or different approaches such as people with disabilities, people living in regional and remote areas, Indigenous Australians, children and young people, and people from linguistically and culturally diverse backgrounds. Organisations should consider taking the following actions:

<b>Indigenous Australians</b>	<ul style="list-style-type: none"><li>• If your organisation has high numbers of Indigenous clients, appoint an Indigenous liaison officer to improve access to your organisation's services and complaint handling systems.</li><li>• Identify people in regional and remote locations who can assist with cultural communications.</li><li>• Provide training for complaint handling officers in cultural awareness and cross-cultural communications.</li><li>• Adapt your complaint handling process to meet cultural requirements of Indigenous people such as less formal meeting arrangements and be aware that communication with remote areas may take longer.</li><li>• Accept complaints from representatives and translation services on behalf of non-English speaking Indigenous complainants.</li></ul>
<b>People with disabilities</b>	<ul style="list-style-type: none"><li>• Provide a text telephone (TTY) service for people with a hearing impairment.</li><li>• Make websites accessible to people using screen readers and, if necessary, make publications and correspondence available in Braille, large print or audio formats for people with sight impairment.</li><li>• Ensure offices are accessible to wheelchairs and to people with mobility impairment.</li><li>• Ask people if they have any special requirements for access or communications.</li><li>• Offer assistance to help complainants with reading or writing difficulties to formulate and lodge complaints.</li><li>• Accept complaints on behalf of people with intellectual impairment from representatives.</li></ul>
<b>People in regional and remote areas</b>	<ul style="list-style-type: none"><li>• Provide a toll-free phone number for making phone enquiries and complaints from regional areas.</li><li>• Provide hard copy information such as brochures and posters in areas with limited online access.</li><li>• Be aware that communication with remote areas may take longer.</li></ul>

<b>Children and young people</b>	<ul style="list-style-type: none"> <li>• Make information about your organisation's services and how to provide feedback/make complaints accessible online and in locations regularly visited by young people such as schools, colleges and libraries.</li> <li>• Make information about your complaints process simple and clear, provide it in an age appropriate format, and respond to complaints promptly.</li> <li>• Use Complaint Handling Officers who are trained and experienced to adapt their communications skills when talking to and corresponding with young people.</li> <li>• Ensure the young person is aware of the nature and limitations of your organisation's services.</li> <li>• Accept complaints on behalf of children and young people from representatives such as parents, guardians and teachers.</li> <li>• Establish if the young person making the complaint requires any further assistance due to a disability, being located in a regional area, coming from a linguistically or culturally diverse background or being an Indigenous Australian, and offer appropriate assistance.</li> <li>• For further guidance, see the <a href="#">Commissioner for Children and Young People's Complaints Guidelines</a>.</li> </ul>
<b>People from linguistically and culturally diverse backgrounds</b>	<ul style="list-style-type: none"> <li>• Make information about your services and the complaint handling process available in alternative languages.</li> <li>• Encourage complainants to use the Translating and Interpreting Service (TIS), which provides a free, national 24 hour telephone interpreting service, publicising the contact number as part of your complaint handling process information and accept complaints through TIS.</li> <li>• Allow complainants to bring people with them who can translate for them in meetings.</li> <li>• For further guidance, see the <a href="#">Office of Multicultural Interest's Language Services Policy</a>.</li> </ul>

## Tracking complaints

An effective complaint handling system should be able to provide information on the demographic make up of complainants. This allows analysis of feedback and complaints information to be used to:

- determine whether the complaint process is accessible and appropriate for various customer groups;
- enable an assessment of differing service delivery needs for people from a range of backgrounds; and
- identify and implement improved practices for particular customer groups including people with disabilities, people living in regional and remote areas, Indigenous Australians, children and young people, and people from linguistically and culturally diverse backgrounds.

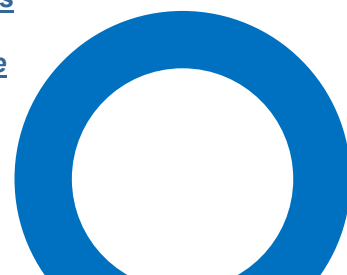
## Resources

### Other Ombudsman Western Australia Publications

The following Ombudsman Western Australia publications provide further details that may be useful in the development of complaint handling systems and for staff involved in handling complaints:

- |   |  |
|---|--|
| • <a href="#"><u>Effective handling of complaints made to your organisation – An Overview</u></a> | • <a href="#"><u>Investigation of complaints</u></a>                   |
| • <a href="#"><u>Complaint handling systems Checklist</u></a>                                     | • <a href="#"><u>Procedural fairness</u></a>                           |
| • <a href="#"><u>Guidance for Complaint Handling Officers</u></a>                                 | • <a href="#"><u>Dealing with unreasonable complainant conduct</u></a> |
| • <a href="#"><u>The principles of effective complaint handling</u></a>                           | • <a href="#"><u>Remedies and redress</u></a>                          |
| • <a href="#"><u>Conducting administrative investigations</u></a>                                 | • <a href="#"><u>Good record keeping</u></a>                           |

For further information about the role of the Ombudsman and guidance for complaint handling, visit our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).



### Ombudsman Western Australia

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This checklist has been developed from the 'good practice principles for management of personal information' defined in the Ombudsman Western Australia *Guidelines - Management of Personal Information*. This checklist will assist agencies to conduct a check of their processes for managing personal information.

### **COLLECTION** Only collect personal information necessary for service delivery

Type of info	<p>Does your agency from time to time check the type of personal information it collects to ensure it is:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> being collected for a lawful purpose?</li> <li><input type="checkbox"/> being used for a purpose that is directly related to the agency's functions or activities?</li> <li><input type="checkbox"/> necessary to perform these functions or activities?</li> </ul>
Process of collection	<p>Does your agency from time to time review the way in which you collect personal information to ensure that your collection process is:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> lawful and fair?</li> <li><input type="checkbox"/> staff are operating within the good practice principles?</li> <li><input type="checkbox"/> not collecting information in an unreasonably intrusive way?</li> </ul>
Communication	<p>Does your agency clearly communicate to your clients:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> that the personal information has been collected?</li> <li><input type="checkbox"/> the purpose for which the information is being collected?</li> <li><input type="checkbox"/> that the collection of the information is authorised by or required under law (if this is the case); and</li> <li><input type="checkbox"/> that your agency may disclose the information to others to deliver its functions or activities to the individual?</li> </ul>

### **ACCURACY, ACCESS AND CORRECTION** Personal information collected, used and disclosed is accurate and current. Agencies allow individuals reasonable access to their personal information and take reasonable steps to make requested corrections or deletions.

