

Requesting a review of a decision about a complaint to the Ombudsman

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What is the Ombudsman's role in handling complaints?

The Ombudsman is an independent and impartial person who investigates complaints about the actions of Western Australian public authorities including State Government departments, prisons, hospitals, schools and technical colleges, local governments and public universities. 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 public authorities and help those public authorities 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 decision making and practices of public authorities; and
- identifying the causes of problems and making recommendations for changes to procedures, practices, policies or legislation that will prevent similar problems occurring again in the future.

Can the Ombudsman's decision about a complaint be reviewed?

Occasionally the Ombudsman is asked to review or reopen a complaint that was investigated by our office. The Ombudsman is committed to providing complainants with a service that reflects best practice complaint handling and complainants who are dissatisfied with a decision the Ombudsman has made, have the opportunity to request a review of that decision by a senior officer.

The decision to undertake a review is not automatic, and the complainant must supply sufficient evidence to persuade the Ombudsman that a review is justified. The purpose of a review is to confirm whether the process undertaken to handle the complaint was fair and reasonable. It is not to conduct a separate or new investigation. As a review can often require substantial resources, it is the policy of the office that, generally, decisions are only reviewed once.

The outcome of the review will either determine that the original decision stands or that it would be appropriate to undertake further work. If the review indicates further work is needed, we may consider undertaking a new or separate investigation.

Will the reviewer be independent?

Wherever possible the decision about whether a matter should be reviewed will be made by a senior officer not involved in the original investigation. The staff member responsible for the original investigation will not carry out the review.

What about where the decision concerned is a question of jurisdiction?

The Ombudsman only has the power to investigate matters that fall within his jurisdiction. As such, matters outside jurisdiction cannot be considered but requests can be made for a review of the basis of this decision.

Factors that will be taken into account during a review

If a review is undertaken, we will consider the following factors in determining whether the process used to handle the complaint was fair and reasonable and that the original decision was appropriate:

- the complainant was afforded procedural fairness, including whether they had an adequate opportunity to put their case;
- the investigating officer acted impartially and did not pre-judge the complaint;
- all material arguments and evidence were considered;
- the decision made, or the view formed by the investigating officer, was reasonably open to them on the basis of the evidence;
- adequate reasons were given for the decision; and
- the investigating officer followed the Ombudsman's procedures for the conduct of an investigation.

Outcome of a Review

A review may determine that the process was fair and reasonable and the decision should stand. If the review identifies any flaws in our process for handling a complaint, we will take action to improve our processes and, if appropriate, undertake further work on the complaint.

In determining whether a further or new investigation is warranted, we will consider:

- the likelihood of being able to obtain appropriate additional evidence - here the age of the original complaint is relevant, as is ready access to witnesses;
- whether the administrative processes which contributed to the original complaint have been rectified - where processes have not been rectified, we would want to look into the matter further;
- whether any practical outcome can be achieved for the complainant - we consider whether any further action by the Ombudsman could personally assist the complainant;
- whether the matter has also been investigated by another agency - in these circumstances we will consider whether the complainant has had reasonable opportunity to put their case forward to another agency, and the relevant body has followed a fair and reasonable investigative process;
- whether re-investigating the matter is an efficient and effective use of our resources; and
- in all the circumstances, whether further investigation is warranted.

What happens at the conclusion of a review?

We will always provide the complainant with reasons for our decision following a review.



Ombudsman Western Australia