The Law Handbook

YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES

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Complaints

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COMPLAINTS ABOUT GOVERNMENT

[9.10] Someone who is dissatisfied with the decision of a government body may have various avenues for seeking a remedy, from requesting the intervention of a member of parliament or complaining to the Ombudsman to bringing court proceedings.

State and federal administrative law

[9.20] The purpose of administrative law is to ensure that governments are accountable for their decisions and actions.

[9.30] State or federal law?

Complaints about state and federal government departments and agencies are handled by different bodies. Different laws and court procedures apply to each. If it is not clear whether something is a federal or state matter, the offices of the Commonwealth or NSW Ombudsman can be contacted for advice.

Local councils

Local councils are often described as the third level of government. This is not strictly correct, because local councils exist under state laws and, in NSW, they are ultimately controlled by the Minister for Local Government. However, they have a considerable influence on daily life in the local community, and their activities are subject to administrative law.

[9.40] Making a complaint

Discussion with the decision-maker

Anyone not happy about a decision made by a government department or agency should start by trying to discuss the problem with the officer who made the decision.

Internal review

Some departments have an internal review system by which other officers in the department or agency reconsider decisions. A person who is unhappy with government administrative action or decisions is often required to use internal review procedures before other avenues are available.

Administrative Tribunals

If the department or agency will not reconsider its decision, you can sometimes go to an external merits review tribunal (such as the Commonwealth Administrative Decisions Tribunal (AAT) or the NSW Civil and Administrative Tribunal (NCAT)) that will often reconsider the decision and may replace the decision with what it considers to be a correct or preferable decision.

Judicial review

Judicial review is where a person applies to a relevant court to have it review whether the decision by the government department or agency was made in accordance with the applicable law. Normally, if the court finds that the decision was unlawful, it will send the decision back to the department or agency to be made in accordance with the law.

The government decision-making process

Most government administration is carried out by government departments. Each department is responsible to a minister and is headed by a senior public servant, such as the Secretary of the Department of Human Services (DHS).

Responsibilities in special areas may be given to statutory authorities such as the State Transit Authority. These bodies are set up by Acts of parliament that outline their functions, powers and operating procedures.

Regardless of who carries out a particular decision-making process, the ultimate political responsibility lies with the minister.

Delegation of authority

Administrative functions are usually delegated to department or agency staff. For example, it would be impossible for the Secretary of the Department of Human Services (DHS) to personally decide every

claim for the age pension. The secretary delegates this to the department's officers and its service delivery agency, Centrelink.

Procedural manuals

General instructions and guidelines for officers are usually set out in manuals, which contain detailed rules interpreting the various sections of the relevant legislation. These manuals must be made available to members of the public under freedom of information laws (see Chapter 25, Freedom of Information).

If the complaint cannot be resolved

Federal government complaints

If problems with a federal government department cannot be resolved, a person may be able to:

- complain to the Commonwealth Ombudsman (see [9.70]);
- appeal to a specialist tribunal;
- appeal to the Administrative Appeals Tribunal;
- seek judicial review by the Federal Circuit Court, the Federal Court or the High Court.

NSW government complaints

If problems with a NSW government department cannot be resolved, a person may be able to:

- complain to the NSW Ombudsman (see [9.80]);
- lodge an application for review to a specialist tribunal or court;
- lodge an application for review to the NSW Civil and Administrative Tribunal (NCAT); or
- seek judicial review by the NSW Supreme Court.

Assessing the cost

Where more than one avenue of review is available, it is important to assess the cost and time required to pursue each avenue.

For example, even if review by the Administrative Appeals Tribunal is possible (see [9.220]), the time, energy and cost involved may be such that it would be better to ask the Ombudsman to investigate.

[9.50] Finding the reasons for a decision

The importance of getting reasons

It is often through finding out the reasons for a government decision that a person discovers an error in the decision-making process. They can then decide whether any challenge is possible, and whether it is likely to succeed.

Knowing the reasons may also show the person that while the decision was not the one they wanted, it was correct according to the rules under which the agency operates.

Is there a right to be given reasons?

People have no general right to be given reasons for a decision made by a government officer. Under certain circumstances, however, the law requires that reasons be given.

Rights under legislation

A person may be entitled to be given the reasons for a decision under the legislation that regulates the decision-making process; for example, the *Environmental Planning and Assessment Act 1979* (NSW) or the *Local Government Act 1993* (NSW) for certain decisions made by local councils; or freedom of information legislation – the *Freedom of Information Act 1982* (Cth) (*FOI Act*) in relation to decisions made by the Commonwealth Government and the *Government Information (Public Access) Act 2009* (NSW) in relation to decisions made by the NSW Government. For more information in relation to decisions by the NSW Government, see https://www.dpc.nsw.gov.au/about-us/accessing-dpc-information/public-access-to-government-information/.

Where decisions are reviewable

A person may apply to the decision-maker for reasons if the decision is reviewable, among other bodies, by:

- the federal Administrative Appeals Tribunal (under the *Administrative Appeals Tribunal Act 1975* (Cth));
- the Federal Court (under the *Administrative Decisions (Judicial Review) Act 1977* (Cth)); or
- the NSW Civil and Administrative Tribunal (under the *Civil and Administrative Tribunal Act 2013* (NSW)).

Time limits

Generally, where there is a right to be given reasons the person must apply within 28 days of receiving notice of the decision, and the decision-maker must reply within 28 days.

What information must be given

The decision-maker's reply should:

- set out the findings on questions of fact;

- refer to the evidence on which those findings were based; and
- give the reasons for the decision.

Legislation

The relevant sections of the Acts are:

- s 28 of the *Administrative Appeals Tribunal Act*;
- s 13 of the *Administrative Decisions (Judicial Review) Act*;
- s 62 of the *Civil and Administrative Tribunal Act*.

Information about third parties

Under the *Administrative Decisions (Judicial Review) Act*, a statement of reasons may omit information relating to the personal or business affairs of anyone other than the applicant where:

- the information was supplied in confidence;
- disclosure would reveal a trade secret;
- the information was given to comply with an Act or regulation;
- disclosure would breach a duty on the decision-maker not to divulge information of that kind.

Exemptions

Schedule 2 of the *Administrative Decisions (Judicial Review) Act* exempts certain types of decisions from the requirements of s 13 – for example, decisions relating to personnel management in the Australian Public Service.

Under both this Act and the *Administrative Appeals Tribunal Act*, the federal Attorney-General may issue a certificate stating that certain matters cannot be disclosed because it would be contrary to the public interest.

What is the public interest?

Public interest may be claimed where:

- disclosure could harm Australia's security, defence or international relations; or
- disclosure would reveal deliberations or decisions of Cabinet; or
- the situation is one where privilege could be claimed in judicial proceedings.

Other ways to obtain information

If none of the Acts authorising review applies and the legislation under which the decision was made does not impose an obligation to provide reasons, the only avenue for obtaining information about the decision-making process is to seek access to the government file and other relevant documents.

This can be done by using:

- freedom of information legislation – the *FOI Act* in relation to decisions made by the Commonwealth Government and the *Government Information (Public Access) Act 2009* (NSW) in relation to the NSW Government; or
- with the court's approval, a procedure called discovery.

Public interest immunity

The government may seek to refuse a claim on the basis that the documents are subject to public interest immunity (ie, that the balance is clearly in favour of protecting the public's interests over those of the individual litigant).

The Ombudsman

[9.60] The federal government and the states have each established an office of the Ombudsman that is impartial and independent of government to receive and seek to resolve complaints about government departments, statutory authorities and public officials and employees. The services of the Ombudsman are free and confidential. An ombudsman is an official, usually (but not always) appointed by the government or parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens.

Approach the government agency first

Before complaining to the Ombudsman, an attempt should be made to resolve the problem by approaching the agency concerned. The Ombudsman may decide not to look into a complaint where no such attempt has been made, and direct contact with the agency is often the quickest way of getting a satisfactory result.