Accuracy	<ul style="list-style-type: none"> <li><input type="checkbox"/> Does your agency check that personal information collected and used is accurate, up to date, complete and not misleading?</li> <li><input type="checkbox"/> Does this checking process extend from collection points, through data entry to service delivery?</li> <li><input type="checkbox"/> Is this checking process proportionate to the risks posed by the use of inaccurate information to your clients and to the efficiency and effectiveness of your agency?</li> <li><input type="checkbox"/> Does your agency have a proactive process for updating information from time to time to ensure it is accurate prior to using it? Does your agency inform individuals that they have the right to access their personal information and how they can provide updates as required?</li> </ul>
Access and Correction	<ul style="list-style-type: none"> <li><input type="checkbox"/> Does your agency have a safe, legal and effective process for deleting information that is no longer needed for service delivery or any other purpose, which also complies with your Recordkeeping Plan?</li> <li><input type="checkbox"/> Do your agency's processes include a cross-check of amendments to personal information held in Information and Communication Technology (ICT) systems and in paper files to ensure consistency?</li> <li><input type="checkbox"/> Does your agency use information from complaints about inaccurate information to continuously improve the accuracy of its personal information databases?</li> </ul>

### **STORAGE AND SECURITY** Personal information is protected from misuse, loss and inappropriate access and disclosure

ICT Systems	<ul style="list-style-type: none"> <li><input type="checkbox"/> Does your agency have controls to protect personal information from unauthorised access by staff and other people as an integral part of the design and operation of your ICT systems?</li> <li><input type="checkbox"/> Does your agency check that the established controls are working in practice, including at any branches or other offices?</li> </ul>
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**STORAGE AND SECURITY** continued

Paper form and on paper files	<input type="checkbox"/> Is personal information stored on your agency's paper files subject to a similar level of security to that stored in your ICT systems? Does your agency check whether the established controls over paper-based information are working in practice, including at any branch or regional offices? <input type="checkbox"/> Does your agency monitor the security of personal information on paper files when it is being transported between branch offices?
Protecting sensitive information	<input type="checkbox"/> Has your agency identified which personal information is sensitive personal information that might require additional safeguards and does your agency give staff guidance to classify this information appropriately and consistently? <input type="checkbox"/> Does your agency limit access to personal information to staff who 'need to know' for the purposes of service delivery?

**USE** Personal information is used only for the primary purpose it was collected, except in certain defined circumstances

Agency use	<input type="checkbox"/> Does your agency from time to time check that you are using personal information only for the purpose it was collected or for authorised secondary purposes? <input type="checkbox"/> Does your agency use personal information for secondary purposes, for example: Marketing; Strategic planning; or Statistical purposes? If you answered yes above, has your agency taken steps to ensure that you are applying good practice principles for managing personal information in these circumstances?
Third party use	<input type="checkbox"/> Does your agency actively ensure that third party service providers with access to personal information adhere to the good practice principles for its management and protect it from inappropriate use?

**DISCLOSURE** Personal information is not disclosed to any people or organisations other than the individual concerned, except in certain defined circumstances

Agency disclosure	<input type="checkbox"/> Does your agency clearly identify to staff when personal information can be disclosed and when it cannot, and does it monitor whether staff follow these requirements?
Third party disclosure	<input type="checkbox"/> Does your agency monitor whether third party service providers clearly identify to staff when personal information can be disclosed and when it cannot, and does it monitor whether staff follow these requirements?

**TRANSPARENCY** The type of personal information that is collected and held, and the principles for its management, should be accessible to clients and other interested members of the public

Access	<input type="checkbox"/> Is a description of the type of personal information you collect and hold, and how you manage this personal information, easily accessible to your clients and other interested members of the public?
Promotion	<input type="checkbox"/> Does your agency promote, from the highest organisational level, the importance of the effective management of personal information as an integral element of core business?

**Other resources**

This checklist should be used in conjunction with the Ombudsman Western Australia *Guidelines - Management Personal Information* and *Good practice principles for managing personal information*, available on our website at [www.ombudsman.wa.gov.au/publications.htm](http://www.ombudsman.wa.gov.au/publications.htm).

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# Good practice principles for the management of personal information

May  
2013

These good practice principles, when implemented effectively, will ensure that personal information is properly managed.

These principles should be read in conjunction with the Ombudsman Western Australia *Guidelines - Management Personal Information* and *Checklist - Good practice principles for managing personal information*, available on our website at [www.ombudsman.wa.gov.au/publications.htm](http://www.ombudsman.wa.gov.au/publications.htm).

### COLLECTION

Only collect personal information that is necessary for service delivery.

### ACCURACY, ACCESS AND CORRECTION

Personal information collected, used and disclosed should be accurate and current. Individuals should be allowed reasonable access to their personal information and agencies should take reasonable steps to make requested corrections and deletions.

### STORAGE AND SECURITY

Personal information should be protected from misuse, loss and inappropriate access and disclosure.

### USE

Personal information should only be used for the primary purpose it was collected, except in certain defined circumstances. Agencies should ensure that personal information provided to third party service providers is protected from inappropriate use.

### DISCLOSURE

Personal information should not be disclosed to any people or organisation other than the individual concerned, except in certain defined circumstances. Agencies should ensure that personal information provided to third party service providers is protected from inappropriate disclosure.

### TRANSPARENCY

The type of personal information that is collected and held, and the principles for its management, should be accessible to clients and other interested members of the public.





Effective management of personal information is of vital importance to all agencies that are required to obtain personal information about individuals in order to deliver government services. Inappropriate use of personal information is, as a matter of principle, wrong. Practically, it can compromise an individual's privacy leading to undesirable outcomes for both the individual and the agency.

Personal information can be defined as information that identifies an individual or could identify that individual. State Government agencies properly require individuals to provide a range of personal information about themselves in order to deliver services, carry out law enforcement, administer regulations and perform other statutory functions. In short, effective and efficient service delivery, including protecting the well-being of individuals and the community, may require an agency to both collect, and disclose or share, personal information.

Personal information is defined in the *Privacy Act 1988* as:

"...information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion."

### What are the 'good practice principles'?

The good practice principles detailed in these guidelines provide guidance to agencies on how to effectively manage personal information. They detail how and when personal information can be collected, how it should be used and disclosed, and storage and security of electronic, paper and sensitive information. The good practice principles also detail how individuals should be able to access that information and have it corrected if it is wrong and how agencies can ensure transparent management of personal information.

#### COLLECTION

Only collect personal information that is necessary for service delivery.

