



## DEALING WITH A NORTHERN TERRITORY OMBUDSMAN INVESTIGATION

### INFORMATION FOR AGENCIES

#### **ROLE AND RESPONSIBILITIES OF THE OMBUDSMAN**

##### **Role**

Under the *Ombudsman (Northern Territory) Act 1978*, the Ombudsman has legislative responsibility to:

- Investigate maladministration by agencies (departments, local government councils and government owned corporations), normally in response to a complaint by a member of the public, but we can also investigate on our own initiative or at the request of the Legislative Assembly.
- Make recommendations to an agency to assist it in improving its practices and processes.

We look at the actions and decisions of agencies and their staff to determine if there was maladministration in the sense that the actions and decision were:

- Contrary to law;
- Unreasonable, unjust, oppressive, or improperly discriminatory;
- In accordance with a rule of law or a provision of any law that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- Taken for an improper purpose, on irrelevant grounds, or which took into account irrelevant considerations;
- Decisions for which a reason should have been given but were not;
- Based wholly or partly on a mistake of law or fact; or
- Wrong.

The principle objective of the Ombudsman is to resolve matters for individual members of the public and to improve administrative systems for the general public, to ensure things will be better dealt with in the future.

##### **Powers**

The Ombudsman Act gives us the power to:

- Make preliminary inquiries to decide whether a complaint may be determined without the need for an investigation.
- Formally investigate the complaint, using the powers available to us under the Act to obtain evidence.

The powers available to us under the Act include:

- Power to enter any buildings and to access any goods, books, documents and other papers relevant to the investigation and power to make copies of documents.

- Power to summon witnesses to give evidence upon oath and to produce any books, documents and writings in their possession.
- Power to override any obligations to maintain secrecy which may apply to agency employees.
- Power to require any information supplied to be verified by statutory declaration
- Power to require a person who obtains information in the course of an investigation to not disclose that information except for the purposes of the investigation.

Penalties apply to individuals who fail without reasonable excuse to comply with our requests made in the exercise of our powers.

#### **HOW WE INVESTIGATE COMPLAINTS**

##### **Process**

A number of factors, such as the nature of the issue complained about, affects how an investigation is carried out. An assessment is made about what evidence is required, which normally involves reviewing agency files and which may or may not involve interviewing agency staff.

Under our Act we are required to notify the agency Chief Executive and the relevant Minister of our intention to conduct an investigation. The issues of complaint are forwarded to the Chief Executive so that the agency may prepare a response.

##### **Impartiality**

Our role is to attempt to ascertain the truth of a matter by uncovering all the relevant facts. We do not act as an advocate for the complainant, nor do we defend an agency's actions.

In the event that an investigator assigned to the case discovers a possible conflict of interest, he or she is required to immediately notify the Ombudsman, who will decide whether the case needs to be reassigned.

##### **Procedural fairness**

Investigations are conducted in accordance with the principles of procedural fairness, since the potential exists for an outcome to the investigation to affect the rights, interests or reputation of an agency employee.

Procedural fairness principles require us to:

- Inform people of the substance of any allegations against them;
- Inform them of the grounds for any proposed adverse comment in respect of them;

- Provide reasonable opportunity for people to put their case;
- Make reasonable inquiries and consider any submissions before making a decision;
- Act fairly and without bias;
- Conduct the investigation without undue delay.

### **Confidentiality**

We are bound by our Act to maintain confidentiality of all information that is received by us in the course of our investigation and to disclose information only for the purposes of the investigation. Agency staff are likewise bound by the same secrecy provisions.

In certain circumstances there may be a need to maintain confidentiality of specific facts such as the identity of the complainant, witnesses and so on. Where we deem this to be necessary, we will inform agencies of the reasons for the decision.

### **Standard of proof**

We are not bound by any rules of evidence and may inform ourselves about a matter in any manner as we think fit. It is our responsibility to obtain as comprehensive and high quality evidence as possible to ensure a high standard of decision making.

The civil standard of proof applies to investigations by the Ombudsman. This is a lower standard than that required in criminal matters, where allegations must be proved beyond reasonable doubt. This means that allegations must be proved according to the balance of probabilities, that is, it must be more probable than not that the allegations are substantiated.

### **Communication**

We ask the Chief Executive of an agency to provide us with a contact person with whom we can deal with during the investigation. We keep the agency informed of progress via the contact person.

We expect the person responsible for providing a response to us will keep relevant agency employees informed about the investigation.

### ***How To Respond***

Many agencies view our involvement as an opportunity for them to identify and remedy any shortcomings in their services to the public. A positive approach to responding to the Ombudsman's inquiries is beneficial to all parties involved in the investigation.

An agency can assist us to achieve timely and appropriate outcomes by co-operating with our requests for information. In preparing a response agencies can assist by:

- Responding promptly;
- Using plain English
- Providing a clear, succinct and complete response
- Ensuring factual accuracy
- Arguing the case logically
- Supporting the argument with relevant facts
- Describing exemplary agency actions
- Admitting any error or mistake and considering making a fresh decision

- Acknowledging the complainant's argument
- Considering inadequacies of the agency's policies or procedures
- Offering a remedy if appropriate
- Avoiding repetition of the complaint by fixing matters promptly
- Ensuring that officers who deal with complaints have the power to make and change decisions.

If any member of the staff of an agency is required to attend before the Ombudsman and provide information or documents, we will advise them of their rights and obligations. Agencies can assist staff by advising them of the role of the Ombudsman and encouraging staff to contact us if they have any questions.

When we advise our intention to conduct interviews with agency officers, it will assist the investigation if the officers refresh their knowledge of the relevant actions by reviewing the agency file or their personal notes and by having handy relevant documents which can pinpoint key facts such as decisions and dates.

We recognise that an agency and some of its officers may find our investigation has a significant impact on them, either in terms of affecting their ability to conduct their core work or in personal terms.

Our investigators are mindful of the impact of our work and seek to minimise disruption to the agency workplace. The secrecy provision of our Act provides protection for agency officers by prohibiting information obtained during the course of our investigation being unlawfully disclosed. This provision applies to our staff as well as to agency staff.

Our commitment to agencies is that we will act with discretion, respect and confidentiality at all times.

### ***OUTCOME OF THE INVESTIGATION***

After our investigation is completed, we form an opinion about the administrative actions in question. Our Act defines 'administrative action' as:

- A decision or an act;
- A failure or refuse to make a decision or perform an act;
- The formulation of a proposal or intention;
- The making of a recommendation.

Our responsibility is to identify and make recommendations about any administrative action or inaction of an agency that involves maladministration. If we consider an agency's actions involve maladministration, we will provide a report to the Chief Executive of the agency, which may contain recommendations to rectify the instances of maladministration or to improve processes to avoid a recurrence of the problem. The principles of procedural fairness apply and responses provided will be considered before the report is finalised.

If no maladministration has been identified we will report this to the Chief Executive. In all cases a copy of the report is also provided to the relevant Minister.

The Ombudsman's report may be tabled in the Legislative Assembly At the request of the Ombudsman if he or she considers that the agency has not taken appropriate action in response to the recommendations made as a result of the investigation.

On the authorisation of the Speaker of the Legislative Assembly, the Ombudsman may also publish a report if the issues are of public interest or in the interest of other parties.

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