The aim of the Ombudsman Office is to resolve complaints impartially, informally and quickly. If they cannot assist with a particular complaint, they will explain why, and suggest other avenues for resolving the matter.

[9.70] The Commonwealth Ombudsman

The *Ombudsman Act 1976* (Cth) (*Ombudsman Act*) creates the office of the Commonwealth Ombudsman, with branches in most states and the Australian Capital Territory (see [9.770] for the NSW address).

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government entities and prescribed private sector organisations that it oversights. The ombudsman's office handles complaints, conducts investigations, and performs audits and inspections, encourages good administration and discharges specialist oversight tasks.

Under the *Ombudsman Act*, the Commonwealth Ombudsman is also the:

- Defence Force Ombudsman;
- Immigration Ombudsman;
- Law Enforcement Ombudsman;
- Overseas Students Ombudsman;
- Postal Industry Ombudsman;
- Private Health Insurance Ombudsman;
- Vocational Education and Training (VET) Student Loans Ombudsman.

Australian government agencies and services

The Ombudsman can investigate complaints about the actions and decisions of Australian government agencies to see if they are wrong, unjust, unlawful, discriminatory or just plainly unfair. Complaints about services delivered by contractors for and on behalf of the Australian government – for example contractors who operate immigration detention facilities can also be investigated.

Defence Force Ombudsman

The Defence Force Ombudsman investigates actions taken in relation to members and former members of the Australian Defence Force (ADF) arising out of their ADF employment (other than some disciplinary actions and certain actions relating to honours and awards). Complaints about relevant matters such as promotion, demotion, discharge, postings, housing allowances and matters affecting their service can be lodged by current and former members of the ADF, their spouses and dependents. From December 2016, the Defence Force Ombudsman will have an additional function in relation to reports by serving or former members of the ADF, of serious instances of abuse.

Immigration Ombudsman

The Immigration Ombudsman can investigate actions taken by the Australian Government's Department of Home Affairs (Home Affairs), including the Australian Border Force in relation to visas, citizenship, immigration and detention. This includes Home Affairs's processing of visa and citizenship applications, and Home Affairs's decisions to refuse or cancel visas.

The Immigration Ombudsman has a compliance role and undertakes file inspections, site visits and observations of Home Affairs's field operations. The Ombudsman monitors Home Affairs's actions in relation to the location, identification, detention and removal of unlawful non-citizens. The Immigration Ombudsman regularly visits immigration detention centres and other facilities that are used to accommodate detainees.

In the Immigration Ombudsman's complaint role, detention-related complaints generally concern internal complaint-handling procedures, access to health services, access to internal and external activities and property related matters. One of the Ombudsman's roles is to ensure that the refugee assessment process for unlawful non-citizens is conducted in a timely and reasonable manner.

In addition, under Pt 8C of the *Migration Act 1958* (Cth), the Ombudsman must assess, report on and makes recommendations in relation to people held in immigration detention for more than two years. These reports are given to the Minister for Immigration and tabled in parliament in a de-identified fashion.

Law Enforcement Ombudsman and inspections role

The Commonwealth Ombudsman has a special role under Pt 5 of the *Australian Federal Police Act 1979* (Cth) (*AFP Act*) in relation to the Australian Federal Police. In this role, the Commonwealth Ombudsman may be referred to as the Law Enforcement Ombudsman. The Law Enforcement Ombudsman oversights the AFP's management of its professional standards issues through regular and ad hoc inspections of the AFP's records.

Allegations of corruption within the AFP and the Australian Crime Commission (ACC) are

referred to the Australian Commission for Law Enforcement Integrity (www.aclei.gov.au).

The Commonwealth Ombudsman also inspects and reports on sensitive or intrusive law enforcement activities undertaken by the AFP, the ACC and other bodies including state police. In addition, the Commonwealth Ombudsman also oversees the retention and storage of data by these organisations. These roles are provided by the:

- *Telecommunications (Interception and Access) Act 1979* (Cth), in relation to the interception of telecommunications, access to stored communications, and the retention of data;
- *Surveillance Devices Act 2004* (Cth), in relation to the use of technology such as listening devices; and
- *Crimes Act 1914* (Cth), in relation to law enforcement controlled operations.

Under these Acts, the Ombudsman reports to the responsible federal minister, who reports to parliament.

Postal industry

The Postal Industry Ombudsman can investigate the actions of Australia Post and those of its commercial peers that register to be part of the Ombudsman Scheme created under the *Ombudsman Act*. The intent is that the Postal Industry Ombudsman acts in a similar manner to other industry Ombudsmen, but with the capacity to exercise set statutory investigation and reporting powers and to use their ombudsman powers in relation to Australia Post if warranted.

Overseas students

The Overseas Students Ombudsman investigates complaints from overseas students about the actions of private education providers on the Commonwealth Register of Institutions and Courses for Overseas Students (cricos.education.gov.au). This register is administered by the Australian Government's Department of Education and Training and includes education providers and services (eg, accommodation, student support and information services) that assist overseas students to adjust to life in Australia.

Private Health Insurance Ombudsman

The Private Health Insurance Ombudsman deals with complaints related to private health insurance. For example, a complaint can be made about a private health fund, a broker, a hospital, a medical practitioner or other health practitioner.

The Ombudsman also publishes information that compares health funds and reports on individual funds.

The Ombudsman can investigate a complaint or refer a matter to mediation.

The Ombudsman does not deal with complaints about the service or treatment provided by a health professional or hospital.

Vocational Education and Training (VET) Student Loans Ombudsman

The VET Student Loans Ombudsman (VSLO) commenced operations on 1 July 2017. The VSLO provides a free, independent and impartial service to students and VET Student Loans scheme providers. The VSLO is an industry-focused ombudsman function responsible for investigating complaints, making recommendations, and reporting on providers delivering education and training services under both VET Student Loans and VET FEE-HELP. The VSLO also gives VET Student Loans scheme providers advice and training about best practice complaint-handling and works to lead the development of a Code of Practice in collaboration with industry. If required, the VSLO has powers to compel VET Student Loans or VET FEE-HELP approved providers to attend meetings, and to make recommendations to other Commonwealth agencies in relation to systemic issues about provider practices identified through the Ombudsman's investigations. The VSLO also assesses complaints under the VET FEE-HELP Student Redress Measures (redress measures) that became available on 1 January 2019. The redress measures provide a remedy for students who, due to the inappropriate conduct of their VET provider, incurred debts under the VET FEE-HELP loan scheme. Under the redress measures, the VSLO assesses complaints and decides whether it will make a recommendation to the Department of Education and Training (DET) to remove individual VET FEE-HELP debts.

Taxation

The Commonwealth Ombudsman no longer handles complaints about tax administration. These complaints are dealt with by the Inspector-General of Taxation (www.igt.gov.au).

Public interest disclosure scheme

The *Public Interest Disclosure Act 2013* (Cth) provides a whistleblower protection scheme for public officials at the federal level. Under this Act, the Ombudsman:

- promotes awareness and understanding of the scheme;
- provides information, resources and guidance to agencies and disclosers;
- monitors the operation of the scheme; and
- reports annually to parliament.

Individuals who meet the definition of a public official – which includes most staff of Australian Government agencies, contractors, and employees of providers of goods and services under contract to the Commonwealth – can use the scheme to report wrongdoing. More information is available at www.ombudsman.gov.au.

[9.80] The NSW Ombudsman

The office of the NSW Ombudsman was created by the *Ombudsman Act 1974* (NSW), which sets out the Ombudsman's functions and how he/she exercises them. Over time, the Ombudsman's jurisdiction has evolved with legislation changes that have given the office new responsibilities.