#### ACCURACY, ACCESS AND CORRECTION

Personal information collected, used and disclosed should be accurate and current. Individuals should be allowed reasonable access to their personal information and agencies should take reasonable steps to make requested corrections and deletions.

#### STORAGE AND SECURITY

Personal information should be protected from misuse, loss and inappropriate access and disclosure.

#### USE

Personal information should only be used for the primary purpose it was collected, except in certain defined circumstances. Agencies should ensure that personal information provided to third party service providers is protected from inappropriate use.

#### DISCLOSURE

Personal information should not be disclosed to any people or organisation other than the individual concerned, except in certain defined circumstances. Agencies should ensure that personal information provided to third party service providers is protected from inappropriate disclosure.

#### TRANSPARENCY

The type of personal information that is collected and held, and the principles for its management, should be accessible to clients and other interested members of the public.

## Good practices for the management of personal information

**COLLECTION**

<b>Overview</b>	Agencies require individuals to provide a range of personal information about themselves in order to conduct their business functions. Agencies need to ensure that clients are aware that their personal information has been/needs to be collected, why it is has been/needs to be collected, where the information is stored and who has access to it.
<b>Checklists: Type of information</b>	Does your agency from time to time check the type of personal information it collects to ensure: <ul style="list-style-type: none"> <li><input type="checkbox"/> being collected for a lawful purpose?</li> <li><input type="checkbox"/> being used for a purpose that is directly related to the agency's functions or activities?</li> <li><input type="checkbox"/> necessary to perform these functions or activities?</li> </ul>
<b>Process of collection</b>	Does your agency from time to time review the way in which you collect personal information to ensure that your collection process is: <ul style="list-style-type: none"> <li><input type="checkbox"/> lawful and fair?</li> <li><input type="checkbox"/> staff are operating within the good practice principles?</li> <li><input type="checkbox"/> not collecting information in an unreasonably intrusive way</li> </ul>
<b>Communication</b>	Does your agency clearly communicate to your clients: <ul style="list-style-type: none"> <li><input type="checkbox"/> that the personal information has been collected?</li> <li><input type="checkbox"/> the purpose for which the information is being collected?</li> <li><input type="checkbox"/> that the collection of the information is authorised by or required under law (if this is the case); and</li> <li><input type="checkbox"/> that the agency may disclose the information to others to deliver its functions or activities to the individual?</li> </ul>
<b>Suggested actions</b>	<ul style="list-style-type: none"> <li>• Consider providing clients with a clear and comprehensive privacy statement that is easily accessible to, and understandable by, clients who are providing personal information;</li> <li>• Ensure your staff know how to explain to clients what the privacy statement means when necessary; and</li> <li>• Take steps to make the statement understandable to clients who do not understand English, are unable to read, or both by providing key information in community languages appropriate to the demographic grouping of your clients, and by using Translating and Interpreting Service National (TIS). Consider if you need to find a verbal, rather than a written, means of providing this information to some clients.</li> </ul>

**ACCURACY, ACCESS AND CORRECTION**

<b>Overview</b>	Agencies should have processes in place to check that personal information about their clients is accurate, complete and current.
<b>Checklist for Accuracy</b>	Does your agency: <ul style="list-style-type: none"> <li><input type="checkbox"/> check that personal information collected and used is accurate, up to date, complete and not misleading?</li> <li><input type="checkbox"/> have a checking process in place to extend from collection points, through data entry to service delivery and is this process proportionate to the risks posed by the use of inaccurate information to your clients and to the efficiency and effectiveness of your agency?</li> <li><input type="checkbox"/> have a proactive process for updating information from time to time to ensure it is accurate prior to using it?</li> <li><input type="checkbox"/> inform individuals that they have a right to access their personal information and how they can provide updates as required?</li> </ul>
<b>Checklist for Access &amp; Correction</b>	Does your agency: <ul style="list-style-type: none"> <li><input type="checkbox"/> have a safe, legal and effective process for deleting information that is no longer needed, which also complies with your Recordkeeping Plan?</li> <li><input type="checkbox"/> have processes in place to cross-check amendments to personal information held in Information and Communication Technology (ICT) systems and in paper files to ensure consistency?</li> <li><input type="checkbox"/> use information from complaints about inaccurate information to continuously improve the accuracy of its personal information databases?</li> </ul>



**ACCURACY, ACCESS AND CORRECTION, CONTINUED****Suggested actions**

- Consider implementing efficient automatic checks to prevent errors when putting personal information into your agency's ICT system, such as dates of birth that cannot predate 1900 and postcodes that cannot be more than six characters.
- Allow clients to correct/update their personal information verbally and/or in writing.
- Ensure your ICT systems have a safe, legal and effective means of deleting personal information that is unnecessary or superseded.

**STORAGE AND SECURITY****Overview**

Agencies should take steps to ensure that personal information is protected from misuse, loss and inappropriate access and disclosure. Additional consideration should be given to the protection of sensitive personal information. Storage and security practices should apply to personal information stored in both ICT systems and paper files.

**Checklists: ICT Systems**

- ☐ Does your agency have controls to protect personal information from unauthorised access by staff and other people as an integral part of the design and operation of your ICT systems?
- ☐ Does your agency check that the established controls are working in practice, including at any branches or other offices?

**Paper form and on paper files**

- ☐ Is personal information stored on your agency's paper files subject to a similar level of security to that stored in your ICT systems? Does your agency check whether the established controls over paper-based information are working in practice, including at any branch or regional offices?
- ☐ Does your agency monitor the security of personal information on paper files when it is being transported between branch offices?

**Protection of sensitive personal information**

- ☐ Has your agency identified which personal information is sensitive personal information that might require additional safeguards and does your agency give staff guidance to classify this information appropriately and consistently?
- ☐ Does your agency limit access to personal information to staff who 'need to know' for the purposes of service delivery?

**Suggested actions**

- Ensure your ICT systems require unique passwords that are not easy to guess and are changed regularly and monitor whether staff use this password protection;
- Implement a hierarchy of access permissions which are actively managed by supervisors to ensure that only those staff that 'need to know' for their work have access;
- Have a user tracking system of access to information held on ICT systems, with checks that this access was for appropriate reasons;
- Implement other controls such as deactivation after 30 days of user accounts that have not been accessed and ensure verification of inactive accounts by agency human resources sections to check that users are still employed;
- Transport paper files between branches or to off-site facilities in secured bags and use a tracking system for paper files in transit;
- Use batch controls so that outgoing and incoming paper files are cross checked by a branch or section supervisor; and
- Keep paper files containing sensitive personal information in a separate secure location.

