

## **Policy and procedure for deciding complaints under the *Ombudsman Act 2001***

### **1. Policy statement**

The Queensland Ombudsman is committed to meeting the objects of the *Ombudsman Act 2001* (the Act) and provide ‘a timely, effective, independent and just way of having administrative actions of agencies investigated’.

This policy and procedure documents the processes undertaken to decide complaints under the Act.

### **2. Application/scope**

This policy applies to all permanent and temporary officers of the Office deciding complaints under the Act.

### **3. Principles**

In deciding complaints, officers must have regard to the following principles.

#### **Duty to inquire**

An officer must make reasonable inquiries to inform themselves of relevant facts in reaching a conclusion on which they intend to rely in reaching a decision. An officer must record, in the Office’s case management system, all inquiries conducted.

#### **Procedural fairness**

Complainants and agencies are entitled to procedural fairness throughout the investigative process.

When inviting submissions from a complainant, the complainant should be directed to the *Ombudsman’s Guidelines for deciding complaints under the Ombudsman Act 2001* so they are adequately informed about the matters that might be considered.

#### **Duty to provide reasons for decisions**

An officer deciding a complaint under the Act must provide reasons for the decision as soon as practicable after making the decision as required under section 23(4) and section 57 of the Act.

## 4. Procedure

Complaints to the Queensland Ombudsman are subject to a preliminary assessment and may be subject to investigation in accordance with this procedure.

## 5. Preliminary assessment

### Jurisdiction

If the Office receives a complaint an officer must decide if the complaint is within this Office's jurisdiction to investigate.

If the complaint is:

- about an entity that is:
  - o not an agency (or not a non-government entity that takes administrative action of an agency) as defined in the Act and
  - o not an administrative action taken for, or in the performance of functions conferred on an agency as defined in the Act; or
- the action complained about is not an administrative action that can be investigated by this Office

then the officer will:

- inform the complainant that the matter is out of jurisdiction and cannot be investigated and
- provide the complainant the reasons the complaint cannot be investigated and explain this decision by reference to the Act and
- provide general information about where else the person may be able to take their complaint.

If the complaint is about an agency's administrative action that is within the Ombudsman's jurisdiction, then the officer will continue to assess the complaint.

### Accepting the complaint

An officer must accept a complaint within this Office's jurisdiction unless:

- the complaint is a verbal complaint and the officer requires the complaint to be put in writing
- the person making the complaint is not directly affected by the administrative action being complained of
- the person making the complaint is doing so on behalf of someone else and the officer must decide whether to accept the complaint as a representative complaint
- the complainant had notice of or might reasonably be expected to have had notice of, the administrative action complained of over 12 months before making the complaint, in which case the officer must decide whether it is proper to accept the complaint because special circumstances exist.

In deciding whether or not to accept a complaint on any discretionary ground the officer must have regard to the *Ombudsman Guidelines for deciding complaints under the Ombudsman Act 2001* and the instrument of delegation.

### **The preliminary assessment**

The purpose of a preliminary assessment is for an officer to decide whether a complaint should be further investigated or not investigated on any ground in section 23 of the Act within the delegation.

The officer may ask the complainant for further information about their complaint to inform their assessment.

The officer may ask the agency for information to inform their assessment using the preliminary inquiry power under section 22 of the Act. If the complaint is about a non-government entity, the officer may request information from the entity, if necessary, provided that they have first discussed the matter with the Assistant Ombudsman and contacted the agency associated with the entity.

The officer seeking further information from a complainant or agency/entity must afford a reasonable period of time for response having regard to the nature of the request.

If having afforded a reasonable period for the provision of further information, no further information is received then the complaint should be assessed on the material before the officer.

If an officer declines to investigate a complaint after a preliminary assessment, then the officer must as soon as reasonably practicable inform the complainant of this decision and this must include:

- the basis on which the decision was made including reference to the Act and
- the relevant facts and reasons for making the decision.

If a decision is made to decline to investigate a complaint during a preliminary assessment then the complainant may be informed by telephone or in writing.

If an officer undertaking a preliminary assessment:

- is a Review Officer or more senior officer and
- does not in their judgement believe the matter should be declined on any grounds within their delegation without investigation

then the officer must refer the matter to the Investigation and Resolution Unit for investigation.

## Investigation

### *Informal investigations*

The officer assigned the complaint is to decide whether the complaint should be further investigated.

An officer may exercise their judgement to discontinue an investigation for any ground set out in the Act within their delegation.

When deciding whether to discontinue an investigation, the officer will:

- make any necessary requests for information from the complainant or the agency/entity
- complete an assessment and investigation plan in support of their decision to discontinue the investigation of the complaint or recommendation that the complaint be further investigated.

If an officer decides to discontinue the investigation of a complaint, then the officer must inform the complainant of the outcome in writing and this must include:

- the basis on which the decision was made including reference to the Act and
- the relevant facts relied upon and reasons for making the decision.