The NSW Ombudsman's functions

The various roles of the NSW Ombudsman are:

- dealing with complaints about the conduct of NSW public authorities, including councils;
- dealing with complaints about community and disability services (*Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW));
- dealing with complaints from inmates about correctional and juvenile justice centres;
- visiting, and inspecting, correctional and juvenile justice centres;
- overseeing the implementation of the *Public Interest Disclosures Act 1994* (NSW) including providing advice and assistance to public authorities and public officials on the operation of the Act, and dealing with public interest disclosures;
- reviewing the causes and patterns of deaths of certain children and people with a disability, and identifying ways in which such deaths could be prevented or reduced;
- monitoring and reviewing the implementation of certain Aboriginal programs and the delivery of government services to Aboriginal people in NSW;
- providing information and training to public authorities and community services about best practice complaint-handling;
- providing information to users of community services about consumer rights and responsibilities and promoting their participation in decision-making about the services they receive.

Recent complaints to the NSW Ombudsman

In 2017–2018, the NSW Ombudsman received 9,260 formal complaints, including written complaints and notifications, and 31,427 informal complaints, including verbal enquiries.

Of these, there were 2,406 formal and 5,673 informal complaints about public authorities; 2,106 formal and 1,131 informal complaints and notifications about employment-related child protection; 1,130 formal and 1,953 informal complaints about local councils; 709 formal and 4,435 informal complaints about custodial services; 985 formal and 1,151 informal complaints about community and disability services and 914 formal and 461 complaints and notifications about disability reportable incidents. The Ombudsman also received 953 formal and 11,945 informal complaints that were outside its jurisdiction.

[9.90] Complaints to the Ombudsman

Who can complain?

Any member of the public (or their representative, such as a relative, friend, advocate, solicitor or welfare officer) can make a complaint to the Ombudsman, as can companies, organisations and associations.

How should the complaint be made?

The NSW Ombudsman

The Ombudsman generally expects that people have complained about the issue directly to the agency concerned (using its internal complaint or feedback process) before bringing their complaint to the Ombudsman. This gives the agency an opportunity to deal with an issue before the Ombudsman becomes involved.

Complaints to the NSW Ombudsman should be in writing, however the Ombudsman may accept a complaint that is not in writing if they consider it is appropriate to do so. People can complain using the online complaint form on the NSW Ombudsman's website, or by post or email.

Staff can help people to lodge complaints and complaints from people whose first language is not English may be written in their preferred language.

What should be in a written complaint

A written complaint should include:

- the nature of the complaint;
- the facts of the dispute;
- the preferred remedy or solution;
- copies of any essential correspondence with the government official or body, including any response to an initial complaint to that agency;
- any other relevant documents.

What can the Ombudsman investigate?

The Ombudsman investigates matters of *administration*. This word is not defined in the legislation, but the courts have interpreted it broadly to include most aspects of government decision-making other than judicial or legislative functions of government.

The Ombudsman has the power to investigate such things as:

- an agency's administrative actions;
- an agency's decisions or recommendations;
- refusal or failure to make a decision or recommendation, or to take some action;
- failing to properly explain a decision or conduct;
- delays in making a decision.

Investigations where there has been no complaint

The Ombudsman also has an *own motion* power to investigate – they can act on their own initiative, without having to receive a complaint. Both the Commonwealth and the NSW Ombudsman have investigated various matters on this basis.

What can't the Ombudsman investigate?

The Ombudsman cannot investigate:

- the actions of a government minister;
- the actions of a judge, magistrate or coroner;
- disputes about employment between the government and its employees (unless there are special circumstances; but see box below);
- certain actions of government authorities that are specifically excluded in Sch 1 of the *Ombudsman Act 1974* (NSW).

Complaints about employment

The employment exception is intended to leave these questions to the industrial relations system. The NSW Ombudsman has found that most complaints about employment-related issues are outside its jurisdiction, although may look at matters affecting a person as an employee where the conduct falls within the exception to cl 12 of Sch 1 of the *Ombudsman Act 1974* (NSW). The Commonwealth Ombudsman has adopted the view that it may investigate certain complaints arising out of pre- and post-employment negotiations, as well as certain employment-related matters that arise once the employment contract has been cancelled.

Refusal to investigate

The Ombudsman has discretion to choose not to investigate a complaint. Reasons for the Ombudsman deciding not to investigate a complaint include circumstances where:

- the complaint could be resolved by internal government procedures;
- the Ombudsman believes the complainant does not have a sufficient interest in the subject of the complaint;
- the matter being complained about is too remote in time to justify investigation;
- an alternate and satisfactory means of redress is or was available to the complainant, such as:
  - administrative appeal;
  - the NSW Civil and Administrative Tribunal;
  - judicial review;
  - civil court action;
  - other complaint handling or dispute resolution processes, for example the Energy and Water Ombudsman (EWON).

[9.100] The investigation

Informal resolution

Government agencies usually cooperate with the Ombudsman and complaints are resolved informally. This means people do not have to wait a long time for a problem to be fixed, and the

relationship between an agency and the person who made the complaint can be maintained. It also means that the Ombudsman does not have to launch a formal investigation, which can add time and a greater level of formality to resolving a complaint.

Formal investigations

Where the Ombudsman decides to formally investigate a matter, it has the powers of a Royal Commission, including the power to:

- examine files and records held by the agency concerned;
- enter government premises;
- question people;
- take evidence on oath.

The Ombudsman only uses its royal commission powers in a small number of matters. Formal investigations are launched when there is initial evidence of serious wrong conduct, a serious issue, parties who are not willing to provide the information and assistance the Ombudsman needs, or a systemic issue that has the potential to have an impact on a larger group of people. In 2017–2018, the Ombudsman finalised 9,464 formal matters. Only eight of these were formal investigations.

Confidentiality

The Ombudsman must conduct investigations in the absence of the public. The Ombudsman is also bound by statutory secrecy obligations, which restrict the circumstances in which he or she can disclose information. This means that, other than in certain specified circumstances, only the agency concerned is told that a complaint has been made.

Information given to the complainant

The complainant is usually informed in general terms about the investigation and is always given the reasons for the Ombudsman's eventual finding.

If the Ombudsman makes any recommendations, the complainant is always given a copy. However, the complainant is not given all the information revealed in the course of the investigation if there are legal or other good reasons to justify confidentiality.

Where the agency is found to be at fault

After investigation, the *Ombudsman Act 1974* allows the Ombudsman to find that the conduct the subject of the investigation is one or more of the following:

- contrary to law;
- unreasonable, unjust, oppressive or improperly discriminatory;
- in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
- based wholly or partly on a mistake of law or fact;
- conduct for which reasons should be given but are not given;
- otherwise wrong.

[9.110] The Ombudsman's report

A final investigation report contains a summing-up of the investigation, findings, recommendations and an explanation of why the Ombudsman has reached its position. The report is given to the relevant minister and the agency, and the report or a summary of it is given to the complainant.

Sometimes a report is made public, if it deals with a matter of public interest and there are no privacy or confidentiality difficulties.

[9.120] Recommendations

The Ombudsman cannot force a change of decision or practice, but can recommend a change to the minister and the head of the agency. The Ombudsman may, for example, recommend that the agency should:

- reconsider an action or decision;
- do something to change the effects of an action or decision;
- make changes to rules or procedures;
- give a full explanation of why it acted as it did;
- take some other action the Ombudsman thinks appropriate in the circumstances, such as compensating the complainant for financial loss.

If the recommendations are not accepted

If an agency does not accept the recommendations, the Ombudsman may send copies of the report on the matter to the relevant Minister and to Parliament. Bringing a matter to the attention of Parliament will

mean the report is publicly available and there is an incentive for agencies to accept the Ombudsman's recommendations to avoid this.

The Ombudsman's effectiveness

Intervention by the Ombudsman may result in an explanation for a decision, an apology or improvements in the decision-making process. Public authorities may also change their decisions, policies or procedures in response to the recommendations or suggestions of the Ombudsman. In some cases, the Ombudsman recommends that compensation be paid to redress a complainant's grievance.

The Ombudsman also has powers to make reports to the Minister responsible for, and the head of, the public authority whose conduct the Ombudsman investigates. The Ombudsman may also, at any time, make a special report to Parliament about any matter arising in connection with the discharge of his or her functions.