**USE****Overview**

Agencies should only use the personal information they collect about clients for the purpose for which it was collected. In some circumstances, it may be appropriate that the information is used for secondary purposes such as marketing, strategic planning or statistical purposes.

**Checklists: Agency use**

- Does your agency:
- ☐ check that you are using personal information only for the purpose it was collected or for authorised secondary purposes?
  - ☐ where personal information is used for secondary purposes (for example, marketing, strategic planning, or statistical purposes) take steps to ensure that good practice is applied for managing personal information in these circumstances?

## USE, CONTINUED

<b>Third party use</b>	<input type="checkbox"/> Does your agency actively ensure that third party service providers with access to personal information adhere to the good practice principles for its management and protect it from inappropriate use?
<b>Suggested actions</b>	<ul style="list-style-type: none"> <li>Assess whether the type of personal information held or accessed by service providers (such as information about children) necessitates particular requirements, such as criminal record checks for their staff;</li> <li>Consider including requirements for the management of personal information in contracts with service providers, their contractors, sub-contractors and agents; and</li> <li>Determine if there is a need to include requirements that contractors' principals should monitor compliance of their contractors, sub-contractors and agents.</li> </ul>

## DISCLOSURE

<b>Overview</b>	Agencies may need to disclose personal information that they collect to third parties within and outside the public sector in order to effectively deliver services.
<b>Checklists: Agency</b>	<input type="checkbox"/> Does your agency clearly identify to staff when personal information can be disclosed and when it cannot, and does it monitor whether staff follow these requirements?
<b>Third party</b>	<input type="checkbox"/> Does your agency monitor whether third party service providers clearly identify to staff when personal information can be disclosed and when it cannot, and does it monitor whether staff follow these requirements?
<b>Suggested actions</b>	<ul style="list-style-type: none"> <li>Consider publishing an internal policy statement to guide staff on the circumstances in which they can: <ul style="list-style-type: none"> <li>Disclose personal information, such as when disclosure would lessen or prevent a serious or imminent threat to the life or health of an individual; or</li> <li>Share personal information with other government agencies in line with the Public Sector Commissioner's Circular 2010-05.</li> </ul> </li> </ul>

## TRANSPARENCY

<b>Overview</b>	The type of personal information that is collected and held, and the principles for its management, should be easily accessible to clients and other interested members of the public. Agencies should promote, from the highest organisational level, the importance of the effective management of personal information as an integral element of core business.
<b>Checklists: Access</b>	<input type="checkbox"/> Does your agency provide a description of the type of personal information you collect and hold, and how you manage this personal information and is this description easily accessible to your clients and other interested members of the public?
<b>Promotion</b>	<input type="checkbox"/> Does your agency promote, from the highest organisational level, the importance of the effective management of personal information as an integral element of core business?
<b>Suggested actions</b>	<ul style="list-style-type: none"> <li>Consider publishing a Personal Information Policy statement on your website.</li> </ul>

## Other resources

The following publications are available on our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au) to assist agencies:

- Checklist for Managing Personal Information*
- Good practice principles for the management of personal information*
- The Ombudsman's Report [\*\*\*The management of personal information – good practice and opportunities for improvement\*\*\*](#)

## Further information

Other useful resources for the effective management of personal information can be found on Office of the Australian Information Commissioner's website at [www.privacy.gov.au](http://www.privacy.gov.au). Information about appropriate release of personal information in Western Australia can be found on the Office of the Information Commissioner website at [www.foi.wa.gov.au](http://www.foi.wa.gov.au).

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### What is procedural fairness?

*Procedural fairness* is concerned with the procedures used by a decision maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. The Ombudsman considers it highly likely that a decision maker who follows a fair procedure will reach a fair and correct decision.

### Is there a difference between natural justice and procedural fairness?

The term procedural fairness is thought to be preferable when talking about administrative decision making because the term natural justice is associated with procedures used by courts of law. However, the terms have similar meaning and are commonly used interchangeably. For consistency, the term procedural fairness is used in this fact sheet.

### Does procedural fairness apply to every government decision?

No. The rules of procedural fairness do not need to be followed in all government decision making. They mainly apply to decisions that negatively affect an existing interest of a person or corporation. For instance, procedural fairness would apply to a decision to cancel a licence or benefit; to discipline an employee; to impose a penalty; or to publish a report that may damage a person's reputation.

Procedural fairness also applies where a person has a legitimate expectation (for example, continuing to receive a benefit such as a travel concession). Procedural fairness protects legitimate expectations as well as legal rights. It is less likely to apply to routine administration and policy-making, or to decisions that initially give a benefit (for example, issuing a licence in the first instance).

In some rare circumstances, the requirement to provide procedural fairness is specifically excluded by Acts of Parliament (for example, section 115 of the *Sentence Administration Act 2003*).

The rules of procedural fairness require:

- A hearing appropriate to the circumstances;
- Lack of bias;
- Evidence to support a decision; and
- Inquiry into matters in dispute.

### What is “the hearing rule”?

A critical part of procedural fairness is ‘the hearing rule’. Fairness demands that a person be told the case to be met and given the chance to reply before a government agency makes a decision that negatively affects a right, an existing interest or a legitimate expectation which they hold. Put simply, hearing the other side of the story is critical to good decision making.

In line with procedural fairness, the person concerned has a right:

- To an opportunity to reply in a way that is appropriate for the circumstances;
- For their reply to be received and considered before the decision is made;
- To receive all relevant information before preparing their reply. The case to be met must include a description of the possible decision, the criteria for making that decision and information on which any such decision would be based. It is most important that any negative information the agency has about the person is disclosed to that person. A summary of the information is sufficient; original documents and the identity of confidential sources do not have to be provided;

- To a reasonable chance to consider their position and reply. However, what is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter; and
- To genuine consideration of any submission. The decision maker needs to be fully aware of everything written or said by the person, and give proper and genuine consideration to that person's case.

### **How does procedural fairness apply to an individual who may be negatively affected by a government decision?**

If you are going to be negatively affected by a government decision, you are entitled to expect that the decision maker will follow the rules of procedural fairness before reaching a conclusion. In particular, you are entitled to:

- Be told the case to be met (for example, that an agency is considering withdrawing an existing entitlement or benefit such as a rebate or an allowance), including reasons for this proposal and any negative or prejudicial information relating to you that is to be used in the decision making process.

The case to be met could be a letter or a draft report, or it could be a summary of the issues being considered by the decision maker. It is not necessary for you to receive copies of all original documents or the identity of confidential sources be revealed.

