

# Guidelines on Conducting Investigations

**Ombudsman Western Australia**  
Serving Parliament – Serving Western Australians

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## **Guidelines on Conducting Investigations:**

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A complete list of available Ombudsman Western Australia publications is available at the back of this booklet.

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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

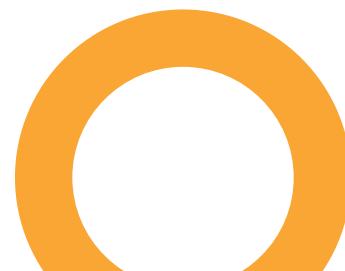
Be sensitive to the needs of other witnesses, for instance in supporting them through any trauma they may experience as a result of being involved in the investigation process.

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





## What is an investigation?

A fact-finding process – a search for, gathering and examination of information in order to establish facts.

It is one step in a decision making process which starts with an issue and ends with a decision.

Its purpose is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response.

The nature and scope of an investigation will depend on the circumstances of each case and any relevant statutory requirements that may apply.

More detailed information on investigation of complaints is available in the Ombudsman WA Guidelines *Conducting administrative investigations*.

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.

## What are the essential steps in an investigation?

### STEP 1 ASSESS THE COMPLAINT

Determine what action is required, which may include options other than a formal investigation.

### STEP 2 SELECT THE APPROPRIATE INVESTIGATIVE APPROACH

This can depend on factors such as statutory requirements which may apply; the nature of the issue; the likely outcome of the investigation.

### STEP 3 PLAN THE INVESTIGATION

Define the subject matter and develop an investigation plan.

### STEP 4 ENSURE PROPER POWERS AND AUTHORITY

Assess whether the investigation has the necessary powers to obtain evidence from relevant witnesses and to access relevant records  
Ensure the investigator has the authority to conduct the investigation.

### STEP 5 OBTAIN EVIDENCE

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.

### STEP 6 REPORTING

Prepare your document setting out the complaint, how the investigation was conducted, relevant facts, conclusions, findings and recommendations.

## TIPS

You will need to consider a range of factors, such as:

- whether the complaint involves a communication problem that can be resolved through explanation or discussion
- whether a more appropriate means of dealing with the issue is available
- whether the complaint can or must be referred or notified to a relevant government agency
- how much time has elapsed since the alleged events occurred
- the significance of the issue for the complainant and/or the organisation.

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.

Identify what questions need to be answered, what information is required to answer those questions, and the best way to obtain that information.

Distinguish between the right to ask and the power to demand.

If the investigation is major or sensitive, ensure you have approved terms of reference and adequate resources.

Where possible separate the investigation and decision making functions.

## Procedural and evidentiary requirements

### Impartiality

Investigators must be impartial, adopting an inquisitorial approach, attempting to ascertain the truth and uncover all relevant facts.

### Procedural fairness

This is very important in an investigation that could result in an outcome that affects the rights, interests or reputation of an individual.

### Confidentiality

This can be very important in an investigation such as an evidence-focused investigation into the alleged conduct of an individual.

### Communication

As a general rule, keep both the complainants and person or bodies the subject of an investigation informed about the progress of the investigation.

### Standard of proof

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.

### Rules of evidence

The rules of evidence will not apply to the majority of administrative or disciplinary investigations.

Nevertheless it is useful for an investigator to understand the basic rules of evidence.



## 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 damages 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
- 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
- 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. However 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 or 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*.



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## Dealing with unreasonable complainant conduct

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).



### Ombudsman Western Australia



### 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](#)

[Record Keeping in Western Australia: Who is Responsible](#)

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

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### **Ombudsman Western Australia**

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# 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.

## About the Ombudsman

- Ombudsman WA Brochure
- How We Assess Complaints
- Ombudsman WA Summary A4 Poster
- Ombudsman WA Summary Flyer
- It's OK to complain – Poster for Young People (two versions)
- It's OK to complain – Postcard for Young People (two versions)
- It's OK to complain – Flow Chart for Young People (two versions)
- It's OK to complain – Information Sheet for Young People

## Making a complaint

- How to complain to the Ombudsman  
(Also available in Arabic, Amharic, Croatian, Chinese Simplified, Chinese Traditional, Cocos-Malay, Dari, Indonesian, Italian, Japanese, Persian, Serbian, Somali, Spanish and Vietnamese)
- Making a complaint to the Ombudsman - Summary Information Sheet
- Making a Complaint to a State Government Agency
- Complaints from overseas students  
(Also available in Chinese Simplified, Chinese Traditional, Hindi, Indonesian and Malay)

## How complaints are handled

- Ombudsman's complaint resolution process - Information for Complainants
- How We Assess Complaints
- Assessment of Complaints Checklist
- Being Interviewed by the office of the Ombudsman
- Requesting a review of a decision about a complaint to the Ombudsman

## Guidelines and Information for Public Authorities

- Ombudsman's complaint resolution process - Information for public authorities
- Information for Boards and Tribunals
- Good Record Keeping

### Decision Making:

- Exercise of discretion in administrative decision making
- Dealing with Unreasonable Complainant Conduct
- Remedies and Redress

### Complaint Handling:

- Effective handling of complaints made to your organisation - An Overview
- Complaint Handling Systems Checklist
- Making your complaint handling system accessible
- Guidance for Complaint Handling Officers
- The principles of effective complaints handling
- Dealing with unreasonable complainant conduct

### Conducting Investigations:

- Conducting administrative investigations
- Investigation of Complaints
- Procedural Fairness (Natural Justice)
- Giving reasons for decisions

### Management of Personal Information:

- Management of Personal Information
- Management of Personal Information Checklist
- Good Practice Principles for the Management of Personal Information

## Forms

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| <ul style="list-style-type: none"><li>• Ombudsman WA Complaint Form</li><li>• Ombudsman WA Authority to Act Form</li></ul> | <ul style="list-style-type: none"><li>• Ombudsman WA Authority to Release Information</li><li>• Complaint Form for overseas students</li></ul> |
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## Ombudsman Western Australia