If the officer recommends that the complaint be further investigated, then an Assistant Ombudsman must then decide whether the investigation should be continued.

If the Assistant Ombudsman commences an investigation, the Assistant Ombudsman must:

- write to the nominated liaison or principal officer of the agency to inform them that the investigation is to be conducted informally and the scope of the investigation
- inform the complainant of the scope of the investigation.

If during or after an investigation an officer believes there has been maladministration then the officer may, in consultation with the Assistant Ombudsman responsible for the investigation, raise the concerns with the agency and attempt to resolve the complaint in an appropriate manner.

If an Assistant Ombudsman decides to discontinue an investigation of a complaint during or after an investigation, then the Assistant Ombudsman must inform the complainant of the outcome to the complainant in writing, and this must include:

- the basis on which the decision was made including reference to the Act and
- the relevant facts relied upon and reasons for making the decision.

If during the assessment or investigation the Office has contacted the agency/entity, then the Assistant Ombudsman must also write to the agency/entity to inform them that the investigation has been discontinued and provide reasons for the decision.

### *Formal investigations*

A decision to investigate using formal powers under Part 4 of the Act may only be made by the Ombudsman.

### **Reports arising from investigations**

If after investigation of a complaint, an Assistant Ombudsman believes:

- there is maladministration on the part of the agency; and
  - the complaint cannot be informally resolved with the agency, or it is not otherwise appropriate to informally resolve the complaint with the agency; and
  - formal recommendations should be made to the principal officer of the agency,
- an investigation report should be prepared for the Ombudsman with a recommendation that a formal report under section 50 of the Act be prepared.

If the Ombudsman does not endorse the recommendation, the investigation should be discontinued or otherwise progressed as decided by the Ombudsman.

If the Ombudsman endorses the recommendation, a proposed report must be provided to the agency for comment allowing for a reasonable period to respond having regard to the length or complexity of the proposed report.

If a proposed report contains adverse comment about any person then the person adversely named should be afforded an opportunity to respond to the comment prior to sending the proposed report to the agency in accordance with section 55 of the Act.

If the report proceeds to finalisation, the Assistant Ombudsman should make a recommendation whether the Ombudsman should request the Speaker table the report in the Parliament or otherwise publish the report with the permission of the Speaker.

As soon as possible after investigating a complaint, a delegated officer must inform the complainant of the result of the investigation.

### **Assessments arising under other legislation**

All officers must consider the impact of other legislation on complaints and information received by the Office. This includes:

#### *Crime and Corruption Act 2001*

If an officer identifies that a complaint or information received during an investigation may amount to corrupt conduct then the matter should be escalated to the Assistant Ombudsman for consideration before referring to the Ombudsman to determine whether or not to refer the matter to the Crime and Corruption Commission. Officers must ensure there is a record of such assessments and decisions.

#### *Human Rights Act 2019*

All officers must have regard to a person's human rights and ensure their decisions under the Act are compatible with the *Human Rights Act 2019*.

### *Public Interest Disclosure Act 2010 (PID Act)*

All officers must consider whether the complaint or information received amounts to a Public Interest Disclosure (PID) to this Office. If an officer believes a matter may be a PID then the officer must escalate the matter to an Assistant Ombudsman for assessment and must ensure the Ombudsman is briefed on all matters identified as a PID prior to deciding the complaint under the Act. All complaints identified as a PID to this Office must be handled in accordance with the PID Act and relevant [PID Standard](#).

### *Local Government Act 2009*

For complaints about the conduct of councillors of a local government, the officer must consider section 150P of the *Local Government Act 2009* and if they consider it is applicable, escalate the matter to an Assistant Ombudsman for further consideration. Should the Assistant Ombudsman consider the complaint should be referred to the Office of the Independent Assessor, they must seek the Ombudsman's decision about whether to refer the complaint.

## **6. Definitions**

All terms in this procedure that are defined in any Act referred to in this procedure has the meaning given to them in the relevant Act.

Maladministration is administrative action of the type set out in section 49(2) of the Act. It means administrative action that is:

- taken contrary to law; or
- unreasonable, unjust, oppressive, or improperly discriminatory; or
- in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
- was taken—
  - (i) for an improper purpose; or
  - (ii) on irrelevant grounds; or
  - (iii) having regard to irrelevant considerations; or
- an action for which reasons should have been given, but were not given; or
- based wholly or partly on a mistake of law or fact; or
- was wrong.

This is also the definition of '*maladministration*' in Schedule 4 of the PID Act.

## **7. Authority**

### *Ombudsman Act 2001*

Instrument of Delegation under the *Ombudsman Act 2001*

## 8. Related documents

All legislation and standards referred to in this Procedure.

*Ombudsman Guidelines for deciding complaints under the Ombudsman Act 2001.*