- A real chance to reply to the case to be met, whether that be in writing or orally. The type of hearing should be proportional to the nature of the decision. For instance, if the consequences of the proposed decision are highly significant, a formal hearing process may be warranted. In contrast, if the matter is relatively straightforward, a simple exchange of letters may be all that is needed. Generally, in any oral (or face-to-face) hearing, it is reasonable to bring a friend or lawyer as an observer, so you may wish to consider this.

In your reply, you may, amongst other things, wish to:

- Deny the allegations;
- Provide evidence you believe disproves the allegations;
- Explain the allegations or present an innocent explanation; and
- Provide details of any special circumstances you believe should be taken into account.

You must have the chance to give your response before the decision is made, but after all important information has been gathered. This is so you can be given all the information you are entitled to and be aware of the issues being considered by the decision maker.

The decision maker should have an open mind (be free from bias) when reading or listening to what you have to say.

### **How does procedural fairness apply to an investigator?**

If you are investigating a matter or preparing a report for a decision maker, it is good practice to consider the requirements of procedural fairness at every stage of your investigation.

Procedural fairness is an essential part of a professional investigation and benefits both parties. As an investigator, acting according to procedural fairness can help you by providing:

- An important means of checking facts and identifying major issues;
- Comments made by the subject of the complaint that can expose weaknesses in the investigation; and
- Advance warning of areas where the investigation report may be challenged.

Depending on the circumstances, procedural fairness requires you to:

- Inform those involved in the complaint of the main points of any allegations or grounds for negative comment against them. How and when this is done is up to you, depending on the circumstances;
- Provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise. It is important to weigh all relevant circumstances for each individual case before deciding how the person should be allowed to respond to the allegations or negative comment;

- In most cases it is enough to give the person opportunity to put their case in writing. In others, however, procedural fairness requires the person to make oral representations. Your ultimate decision will often need to balance a range of considerations, including the consequences of the decision;
- Hear all parties to a matter and consider submissions;
- Make reasonable inquiries or investigations before making a decision. A decision that will negatively affect a person should not be based merely on suspicion, gossip or rumour. There must be facts or information to support all negative findings. The best way of testing the reliability or credibility of information is to disclose it to a person in advance of a decision, as required by the hearing rule;
- Only take into account relevant factors;
- Act fairly and without bias. If, in the course of a hearing, a person raises a new issue that questions or casts doubt on an issue that is central to a proper decision, it should not be ignored. Proper examination of all credible, relevant and disputed issues is important;
- Conduct the investigation without unnecessary delay; and
- Ensure that a full record of the investigation has been made.

Of course, wherever there is a requirement to apply particular procedures in addition to those that ensure procedural fairness, the terms of that statutory obligation must also be followed.

The Ombudsman recommends that whenever it is proposed to make adverse comment about a person, procedural fairness should be provided to that person before the report is presented to the final decision maker. This should be done as a matter of best practice.

There is no requirement that all the information in your possession needs to be disclosed to the person. In rare cases, such as a serious risk to personal safety or to substantial amounts of public funds, procedural fairness requirements may need to be circumvented due to overriding public interest. If you believe this exists, make sure you seek expert advice and document it.

## How does procedural fairness apply to the decision maker?

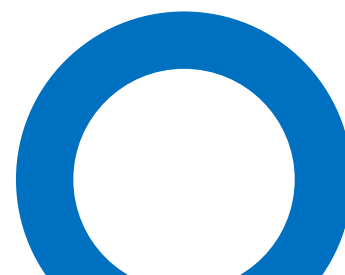
Except in rare circumstances where procedural fairness is excluded by statute, if you are making a decision which will affect the rights, interests or legitimate expectations of a person, you must comply with the rules of procedural fairness. In other words, you must ensure:

- You allow the individual a fair hearing (or verify that the individual has been granted a fair hearing) that is neither too early nor too late in the decision making process; and
- You are unbiased. This includes ensuring that from an onlooker's perspective there is no reasonable perception of bias. For example, personal, financial or family relationships, evidence of a closed mind or participation in another role in the decision making process (such as accuser or judge) can all give rise to a reasonable perception of bias. If this is the case, it is best to remove yourself from the process and ensure an independent person assumes the role of decision maker.

If you are relying on a briefing paper that summarises both sides of the case and makes a proposal, it is often a good idea to disclose a draft of the briefing paper to the person, even though a hearing has earlier been held.

## Acknowledgements

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for use of their publication *Investigating complaints - A manual for investigators* in the development of these guidelines, and their continuing advice and assistance. Thanks also to [Clayton Utz](#) for use of their publication *Good decision making for government*.







Public sector agencies deliver a vast range of services to members of the public who usually do not have the option of obtaining these services elsewhere. Under these conditions, it is important that the community has confidence that agencies will act fairly and reasonably in delivering their services.

In the Ombudsman's view it is essential that, when the service provided to an individual is unsatisfactory and the agency has in some way contributed to this, the agency should provide redress to remedy the situation.

These guidelines provide a framework to help managers make decisions about addressing a complainant's sense of grievance when they are dissatisfied with the service they have received from the agency. Ultimately, the guidelines should assist agencies to better manage their business, improve the transparency of their processes, and thus enhance public confidence in their operations.

## Codes of conduct and organisational values

Public sector agencies, which include government departments, statutory authorities and local governments, have codes of conduct setting out values that include being honest and exhibiting high levels of integrity, openness and ethical behaviour.

The values in these codes should guide the way staff deal with aggrieved complainants. For example, "fairness" is demonstrated by maintaining an open mind in investigation and action; recognising the lawful rights of others to natural justice and equitable outcomes; and allowing people access to due process. The principle of "openness" requires acknowledging mistakes, explaining actions and apologising. These principles underly the redress guidelines.

In the Ombudsman's view, the ethical principles in the codes of conduct of public sector agencies are consistent with a redress framework which provides that, when people are unfairly or unreasonably affected by decisions, the agencies should take all fair and reasonable steps to make good.

## Redress circumstances

Circumstances that warrant the provision of redress by an agency to a complainant can arise in many ways, but in broad terms may arise when any one of or a combination of the following occur:

- poor communication results in misunderstandings or misapprehensions;
- an inappropriate, unfair or unreasonable decision is made;
- an inadequate or unfair process was used to arrive at a decision; or
- a decision was made that was disproportionate or unreasonable in the circumstances.

## Redress principles

There are six principles involved in the consideration of redress:

- All mistakes are admitted and put right.
- A sincere and meaningful apology is offered.
- Arrangements for considering redress are made public.
- Redress is fair and reasonable.
- As far as possible, redress restores the complainant to their original position.
- Redress is procedurally sound.