Matters the Ombudsman has investigated

The NSW Ombudsman

Examples of complaints investigated by the NSW Ombudsman are:

- compliance and enforcement issues relating to the management of water resources;
- the barriers preventing people with mental illness from accessing and maintaining accommodation;
- the failure of government systems to protect vulnerable people;
- use of force in juvenile justice detention centres and adult correctional centres;
- the management of asbestos issues by state and local government agencies;
- allegations of child abuse by government employees, as well as employees of non-government agencies such as schools and childcare centres.

The Commonwealth Ombudsman

Examples of complaints investigated by the Commonwealth Ombudsman are:

- disputes about child support payments;
- delay or refusal by Centrelink to grant pensions and benefits;
- delays about immigration decisions.

The Independent Commission Against Corruption

[9.130] The NSW Independent Commission Against Corruption (ICAC) began operations in 1989. Its job is to look into allegations of corrupt conduct by, or affecting, NSW public officials and public authorities, including local government officials.

[9.140] Functions

The ICAC was established by the *Independent Commission Against Corruption Act 1988* (NSW). Its three main functions are:

- investigating possible corrupt conduct (the best known aspect of its operations);
- educating public authorities and the community about corruption;
- prevention of corruption, by such means as advising public authorities about changes they should make to their practices and procedures to reduce the risk of corruption occurring.

When can the ICAC investigate?

The ICAC can investigate conduct:

- in response to a complaint;
- when required by parliament;
- on its own initiative.

Investigations about police

The ICAC cannot investigate the conduct of police officers unless the matter also involves the conduct of a public official who is not a police officer. Alleged

corrupt conduct by police officers is investigated by the Law Enforcement Conduct Commission (see [9.450]).

[9.150] Complaints

Who can complain

Anyone can complain to the ICAC about something that may involve corrupt conduct.

How to complain

Complaints can be made in writing, by telephone, in person, online and by email. They can be anonymous, although the ICAC finds it easier to follow up sourced complaints.

Refusal to investigate

The ICAC can choose not to investigate a complaint (ss 10, 20) and, in practice, it formally investigates only a small percentage of the complaints it receives. For example, the ICAC might not investigate if the conduct complained of:

- is trivial;
- occurred a long time ago; or
- was made simply to annoy or harass.

What the ICAC cannot investigate

The ICAC cannot investigate a complaint that does not fall within its jurisdiction.

[9.160] Powers to investigate

The ICAC has a wide range of powers to investigate, including powers to:

- require public officials to provide written statements of information (s 21);
- require any person to attend the ICAC and give it documents or items (s 22);
- issue search warrants.

Corrupt conduct

Corrupt conduct is defined widely by the *Independent Commission Against Corruption Act 1988*. Broadly, it must involve both:

- the dishonest or biased use of a position by a public official or public authority (ss 7, 8); and
- a criminal offence or conduct sufficiently serious to justify disciplining or dismissing the official (eg, an official using public resources for a private purpose).

Private individuals and organisations can also be investigated by the ICAC and found to be corrupt if their conduct causes (or could cause) a public official to misuse their position in a way the Act says is corrupt (eg, a company that wants to do business with the government paying an official to choose it for a job).

Members of parliament

The conduct of a member of parliament is "corrupt" only if it involves a substantial breach of the parliamentary code of conduct (s 9).

For advice and information about whether conduct could be corrupt under the Act, telephone the ICAC or visit its website.

[9.170] Hearings

The ICAC can hold a hearing as part of its investigation, but does not always do so. The ICAC Commissioner decides whether a hearing, or parts of it, will be held in public or in private (s 31). Public hearings are common, and they are likely to get a lot of media attention.

Who may appear

The ICAC can permit individuals, groups and unincorporated associations to appear at a hearing if they are "substantially and directly" interested in it (s 32); for example, if allegations have been made about them.

Legal representation

Legal representation must be authorised by the ICAC, but people summoned to give evidence must be given a "reasonable opportunity" to be represented (s 33). The practice has been to allow representation, and a person at any risk of being implicated in a finding of corrupt conduct would be wise to seek this assistance.

[9.180] What the ICAC can do

The ICAC cannot prosecute people or impose penalties (such as dismissal); what it can do is draw conclusions, express opinions and make recommendations. It may, for example, draw conclusions about whether there has been corrupt conduct, and if so, by whom.

Reports

An ICAC investigation usually results in a public report. Copies can be obtained from the ICAC free of charge.

Recommendations to prosecute

The ICAC may not report that anyone is guilty of, or has committed, a criminal offence (s 74B), but it can say that they are engaging in corrupt conduct or conduct that may constitute corrupt conduct.

Given the ICAC's power to conclude that people have behaved corruptly, and the media attention given to its reports, ICAC proceedings and outcomes should be taken very seriously.

[9.190] Appeals

A person who considers that the ICAC has made a legal error in its decision-making – for example, by denying them procedural fairness – can seek judicial review in the Supreme Court (see [9.370]).

Specialist tribunals and courts

[9.200] The legislation under which a decision is made may provide a right to appeal to a specialist tribunal or court, such as the Land and Environment Court for decisions under the *Environmental Planning and Assessment Act 1979* (NSW).

The legislation may require the decision-maker to tell the person about the right of appeal when notifying them of the original decision.

[9.210] Types of appeal

An appeal may be made *on the merits*, or may be restricted to *points of law*.

Appeal on the merits

In an appeal on the merits, the tribunal or court usually has all the powers of the original decision-maker and can replace the original decision with its own.

Appeal on a point of law

In an appeal on a point of law, the tribunal or court can only find that the original decision-maker made a mistake in applying the relevant laws or procedures.

There is more information about specialist tribunals and court in *The Law Handbook* chapters relating to the matters they deal with; for example, Chapter 23, Environment and Planning and Chapter 36, Social Security Entitlements.

The Administrative Appeals Tribunal – reviewing decisions made by the Commonwealth Government

[9.220] The Administrative Appeals Tribunal (AAT) was established by the federal government under the *Administrative Appeals Tribunal Act* to review a wide range of administrative decisions made by Australian government ministers, departments, agencies and some other tribunals on their merits (see [9.225]). In limited circumstances, the AAT can review administrative decisions made by state governments and non-government bodies. The AAT can also review decisions made by the Norfolk Island Government.

On 1 July 2015, the Migration Review Tribunal (MRT), the Refugee Review Tribunal (RRT) and the Social Security Appeals Tribunal (SSAT) merged with the AAT. Decisions previously made by the MRT or RRT are now made by the AAT's Migration and Refugee Division. Decisions that were previously made by the SSAT are now made by the AAT's Social Services and Child Support Division.

[9.225] Merits review

Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The tribunal considers the material before it and decides what is the correct – or, in a discretionary area, the preferable – decision. It will affirm, vary or set aside the decision under review.

Section 33 of the *Administrative Appeals Tribunal Act* requires that proceedings of the AAT be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the AAT permit. The AAT is not bound by the rules of evidence and can inform itself in any manner it considers appropriate.

Information about the right of appeal

If a decision can be appealed to the AAT, the agency must inform the person affected by the decision of that right. Failure to provide this information, however, does not affect the decision's validity (s 27A).

[9.230] What appeals can be heard?

The AAT is not always the first avenue of review of an administrative decision. In some cases, the AAT cannot review a decision until there has been an internal review of the primary decision. In other cases, review by the AAT is only available after intermediate review by a specialist tribunal. The AAT's jurisdiction is constantly changing. An up-to-date list as at 30 June of each year is given in its Annual Report.

A person can find out whether the AAT can hear a particular case by contacting the local registry of the AAT in their capital city. In NSW details are located at the AAT website by following the 'Contact Us' links at www.aat.gov.au.

[9.240] Right to reasons for a decision

Under s 28 of the *Administrative Appeals Tribunal Act*, if a decision is reviewable by the AAT, the decision-maker must give reasons if asked to do so by an affected person, whether the person is considering seeking review or not (see [9.50]). The person should request the reasons in writing within 28 days of being notified of the decision.

