

Document name:	Review of Ombudsman decisions about complaints
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Summary	This policy explains what decisions the Ombudsman may choose to review, and the review process.
Related policies/ documents:	Feedback, compliments and complaints policy, Complainant conduct and visitor access policy
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Policy Owner:	Assistant Ombudsman (Complaints and Investigations)
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About this policy

This policy explains decisions made by Ombudsman staff that may be the subject of a review by the Ombudsman. It also explains how a complainant can seek a review of a decision and the review process.

The policy does not apply to complaints about the conduct of Ombudsman staff. For information about these complaints, see the Feedback, complaints and compliments policy.

The policy also does not apply to requests for internal reviews of decisions made under the *Government Information (Public Access) Act 2009*. The procedure for those reviews is set out in Part 5 of that Act.

Legislative and compliance framework

Ombudsman Act 1974 (Act)

Policy statement

The Ombudsman's powers in relation to complaints received under section 12 of the Act (**section 12 complaints**) are discretionary. The Ombudsman cannot be required to investigate, make inquiries into or take any other action about a section 12 complaint, and cannot be required to review a decision to take (or not take) any action.

Reviewable decisions (subject to the Ombudsman agreeing to a review request)

While the Ombudsman cannot be required to do so, the Ombudsman's policy is to consider complainants' requests to review any decision:

- 1 not to make preliminary inquiries, or further preliminary inquiries, into a complaint
- 2 not to conciliate, or further conciliate, a section 12 complaint
- 3 not to investigate a section 12 complaint, or
- 4 to discontinue an investigation into a section 12 complaint.

If a request is approved, a review will be conducted.

Non-reviewable decisions

The Ombudsman will not review:

- 1 any decision to investigate the conduct of a public authority or community service provider
- 2 any finding or recommendation contained in a report made under s 26 of the Act, or
- 3 anything contained in a special report to Parliament made under s 31 of the Act.

The request process

- 1 Before requesting a review of a decision, a complainant should contact the Ombudsman officer who advised them of the decision, to discuss the basis for the decision. If, following that discussion, the complainant is still dissatisfied with the decision, they may request a review.
- 2 A request can only be made about a Reviewable decision. The request must ordinarily be in writing, but in special circumstances Ombudsman staff may accept an oral request. The request must:
 - a) state how or why the complainant believes the Reviewable decision is inappropriate or unreasonable, and/or

- b) provide new information that the complainant believes is relevant to the Reviewable decision.

Requests that do not include either (a) or (b) will be refused.

- 3 Review requests are assessed by Managers. If a Manager determines a review is warranted, he or she will assign a Review officer to conduct the review. If the Manager determines that a review is not warranted, the complainant will be advised that their review request has been declined and given brief reasons why the request has been declined. If a request is declined, no additional requests may be made to review any decisions made about the relevant complaint.

The review process

- 4 The Review officer assigned by the Manager to review the decision must be an Ombudsman officer who had no involvement in the decision to be reviewed. Wherever reasonably possible, the Review officer must also be senior to the officer who made the decision, but where this is not reasonably possible, the Review officer must be at the same grade of seniority as that officer.
- 5 The Review officer must consider the information already recorded on the complaint file about the complaint, and any additional material provided by the complainant in their request. Based on that information, the Review officer must consider whether:
 - a) the decision was reasonable, having regard to the information reasonably available at the time the decision was made, and any new and relevant information the complainant has provided in their request for review
 - b) the process used to assess the complaint and make the decision was fair and appropriate, and
 - c) the decision was adequately explained to the complainant.
- 6 The Review officer will report on their review to the Ombudsman or a statutory officer to whom the Ombudsman has delegated his or her review power.
- 7 The Ombudsman or a statutory officer must then either:
 - a) affirm the decision being reviewed
 - b) make a new decision to take action in accordance with the Act in response to the complaint, or
 - c) refer the complaint to a Manager or Ombudsman officer who will decide what action to take in accordance with the Act in response to the complaint.
- 8 A decision made under 7 above will be final. No complainant will be permitted to seek another review in relation to a complaint that has already been reviewed. No further reviews or appeals will be considered.

Roles and responsibilities

Ombudsman and statutory officers

The Ombudsman, or a statutory officer, must consider a review report in accordance with 7 above.

Managers

Managers are responsible for assessing review requests and, where a review is to be conducted, appointing Review officers.

Review officer

Review officers are responsible for undertaking reviews assigned to them and reporting to the Ombudsman or his or her delegate.

Ombudsman staff

All Ombudsman staff must provide information about reviews to complainant, handle requests for reviews impartially and, where appropriate, refer requests to the relevant Manager for assessment.

Ombudsman approval

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is written in a cursive, flowing style.

Paul Miller
Acting NSW Ombudsman