<b>Principle 1: Admitting mistakes</b>	<p>An organisation that values openness and accountability should be willing to admit and make good its errors. For this principle to be effective, staff must be confident that they have full support from their agency to take these actions.</p> <p>To achieve this, it is important that management provide suitable resources (including training) so that staff not only handle complaints properly but also have a good understanding of the benefits of handling a complaint well. Management should also outline the scope of employees' decision-making delegations - giving them the power to deal with complaints, and explaining the limits of redress that can be offered.</p> <p>For example, in the case of a claim made against an agency by a third party, RiskCover requires there be no admission of liability. In this instance, a 'claim' is defined as "an allegation, request, or demand for compensation". Even complaints by third parties about conduct could be regarded as a claim. For further information, see <a href="http://www.riskcover.wa.gov.au/liability/riskcover_claimsmanagement_liability_forms">www.riskcover.wa.gov.au/liability/riskcover_claimsmanagement_liability_forms</a></p>
<b>Principle 2: Apologies</b>	<p>The <i>Civil Liability Act 2002</i> defines 'apology' as:</p> <p>An expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person (see <a href="#">Appendix A</a>).</p> <p>The Act provides that an apology expressed in this way does not constitute an admission of liability, and therefore should not be relevant to the determination of fault or liability in connection with civil liability of any kind, nor should it be admitted into evidence in a court hearing.</p> <p>The impact of a sincere apology, offered early in the process, should not be underestimated. Even where an apology may not appear to be warranted, it is worthwhile expressing regret or sympathy in a way that does not accept blame; for example "<i>I'm sorry that this situation has left you feeling disappointed</i>". It will often avoid the escalation of a dispute and the significant cost in time and resources that can be involved.</p> <p>Apologising should not be seen as a sign of organisational weakness. To the contrary, it is a sign of organisational strength and maturity.</p>
<b>Principle 3: Visible mechanisms</b>	<p>In order to convince the public that complaints are taken seriously, agencies should publicise their mechanisms for complaint handling. This gives the public confidence that the agency will listen to complaints and act on them, and that making a complaint is worthwhile.</p>
<b>Principle 4: Fair and reasonable</b>	<p>Redress should be fair and reasonable to both the person affected and the agency. There are a number of criteria that need to be considered.</p> <p><b>Decisions not based entirely on legal grounds</b> – Technical legal questions cannot and should not be ignored. However, fairness involves considering all of the ways in which the circumstances in question have affected the complainant and the wider community. This involves both legal and non-legal issues. An approach guided solely by legal principles risks being rigid, lacking the flexibility necessary for customer-focused agencies. Appropriate weight should be given to broad questions of reasonableness, the effect of decisions and the ethical obligations of fairness and accountability.</p> <p><b>Equal treatment</b> - Like cases should, as a matter of principle, be treated equally. Differences in redress between similar cases should be clearly attributable to material differences in the circumstances.</p>



<b>Principle 4: Fair and reasonable</b>  <i>continued</i>	<p><b>Resources not used to disadvantage</b> - Agencies are typically large, with access to resources and advice not usually afforded to most citizens. Using these to the disadvantage of complainants only exacerbates the detriment suffered.</p> <p><b>Proportion</b> - Redress should be proportional to the detriment suffered. This involves weighing the problem and possible solutions to find an appropriate balance.</p>
<b>Principle 5: Restoration</b>	<p>Generally, when a person suffers a detriment wholly or partly as a result of the inappropriate actions of an agency, that person should be restored to their original position. When this is not possible, fair and reasonable alternatives should be offered.</p>
<b>Principle 6: Procedurally sound</b>	<p>A proper response by an agency to a person who has suffered a detriment involves:</p> <ul style="list-style-type: none"> <li>• covering all of the consequences of the decision in question. Failing to do so is likely to simply generate further complaints;</li> <li>• providing all relevant information about what happened, why it happened, what steps are being taken to rectify the position and why those steps are being taken;</li> <li>• accepting that agreements made in ignorance of rights and the available information are not fair and reasonable;</li> <li>• taking into account the views of the people affected;</li> <li>• taking into account protection of the public purse;</li> <li>• taking into account these guidelines and previous decisions about similar complaints;</li> <li>• dealing with the complaint in a timely manner. Agencies are much more likely to meet the ethical principles of respect, openness and accountability if redress circumstances are dealt with quickly. Delaying redress is liable to intensify the detriment already suffered.</li> </ul>

## Limitations

There are limits to what steps might be reasonably expected to be taken in order to make good. The following issues should be explored in order to determine the limits in individual cases.

### Elapsed time

As a general principle the greater the elapsed time since the decision in question the less compelling the obligation on the agency to make good.

### Remoteness

People not directly affected should not expect redress, unless special circumstances exist.

### Contribution

Complainants may have themselves contributed to redress circumstances. It is reasonable for the agency to take into account the extent to which its officers and the people affected have contributed to the detriment suffered.

### Mitigation

People affected by activities have a responsibility to take reasonable steps to minimise the impact on them.

### Unwarranted enrichment

Redress should be aimed at making good the detriment suffered. It should not lead to a person making a profit or gaining an advantage.

### External considerations

Providing redress is likely to be delayed or even inappropriate when other processes have not been completed. However, as a general principle, an agency should not delay providing redress while such processes are still in train once the need to provide it has been acknowledged. Some of the more important considerations include:

#### Agency internal review

Where appropriate, having regard to the particular circumstances of each case, providing redress should not be delayed because the agency's internal review is incomplete.

#### Legal liability

In some cases the person suffering detriment will have a legal entitlement to redress, and in this situation, where possible, the agency should provide appropriate redress that obviates the need for that person to pursue their legal remedies. While concerns about legal liability are an important consideration, such concerns should not be the sole or even primary consideration in assessing whether to offer redress. Agencies have a duty to correct or rectify problems arising from maladministration for which they are responsible. Agencies should make sensible decisions to reach out of court settlements, or better still, to forestall the need for legal proceedings at all. Redress can be offered without admission of liability. The agency may wish, if offering an Act of Grace payment, to enter into a deed with the complainant by which they release the agency and the State from any liability related to the complaint.

#### Government expenditure

Making good a detriment suffered should be primarily based on the moral obligation of the agency to do so on a balanced assessment of the relevant circumstances. But sometimes agencies limit their responses in a bona fide attempt to limit the financial exposure of government. While it is always important to use government resources wisely, this must be accomplished in a way that does not disadvantage complainants. When considering the public interest, agencies need to take account of the improvement in public confidence in service delivery that may result from a fair and timely response to service failures. In these cases the cost of providing redress could be viewed as one of the costs of providing a reasonable standard of service.