In addition, the *FOI Act* gives any person the right to access copies of documents (except exempt documents) that a Commonwealth government department, agency or office holds. A person may also ask the relevant body for documents or information about them and ask for it to be changed or annotated if it is incomplete, out of date, incorrect or misleading. A person may seek a review of the decision not to allow them access to a document or not to amend their personal record and may also request the reasons for a decision, provided it does not fall into an exempt category.

Exempt documents may include documents relating to national security, containing material obtained in confidence or subject to other types of exemptions set out in the *FOI Act*.

[9.250] Who may apply?

An application may be made by anyone whose interests are affected by a decision (*Administrative Appeals Tribunal Act*, s 27). Other people may join in and support or oppose the application (s 30) if they are affected in some way by the decision and can persuade the AAT that they should be a party to the proceedings.

[9.260] Lodging an appeal

An application to the Administrative Appeals Tribunal must be in writing, setting out the reasons for the application. Application forms are available from the AAT (s 29).

Fees

There is no application fee for applications to the Administrative Appeals Tribunal (AAT) for review of some kinds of decisions, however, for some decisions, a fee must be paid.

If a fee is payable, the full application fee is $932 if paid on or after 1 July 2019. In certain circumstances, the fee can be reduced to $100 or an exemption to the fee can be claimed (eg, people who have a health care or benefit card or a pensioner concession card issued by the Department of Human Services do not have to pay the fee). For more information on the Administrative Appeals Tribunal fees, see www.aat.gov.au/applying-for-a-review/fees.

Where the fee can be waived

The fee can be waived by the AAT in cases of financial hardship. A person seeking a waiver should complete a *request for fee reduction* form, available at the same Internet address as information on AAT fees set out above.

Refund for a favourable outcome

The application fee is usually refunded if the outcome is favourable to the applicant.

Taxation cases

In taxation cases, where the amount in dispute is less than $5,000, there is a non-refundable fee of $92 if paid on or after 1 July 2019. These matters are dealt with in the Taxation and Commercial Division, which is part of the Administrative Appeals Tribunal.

Time limits

The appeal must be lodged within 28 days of:

- receiving notification of the decision, if reasons were provided with it; or
- receiving a formal statement of reasons if they were requested under the Act.

The time may be extended by the AAT (s 29).

What happens to the original decision?

The original decision usually continues to operate after an appeal has been lodged. If speedy action to implement the decision is required, the agency will take this action without waiting for the outcome.

A person who wants to prevent action being taken on a decision they consider wrong can apply for an order to suspend its operation (s 41).

Dismissing an appeal

The AAT may dismiss an appeal it considers to be "frivolous or vexatious" (s 42B).

[9.270] Presenting a case

Alternative dispute resolution

Division 3 of Pt 4 of the *Act* allows for dispute resolution processes between the parties, to clarify the issues and, if possible, bring about a solution. They are an important part of the AAT's procedures and are used in most cases.

Many cases are resolved at this stage without the need for a hearing. If agreement is reached, the AAT may make a decision in accordance with the terms of the agreement.

Matters can also be referred for mediation, if the parties agree.

If the case is not resolved

If a case is not resolved at this stage it goes to a hearing, unless the AAT considers that it can be decided on the basis of documents alone, and the parties agree to this.

Hearings

Hearings are usually fairly formal, and lawyers or other trained advocates may appear for the parties (most applicants in social security cases do not have legal or other representation).

The AAT does not rely solely on oral argument, but will also receive statements of agreed facts and written submissions before or during the case. It is not bound by the rules of evidence, and may inform itself in whatever way it considers appropriate.

Powers to obtain information

The AAT has wide powers to call for government documents (ss 37, 38) and require persons to answer questions. Under ss 36–36D, it can do this under some circumstances even if the Attorney-General has decided that a person cannot receive certain information because:

- it affects national security or deals with Cabinet deliberations (in this case the AAT cannot disclose the information obtained to anyone else);
- it falls within the area of public interest immunity (see Public interest immunity at [9.50]).

Public or private hearings?

Hearings are normally public, although the AAT has a discretion to close off all or part of a hearing (s 35).

[9.280] What the AAT may do

The AAT may review a decision on its merits, which means it has the same authority over a matter as the original decision-maker (s 43). Unless its powers are limited by the legislation that allows it to hear an appeal, it may:

- affirm the decision under review;
- vary the decision; or
- set aside the decision and either:
  - make a new decision; or
  - return the matter to the decision-maker for reconsideration in accordance with its directions or recommendations.

The AAT must give its decision in writing, and give reasons for it.

Costs

Usually each side pays its own costs. The AAT cannot order costs except in Security Division matters or in other matters set out in specific statutes.

Legal aid

It may be possible to get legal aid for an appeal to the AAT. Legal Aid NSW can advise on eligibility (see Chapter 4, Assistance With Legal Problems). The Act also allows people appealing to the AAT to apply to the federal Attorney-General for legal aid (s 69). The Attorney-General must consider:

- whether refusal would involve hardship for the applicant; and
- whether granting legal aid is "reasonable in all the circumstances".

There may be conditions attached to any grant.

[9.290] Appeal

It is possible to appeal on questions of law from the AAT to the Federal Court (s 44). With some exceptions, the Federal Court may transfer appeals to the Federal Circuit Court. An appeal to the Federal Court does not stop a decision from taking effect unless the court orders otherwise (s 44A).

A party who appeals from the AAT to the court and who would not be liable for the government's costs in the AAT may be liable to pay its costs in the court.

The AAT may also itself refer a question of law to the Federal Court (s 45).

[9.295] The Service Charter and complaints about the AAT

The Service Charter sets out the standards of service that people can expect when they deal with the AAT. The Charter also includes information on how to make a complaint about the AAT and its complaint-handling procedures.

See www.aat.gov.au/about-the-aat/our-commitment-to-you/service-charter..

The NSW Civil and Administrative Tribunal (NCAT) – reviewing decisions made by the NSW Government

[9.300] The NSW Civil and Administrative Tribunal (NCAT) was established on 1 January 2014 by the *Civil and Administrative Tribunal Act* as "a super tribunal" which consolidated the work of 22 NSW tribunals into a new, one stop shop, for specialist tribunal services. It replaced the Administrative Decisions Tribunal in NSW.

NCAT undertakes a merit review of some government decisions (see [9.225]). NCAT aims to provide tribunal services that are quick, accessible, economical and effective.

NCAT has four divisions:

- Administrative and Equal Opportunity;
- Consumer and Commercial;
- Guardianship; and
- Occupational.

It deals with a broad and diverse range of matters from disputes about residential tenancy and building works, to guardianship and administrative review of government decisions.

Matters previously heard in the Administrative Decisions Tribunal (ADT) are mainly heard in the Administrative and Equal Opportunity Division of NCAT.

[9.305] Divisions of the NCAT

Administrative and Equal Opportunity Division

The work of the Administrative and Equal Opportunity Division within NCAT includes the review of administrative decisions made by NSW Government agencies and resolution of discrimination matters. This Division takes up some of the work of the former Administrative Decisions Tribunal.

Review of administrative decisions made by NSW Government agencies

Such decisions include decisions about access to information held by government; use of, and access to, personal information held by government; firearm licences; guardianship and financial management; and review of administrative

decisions made in the community services sector and various State taxation decisions.

Resolution of discrimination matters

The Division is also responsible for providing services to resolve complaints referred to it by the President of the Anti-Discrimination Board. These complaints are about alleged breaches of the *Anti-Discrimination Act 1977* (NSW). They relate to discrimination, harassment, victimisation and vilification.

Other functions include deciding whether to give permission for a complaint to go ahead after it has been declined by the President of the Anti-Discrimination Board, deciding whether to register a conciliation agreement made at the Anti-Discrimination Board so it can be enforced, and reviewing a decision of the President of the Anti-Discrimination Board relating to an application for exemption from the *Anti-Discrimination Act 1977*.