Of course agency expenditure must have a legal foundation. The *Financial Management Act 2006* includes authorisation to request approval for Act of Grace payments (section 80(1)), which provides for the following:

If the Treasurer is satisfied that it is appropriate to do so because of special circumstances, the Treasurer may authorise an amount to be paid to a person even though the payment would not otherwise be authorised by law or required to meet a legal liability.

The procedure for making such requests is set out in [Treasurer's Instruction 319](#).

Western Australian Government policy encourages agencies to develop policies on the provision of redress (or remedies) as part of their complaints management process.<sup>3</sup>

### The redress process

An agency's complaint handling system must have the capacity to identify and efficiently and effectively deal with decisions about redress. In the Ombudsman's view, a model redress mechanism incorporates the following four steps:

**Step 1.** Decide whether redress circumstances resulting in a person suffering a detriment exist.

**Step 2.** Consider the nature of the detriment.

**Step 3.** Decide what it would take to satisfy the complainant or restore the complainant to their original position.

**Step 4.** Determine what would need to be done to prevent a recurrence.

<b>Step 1: Decision resulted in a detriment</b>	<p>There are many occasions when a complainant may suffer a detriment when an agency is acting lawfully and reasonably. Depending on the circumstances, however, an apology may be appropriate.</p> <p>Similarly, redress does not need to be provided when legislation is operating as intended or to remedy major legislative deficiencies.</p>
<b>Step 2: Nature of detriment</b>	<p>Establishing the nature of the detriment that the complainant has suffered and their desired outcome should be a standard component of the complaint-handling process. In determining this, agencies should take into account:</p> <ul style="list-style-type: none"> <li>the amount of quantifiable financial loss (such as loss or damage to property, injury or damage to health, loss of earnings, medical and legal costs, time and trouble where the person dealt with the matter without professional assistance); and</li> <li>any non-financial damage (such as gross inconvenience, embarrassment, humiliation, or stress).</li> </ul> <p>Many complainants are eager to move on and merely seek acknowledgement of their grievance and a timely apology. Some are satisfied with the knowledge that remedial action has been taken and elect not to pursue civil claims.</p>
<b>Step 3: Restoring complainant to original position</b>	<p>Sometimes agencies offer only partial redress, resulting in the complainant remaining dissatisfied. This occasionally occurs when property has been damaged or lost as a result of an agency's action. The agency may offer a part payment on the basis that the damage or loss was accidental. However, if the complainant's actions did not contribute to the damage or loss, the principle of fairness indicates that the complainant should be fully reimbursed.</p>
<b>Step 4: Prevent recurrence</b>	<p>One of the principal functions of a good complaint handling system is to allow the agency to learn from its complaints and improve its services. It is expensive, inefficient and poor administrative practice to simply deal with complaints as they arise and fail to fix the cause.</p> <p>Each complaint should be assessed to determine whether the circumstances are likely to arise again and if there is a better way to deal with the matter. Often this will involve identifying training needs or making amendments to procedural manuals.</p>

**Common excuses to avoid making good**

The Ombudsman's experience is that agencies are often motivated to avoid making good to avoid expenditure or embarrassment or because they believe making good risks being seen as an admission of liability. In our view, such decisions are ill-conceived and inconsistent with the principles of accountability and openness.

The following common responses are unacceptable reasons to avoid making good:

**Avoiding setting a precedent** (or "the floodgates" argument)

If the flawed decision is demonstrably unfair and unreasonable in a specific set of circumstances, then this is what must be addressed.

**Not legally required to offer redress**

This confuses the issues of lawfulness and fairness. Fairness involves considering both legal and non-legal issues. Appropriate weight should be given to broad questions of reasonableness, the effect of decisions and the ethical obligations of fairness and accountability.

### Fix the system but not resolve individual complaint

The original complainant may obtain little satisfaction from actions to prevent a recurrence of the incident that led to the complaint. When an agency identifies a deficiency that needs correction, fairness requires that the complaint which led to that identification be addressed in an appropriate manner.

### Don't want to create a bigger problem

This approach is inconsistent with the ethical principle of openness. If making good alerts people to the fact that a bigger problem exists, then this is itself a useful outcome.

### Forms of redress

When things go wrong, many complainants want no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and an apology.

There are various forms that redress can take.

<b>Explanation</b>	It may be possible to resolve the complaint by providing information about the decision-making process or relevant policies or legislation, or by giving reasons for decisions if this has not already been done. A complainant's sense of grievance is likely to be lessened when they are satisfied that their position has been understood and taken into account.
<b>Apology</b>	A prompt apology can be extremely effective. Apologise promptly, sincerely, face to face, and confirm it in writing. Depending on the circumstances, it may be appropriate for the agency to acknowledge responsibility and express sympathy or regret. If legal liability may be a concern, an expression of sorrow, regret or sympathy, without acknowledging fault, can still be helpful.
<b>Reconsidering conduct</b>	Taking into account new information or information that may have been unintentionally ignored during the original assessment may lead to stopping action or taking alternative action or otherwise changing the consequences of a flawed decision.
<b>Changing policy or practice</b>	Some complainants are satisfied by the fact that changes will be made to prevent future similar incidents.
<b>Mitigation</b>	Mitigation reduces the impact of the detriment suffered and may involve replacing damaged property, correcting records, returning property or refunding fees.
<b>Restitution</b>	Compensation for loss or damage to property.
<b>Reimbursement</b>	Compensation for costs that were incurred as a result of the flawed decision, including medical costs, professional costs, or time and trouble involved.
<b>Satisfaction</b>	Compensation for loss of amenity or rights, or for inconvenience. When an agency is not under a legal liability to provide financial compensation (i.e. restitution, reimbursement and satisfaction), it may still decide that it has a moral obligation to offer this type of redress. This can be done by way of an Act of Grace payment under section 80 of the <i>Financial Management Act 2006</i> .

## Develop agency-specific guidelines

The availability of redress is a crucial component of a fair and reasonable complaints system. When a complainant suffers a detriment and it can be established that an agency contributed to that detriment, an agency that wishes to be seen as accountable must take steps to rectify the perceived damage. If agencies lack a proactive approach to providing remedies, they risk complainants remaining aggrieved.

To ensure public confidence is safeguarded, the Ombudsman suggests that agencies develop a “menu” of remedies, including examples, to assist staff in considering what remedy to provide. This will ensure that staff provide consistent and appropriate responses. To ensure transparency, the agency’s commitment to appropriate redress (including limitations, where these apply) should also be made accessible to members of the public.

## Resources

The following Ombudsman Western Australia publications provide further details that may be useful in the development of complaint handling systems and for staff involved in handling complaints:

- [Effective handling of complaints made to your organisation – An overview](#)
- [Making your complaint handling system accessible](#)
- [Complaint handling systems checklist](#)
- [Guidance for Complaint Handling Officers](#)
- [Investigation of complaints](#)
- [Conducting administrative investigations](#)
- [Procedural fairness](#)
- [Dealing with unreasonable complainant conduct](#)
- [Good record keeping](#)

For further information about the role of the Ombudsman and guidance for complaints management, visit our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).

## Acknowledgement

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for allowing us to use their publication *The Complaint Handler’s Tool Kit 2004* in the development of these guidelines.

## Appendix A

### CIVIL LIABILITY ACT 2002

#### Apologies Part 1E

##### s. 5AF Interpretation

In this Part — “apology” means an expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person.

##### s. 5AG Application of this part

Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.

This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.

This Part does not apply unless the civil liability giving rise to the claim arises out of an incident happening on or after the commencement day.

If in a claim for damages:

- it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and
- the symptoms of the injury first appeared on or after the commencement day, the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

In this section “commencement day” means the day on which the Civil Liability Amendment Act 2003 section 8 comes into operation.

##### s. 5AH Effect of an apology on liability

An apology made by or on behalf of a person in connection with any incident giving rise to a claim for damages:

- does not constitute an express or implied admission of fault or liability by the person in connection with that incident; and
- is not relevant to the determination of fault or liability in connection with that incident.

Evidence of an apology made by or on behalf of a person in connection with any incident alleged to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident.

You can access a full copy of the *Civil Liability Act 2002* at the [WA State Law Publisher](http://www.wa.gov.au) website



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# Requesting a review of the handling of a complaint to the Ombudsman

Revised  
July 2020

### What is the Ombudsman's role in handling complaints?

The Ombudsman is an independent and impartial person who investigates and resolves complaints about the decision making and practices of Western Australian public authorities. The Ombudsman reports directly to the Parliament of Western Australia, not to the government of the day.

The *Parliamentary Commissioner Act 1971* describes the role of the Ombudsman and the Ombudsman's jurisdiction – what we can and cannot investigate.

**Public authorities include State Government departments and authorities, local governments and universities.**

### Can a decision about a complaint be reviewed?

We offer complainants an opportunity for the handling of their complaint to be reviewed by a senior officer, who was not involved in the original investigation of their complaint.

The purpose of a review is to consider whether the complaint was handled in accordance with the *Parliamentary Commissioner Act 1971*.

The decision to undertake a review is not automatic and it is not sufficient to merely disagree with the view formed by the case officer. The handling of a complaint is only reviewed once.

### Will the reviewer be independent?

The decision about whether a matter should be reviewed, and the review itself, will be undertaken by a senior officer not involved in the original investigation.

### Requesting a Review

Requests for review should be made in writing, addressed to the Senior Assistant Ombudsman Complaint Resolution, and set out the reasons why the complaint was not handled fairly, in accordance with the *Parliamentary Commissioner Act 1971*.

### Outcome of a Review

A review may determine that:

- The handling of the complaint was in accordance with the *Parliamentary Commissioner Act 1971*; or
- The handling of the complaint was not in accordance with the *Parliamentary Commissioner Act 1971*. In this case, we will apologise, take action to improve our processes and, where appropriate, we will re-open and reconsider the complaint.

### What happens at the conclusion of a review

We will always inform you of the outcome of the review and the reasons for our decision.





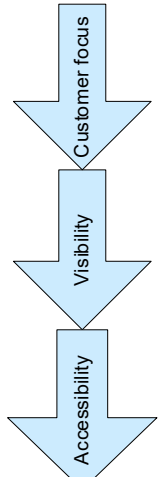
The key features of an effective complaint handling system can be organised according to 10 principles for good practice. These principles form the three stages of complaint handling:

- Enables complaints to be made - a customer focused system, that is visible and accessible, with a demonstrated commitment from the organisation's management;
- Responds promptly and effectively to complaints - complaints are handled objectively and fairly with appropriate confidentiality, remedies are provided where complaints are upheld and there is a system for review for finalised complaints; and
- Provides for accountability and learning - there are clearly established accountabilities for complaint handling and continuous improvement opportunities are identified and implemented, as appropriate.

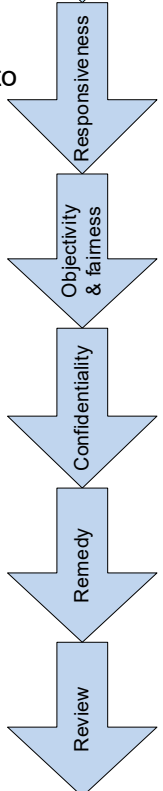
### The principles of effective complaint handling

1. **Customer focus** – the organisation is committed to effective complaints handling and values feedback through complaints.
2. **Visibility** – information about how and where to complain is well publicised to customers, staff and other interested parties.
3. **Accessibility** – the process for making a complaint and investigating it is easy for complainants to access and understand.
4. **Responsiveness** – complaints are acknowledged promptly, addressed according to urgency, and the complainant is kept informed throughout the process.
5. **Objectivity and fairness** – complaints are dealt with in an equitable, objective and unbiased manner. This will help ensure that the complaint handling process is fair and reasonable. Unreasonable complainants are not allowed to become a burden.
6. **Confidentiality** – personal information related to complaints is kept confidential.
7. **Remedy** – if a complaint is upheld, the organisation provides a remedy.
8. **Review** – there are opportunities for internal and external review and/or appeal about the organisation's response to the complaint, and complainants are informed about these avenues.
9. **Accountability** – accountabilities for complaint handling are clearly established, and complaints and responses to them are monitored and reported to management and other stakeholders.
10. **Continuous Improvement** – complaints are a source of improvement for organisations.

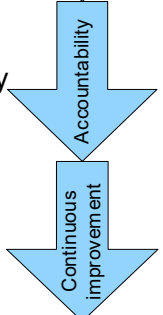
Step 1:  
Enabling  
Complaints



Step 2:  
Responding to  
Complaints



Step 3:  
Accountability  
and Learning







# Ombudsman Western Australia

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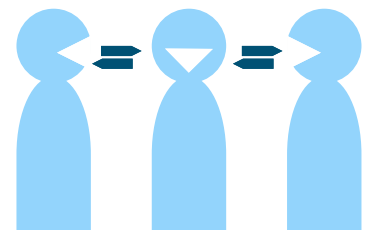
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