Consumer and Commercial Division

The Consumer and Commercial Division of NCAT resolves a wide range of everyday disputes such as tenancy disputes and other issues relating to residential property, and disputes about the supply of goods and services. For example:

- agent commissions and fees;
- agricultural tenancy;
- boarding houses;
- consumer claims;
- conveyancing costs;
- dividing fences;
- holiday parks (long-term casual occupancy);
- home building;
- motor vehicles;
- pawnbrokers and second-hand dealers;
- residential communities;
- retail leases;
- retirement villages;
- social housing;
- strata and community schemes;
- tenancy;
- travel compensation fund appeals.

Guardianship Division

The Guardianship Division is a specialist disability division within NCAT. The Division conducts hearings to determine applications about adults with a decision-making disability who are incapable of making their own decisions and who may require a legally appointed substitute decision-maker.

Applications may be made to the Guardianship Division to:

- make guardianship orders to appoint a private guardian (family member or friend) and/or the NSW Public Guardian;
- make financial management orders to appoint a private financial manager and/or the NSW Trustee and Guardian;
- provide consent for treatment by a doctor or dentist;
- review enduring powers of attorney;
- review an enduring guardianship appointment;
- approve a clinical trial so that people with decision-making disabilities can take part.

The Guardianship Division of NCAT considers applications about people who are in NSW or who have property or other financial assets in NSW.

The *Guardianship Act 1987* (NSW) sets out the limits of its responsibilities and functions and the principles to be applied when making decisions.

Occupational Division

Licensing – reviews of administrative decisions

NCAT can review decisions by government agencies about licences for drivers and operators of taxis, buses, hire cars and tow trucks; security guards; builders; real estate agents; motor dealers and repairers; pawnbrokers and second hand dealers; stock and station agents; business agents; travel agents; valuers and licensed conveyancers.

When making a decision, the government department or agency should include a letter telling the applicant of their right to have the decision reviewed by NCAT. If a person is unsure whether a matter can be dealt with by NCAT, they should seek legal advice, or check the legislation that applies to their situation.

Professional Discipline

A range of occupations, including professions, are governed by a council, board, panel or authority. These appointed bodies aim to protect the public by:

- investigating complaints;
- initiating proceedings against members for unsatisfactory professional conduct;
- assessing registration applications.

If you are dissatisfied with the work, service or advice you have received from an individual, for

example a lawyer, you can contact the appointed body responsible for investigating complaints which, in the case of a lawyer, is the Office of the Legal Services Commissioner (see also [9.590]).

If the complaint is of a serious nature or the individual does not abide by the decision of the investigating body, an application can be made by the appointed body to NCAT to conduct further disciplinary proceedings or to enforce their decision.

If the individual, against whom the complaint was made, does not agree with the disciplinary decision, an application can be made to NCAT to review the decision.

NCAT can also deal with decisions made by an appointed body including registration and licensing.

[9.310] What the NCAT can review

Decisions made by NSW government officers can only be reviewed by NCAT where the legislation under which the decision was made provides for it. Such decisions include:

- *Government Information (Public Access) Act 2009* (NSW) decisions;
- various types of licensing decisions;
- certain state taxation decisions;
- administrative decisions about adoption, community and disability services (see box below).

It is usually necessary to seek internal review by the department or agency before applying to NCAT (see [9.330]).

NCAT cannot review decisions of local councils about development or building applications, nor can it review land valuations made by the Valuer General or the Chief Commissioner of State Revenue. Review of these decisions is the responsibility of the Land and Environment Court.

Original decisions

NCAT makes original decisions in some types of cases, including:

- anti-discrimination cases;
- professional disciplinary cases;
- retail tenancy cases.

[9.320] Rights contained in the legislation

The *Administrative Decisions Review Act 1997* (NSW) gives a person the right to seek:

- internal review of decisions reviewable by NCAT (with some exceptions); and
- reasons for decisions reviewable by NCAT.

If a decision can be reviewed by NCAT, the decision-maker must inform any interested person of their right to seek review at the time they inform them of the decision.

The right to be given reasons

Under s 49 of the *Administrative Decisions Review Act 1997* if a decision is reviewable by NCAT the decision-maker must give reasons, if asked to do so by an affected person, whether the person is considering seeking review or not (see [9.50]). The person should request the reasons in writing within 28 days of being notified of the decision.

Who may seek review?

The *Civil and Administrative Tribunal Act* leaves it to the legislation providing a right to seek review to specify who is entitled to seek it. For example:

- the *Tow Truck Industry Act 1998* (NSW) limits the right to seek review of a licensing decision to the applicant for, or holder of, the licence or driver's certificate.

Appeals NCAT may hear

The legislation under which the original decision was made empowers NCAT to review:

- various licensing decisions, for example:
  - licensing of security guards under the *Security Industry Act 1997* (NSW);
  - licensing of tow truck drivers under the *Tow Truck Industry Act 1998*;
  - firearms licensing under the *Firearms Act 1996* (NSW);
- decisions concerning an authority to drive a bus or taxi under the *Passenger Transport Act 1990* (NSW);
- decisions made by the Minister for Community Services to terminate custody of a ward or to refuse to terminate guardianship of a ward;
- refusals to provide certain information or assistance under adoption legislation;

- taxation decisions made by the Chief Commissioner of State Revenue in respect of assessments and certain other decisions (concerning, eg, stamp duty, payroll tax and land tax, other than land value matters) after the taxpayer has first made an objection to the Chief Commissioner.

[9.330] Internal review

Internal review occurs when a decision is re-examined by someone (not the original decision-maker) in the government department or agency.

Internal review is generally a pre-condition to NCAT review. That is, it is usually necessary for a person to seek internal review of a decision before they are entitled to apply to NCAT. There are some exceptions.

Formal requirements

Applications for internal review must be in writing and addressed to the person who made the original decision (see *Administrative Decisions Review Act 1997*, s 53). Material that supports the application for review should also be sent.

Time limits

The application must be made:

- within 28 days of the decision being made; or
- if reasons have been requested, within 28 days of reasons being provided.

Result of the review

The internal reviewer may decide to:

- affirm the decision;
- vary it; or
- set it aside and substitute a new decision.

Notification requirements

The decision-maker must notify the applicant of:

- the internal review decision;
- the reasons for it;
- the applicant's right to seek review by NCAT.

Time limits

Internal reviews must be completed within 21 days (with some exceptions) unless the decision-maker and applicant agree to a longer period.

Internal review will be regarded as being completed after this time, so that the applicant can proceed to NCAT.

[9.340] Applications to NCAT

Formal requirements

NCAT deals with a broad and diverse range of matters about residential tenancy and building works to guardianship and administrative review of government decisions.

In most Divisions of NCAT, to start proceedings, you will need to complete and lodge an application form. The relevant application form can be located at https://www.ncat.nsw.gov.au/Pages/apply_to_ncat/ncat_common_forms.aspx.

Time limits

Applications must be lodged:

- within the time period set out in the specific legislation governing the particular type of decision; or
- within 28 days of the applicant becoming entitled to appeal under that specific legislation in other cases.

NCAT can extend the time period if there is a reasonable explanation for the delay.

Fees

Fees are payable, but can be waived in cases of undue hardship; for example, if the applicant receives a pension. The fee varies depending on the type of matter. A full list of fees is listed on the NCAT website at https://www.ncat.nsw.gov.au/Pages/apply_to_ncat/fees_and_charges/fees_and_charges.aspx.

There is no fee for applications made under, among other legislation:

- the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW);
- the *Anti-Discrimination Act 1977*.

The NCAT's rules

Rules have been made which regulate some aspects of NCAT's operations. These rules are contained in the *Civil and Administrative Tribunal Rules 2014* (NSW) (*NCAT Rules*).

Procedure

Once an application is filed, the government party is notified and then has 28 days to lodge with NCAT a copy of all relevant documents, including a statement of reasons for the decision as required under the tribunal practice direction issues in

accordance with the *Civil and Administrative Tribunal Act*.

Hearings

The next step is a hearing, except in *Government Information (Public Access) Act 2009* (NSW) matters where the parties are invited to attend a planning meeting.

Hearings are usually conducted by a single judicial member of NCAT.

Legal representation

Many applicants are not represented at the hearing by a lawyer. Government agencies are usually legally represented.

Effect on the disputed decision

An application to NCAT for review of a decision does not affect the operation of the decision or the taking of action to implement it.

If a person wants to prevent any action being taken on a decision that they consider wrong, they can apply for an order suspending the operation of the decision (s 43).

What NCAT can do

NCAT can review a decision on its merits. Its job is to decide what the correct and preferable decision is having regard to material then before it, including all relevant factual material and applicable law (s 62). NCAT may decide to:

- affirm the decision under review;
- vary it; or
- set it aside and either make a decision in substitution or return the matter to the decision-maker for reconsideration in accordance with any directions or recommendations of NCAT.

Costs

NCAT can only award costs if there are special circumstances warranting it (s 60). This means that usually each side pays its own costs.

Reasons

NCAT must give reasons, either written or oral, for its decisions. If it gives only oral reasons, any party to the proceedings can ask for written reasons, as long as they do so within 28 days of receiving a copy of the decision (s 62).

[9.350] Appeals

A person dissatisfied with the first decision of NCAT may be able to appeal on a question of law to an appeal panel of NCAT (unless the particular legislation conferring jurisdiction on NCAT says otherwise). With the leave of the appeal panel, the appeal may extend to a review of the merits of the appealed decision (s 80).

An appeal panel must consist of three members of specified status (s 27).

Fees

There is a fee for appeals. See NCAT's website for up-to-date information about fees.

[9.360] Appeal to the Supreme Court

It is possible to appeal on questions of law from the Appeal Panel of NCAT to the Supreme Court (s 83).

The Supreme Court also has the power to carry out judicial review of NCAT decisions.

Judicial review by the courts of decisions by the government

[9.370] Judicial review is different from administrative appeal or a complaint to the Ombudsman. Put simply, a person seeking to obtain judicial review of a decision or action seeks an order from a court that:

- a decision be set aside;
- a proceeding be brought to a halt; or
- certain action be taken by an administrative official.

The court will not normally attempt to direct the government body or official on what course of action should be followed in future. Rather, the matter is usually returned to the decision-maker to be dealt with according to the principles laid down by the court.

[9.380] How the court decides

In a judicial review, the court looks at the methods a government decision-maker used in coming to a decision, and can determine:

- whether those methods were consistent with natural justice or procedural fairness;
- whether the factors taken into account were correct under the legislation;
- whether the decision-maker acted within the powers given in the legislation.

The courts do not review the actual decision on its merits. All they do is decide whether or not a decision was properly made.

Even if the court sets aside the action or decision on these grounds the person may not get the decision they want – the agency may follow the correct procedures to arrive at the same decision.

The role of the courts

The courts have traditionally seen their role as supervising the decision-making powers of government agencies and ensuring that they stay within proper boundaries. The grounds on which courts will force a government agency to stop a process or reverse a decision and look again at a matter have been developed by English and Australian courts over hundreds of years.

[9.390] Federal or state government

State government decisions

Action to obtain judicial review of a state government decision must usually be taken in the Supreme Court. Some matters can be dealt with by the Land and Environment Court.

Federal government decisions

Review under the Administrative Decisions (Judicial Review) Act

The Federal Court, and the Federal Circuit Court with some exceptions, can review federal government decisions under the *Administrative Decisions (Judicial Review) Act* if they can be categorised as decisions of an administrative nature made under an enactment (ie, an Act, regulation or other instrument). This includes most decisions made by federal decision-makers.

Review on common law grounds

Decisions that are not reviewable under the *Administrative Decisions (Judicial Review) Act* may be reviewable by the Federal Court or the High Court on traditional common law grounds.

Migration matters

The *Migration Act 1958* (Cth) has its own self-contained code for review that operates to the exclusion of the *Administrative Decisions (Judicial Review) Act*, but is similar to it.

[9.400] Common law principles

The traditional common law principles of judicial review apply in both the NSW Supreme Court and the Federal Court.

The grounds on which the Federal Court and Federal Circuit Court may order judicial review under the *Administrative Decisions (Judicial Review) Act* are very similar to the common law grounds, and are discussed in [9.440].

[9.410] Standing to sue

Not everyone who feels the government has behaved wrongly is entitled to bring a case. The courts require that a person has *standing to sue* – that is, a special interest in the subject matter of the action. It need not be a financial or property interest, but it must distinguish that person from members of the public generally.

For example, a person who loses a work licence, such as for taxi driving, has standing to sue over the matter.

Where the situation is unclear

A person denied a benefit or deprived of a licence, or who has been in some other way the direct target of government action, clearly has standing to sue. Where the action is more general, not operating specifically against an individual, judicial review is more difficult to obtain.

Action by groups

Resident action groups and environment protection groups, for example, may not be able to establish a sufficiently direct interest to have the necessary standing to bring an action. Some, however, have been seen to have standing – it may be possible to establish this if, among other things, the group has

been involved in the decision-making process, for example by making submissions or objections.

Standing provisions in legislation

Some environmental and other statutes have their own specific standing provisions.

Attorney-General's fiat

The representatives of a group may ask the relevant Attorney-General to initiate proceedings on their behalf. This is called an *application for a fiat*. Where it is granted, the Attorney-General sues on behalf of the person making the request.

Such applications are not always granted. Among other things, political considerations may come into the decision (the action objected to will have been taken by the government of which the Attorney-General is a member).

If the application is granted, the organisation or individual concerned must pay for the action, but the Attorney-General authorises all steps in the litigation, such as signing documents or agreeing to withdraw the action. This means that the Attorney-General has ultimate control of the case, which will probably result in delays while advice is sought from departmental officers.

[9.420] Is there a basis for review?

Did the agency follow required procedures?

Anyone who wishes to challenge an administrative decision should look at the Act permitting that decision and ask:

- what official or agency was required to take the action? Did it take the action? For example, are there any letters or orders that should have been signed and were not?
- was the agency required to give the person a hearing before reaching its conclusion? Did it do so?
- was the agency required to place newspaper advertisements or give some other type of notice to, for example, the local community before taking action? Did it do so?
- were any time limits built into the process; for example, a period of public notice, a period for receipt of objections, or a period for appeal against the decision before action could be taken? Were these complied with?
- was the agency required to consult any outside bodies or individuals before reaching its decision? Did it do so?

If there has been any irregularity in following the terms of the relevant Act, there may be a basis for obtaining judicial review of the decision.

Is the mistake merely technical?

The courts sometimes treat a breach of statutory requirements as merely technical and not having the effect of making the administrative act or decision invalid, though the decision-maker will sometimes be required to correct the procedure in the future (*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 153 ALR 490).

The difficulty is in predicting whether a mistake will be regarded as merely technical or so serious as to make the act or decision invalid. This is a matter of legal judgment depending on factors such as statutory interpretation and regulatory efficiency and fairness.

Was procedural fairness denied?

The courts insist on compliance with minimal requirements of *procedural fairness*, a term now used in preference to *natural justice*.

There is an implied requirement that government agencies will comply with procedural fairness if a decision affects:

- a right;
- an interest;
- a legitimate expectation.

What is an interest?

An interest may be financial, or involve a person's livelihood, status or reputation, such as a decision to dismiss the person from an official position.

What is a legitimate expectation?

A legitimate expectation is an expectation based on reasonable grounds that some interest or benefit will not be denied or interfered with, or that some procedure will be followed.

The expectation can be based on an explicit undertaking from the decision-maker as to a procedure to be followed, or may arise simply from the nature of the decision being made. The courts have recently raised some doubts about the continued existence of legitimate expectations as a

basis for requiring procedural fairness. It is likely, however, that any legitimate expectation would qualify as a right or expectation in any case.

For example …

If a person must have a licence to carry on an occupation and the relevant body grants one, the person has a legitimate expectation that the licence will not be cancelled, or renewal refused, without explanation. Before a licence is cancelled, a licensee should be advised of the case they have to meet and given a chance to make representations to the decision-maker.

Exceptions

Not all administrative decisions are subject to the requirements of procedural fairness. Decisions that are not necessarily subject to such requirements include those that:

- affect a lot of people equally, such as a decision to impose rates;
- involve significant policy or public interest considerations, for example decisions made by Cabinet on sensitive political questions.

In addition, procedural fairness is not required if the legislation specifically excludes it, or provides a procedure that must be followed.

A denial of procedural fairness

Kioa v Minister for Immigration and Ethnic Affairs (1985) 159 CLR 550 concerned a Tongan couple who had overstayed their temporary entry permits to Australia. Their application for a renewal of the permits was refused, and a deportation order was made. The High Court held that the deportation order should be set aside because the couple had been denied procedural fairness when the department acted on damaging allegations made about Mr Kioa without allowing him to comment or rebut them. Clearly the couple had no right to remain in Australia, but their interests, in the broadest sense, were affected by the decision to deport them and they were accordingly entitled to procedural fairness.

Was there a fair hearing?

If the situation is one where procedural fairness is required, the next step is to ask what procedures *should* have been followed. The Act covering the decision-making agency often lays down the procedure. It may answer such questions as:

- how much notice of a hearing should the decision-maker have given?
- must there be an opportunity for oral representations and, if so, can the person affected be represented by a lawyer?
- if the decision is to be made by a tribunal or board, who should be on it?
- are the proceedings governed by strict rules about the presentation of evidence?
- is the person affected entitled to question witnesses appearing against them?

Ultimately, everything turns on whether a court considers a particular procedure to have been fair in the circumstances, and whether, at the very least, the person affected had the chance to present their side of the story.

There are no absolute rules in this area. A finding in favour of the complainant is most common in cases involving a failure to give:

- adequate notice of a hearing;
- a sufficient opportunity to present their case;
- a sufficient opportunity to answer the case against them.

Was the decision biased?

Procedural fairness requires that the decision be made by an impartial and unbiased decision-maker. Usually, little is said about this in the relevant Act.

The courts have adopted the strict position that a person cannot sit in judgment where their financial interests may be affected by the outcome of the case. So, for example, a member of a planning tribunal could not review a planning application from a company in which they hold shares.

The financial interest aspect is clear-cut. But there are obviously other situations where a person may be biased. For example:

- they may be a relative of one of the parties;
- they may have had a professional association with one of the parties;
- they may in the past have expressed hostility to views being put by one of the parties.

The general standard used by the courts is to ask whether a reasonable person would suspect that the decision was not free from bias; that is, that the decision-maker did not bring an open and impartial mind to the making of the decision.

Did the decision-maker go beyond their powers?

A court will intervene in an administrative decision if it can be shown that the decision-maker went beyond their statutory power in making it. An

administrative action of this kind is often called ultra vires – "beyond power" (or increasingly these days, a jurisdictional error – see below).

There are various grounds for an ultra vires challenge. These are discussed below.

Relevant and irrelevant considerations

The relevant Act may list the matters that the decision-maker must take into account. If it does not, the court will determine them. If it can be shown that the decision-maker ignored relevant factors, or took irrelevant factors into account, the court can intervene.

For example …

In deciding whether to grant a single parenting payment, Centrelink must consider whether the applicant is a member of a couple, whether they have a dependent child and various other matters. If the child's age (a relevant matter) was ignored, or the applicant's gender (an irrelevant matter) was taken into account, and the payment denied on either basis, the decision would be overturned by the court.

Improper purposes

A decision or action that is apparently proper under the law may be designed to achieve a purpose beyond the agency's responsibilities.

For example …

An Act may permit a local council to close off a street for roadworks. If it was shown that the real object of a particular road closure was not repairs but to create a permanent traffic-free precinct, this would be considered an improper purpose under that legislation.

Unreasonableness

A court will review and set aside a decision if it considers that it was so unreasonable that no reasonable body would have reached it.

The courts must be careful in exercising this power of review. It is not their role to substitute their view of what is reasonable for that of the decision-maker (who may be a minister, a public servant or an elected local councillor). That would amount to a review on the merits, which is beyond the courts' jurisdiction.

Improper delegation

Improper delegation occurs when a decision-maker allows another body to make decisions for it without a proper legal or procedural basis.

For example …

If the secretary of the Department of Community Services left a matter for which they were responsible to a social work agency to decide, and simply signed the letters containing the decision, that would be improper delegation. If the secretary had laid down guidelines and treated the agency's views as a recommendation only, there would be no grounds for judicial review.

Uncertainty

A decision may be overturned because it is so vague or uncertain as to be meaningless. This ground rarely applies.

Lack of evidence

If there is no evidence upon which the decision could be based, it cannot stand.

Divesting

Divesting happens where a decision-maker simply gives away their authority in a matter.

For example …

If the chief executive officer of Customs was to declare that in future all determinations about prohibited imports would be made by a drug foundation, this would be an improper divesting of responsibility.

Dictation

It is quite permissible (and politically sensible) for bodies to consider government policy in reaching a decision, as long as they only consider it as one factor among others in making the decision.

The reverse of this is dictation, where the body responsible for making a decision allows itself to be told what to do by some other body.

For example …

If electoral commissioners carried out a function given to them in an Act by merely following a ministerial directive, this would involve improper dictation.

Inflexible application of policy

A decision-making body required to consider each case on its merits must not simply apply rigid policy guidelines.

This principle cannot be taken too far. Clearly, rules and policies are necessary to ensure consistency in decision-making. However, they should not

interfere with a proper consideration of individual circumstances – a balance is required.

Going beyond jurisdiction

The authority or power of bodies like courts, tribunals and registration authorities is called their jurisdiction. Often they make decisions against a particular person; a registration body might deregister a practitioner, a tribunal might deny an application for a planning permit or a Local Court may refuse to hear a civil action.

The question of whether a tribunal or other body has jurisdiction in a matter is important, because administrative tribunals usually have authority in a very narrow area. In contrast, courts usually have a large jurisdiction and generally do not have much difficulty with this question, although they must also ask it.

Someone who is upset by a tribunal's action should ask whether the tribunal had the right to look at the matter in the first place. The conditions to be satisfied will be set out in the governing legislation. If the tribunal or body did not have such a right, it is called a jurisdictional error.

Even if a tribunal does have jurisdiction, it may still make an error in the course of determining a matter. Some errors in the course of determining a matter involve the tribunal exceeding its jurisdiction and are also called jurisdictional errors.

Courts have more scope for making errors. The grounds for arguing that a court has exceeded its jurisdiction are narrower than for tribunals.

Error of law "on the face of the record"

Even if a tribunal or court has not exceeded its jurisdiction, there may be a less serious misunderstanding of the legal issues that is apparent in the record of proceedings. In this case, it is possible to strike down the decision on the basis that there is an error of law "on the face of the record". The decision can be challenged even if the error of law is fairly insignificant.

[9.430] Remedies

After it has been shown that one or more of the grounds for judicial review is satisfied, the next task is to indicate what kind of solution is preferred. The remedies available are limited in their effectiveness, since the courts are concerned (in theory at least) with the legality of the process rather than whether the decision under challenge was the correct one.

Where a remedy may not be granted

All the remedies are discretionary, which means that even if the ground for review is established, the court may still decide not to grant a remedy after taking into account factors such as:

- delay in seeking the remedy;
- the usefulness or otherwise of granting it;
- any hardship that granting it could cause to others.

What remedies are available?

The five remedies most often sought in common law judicial review proceedings are:

- declaration;
- injunction;
- mandamus;
- prohibition;
- certiorari.

The first two – declaration and injunction – can be obtained in any successful judicial review. The others are the main remedies in a collection of remedies that lawyers call the *prerogative writs* or, in the Supreme Court, *prerogative orders*.

Declaration

A declaration (sometimes called a *declaratory order* or *declaration of right*) is a formal statement from the court that a decision, act or procedure is unlawful. It is often sufficient to obtain a declaration. The agency will usually:

- reverse its decision;
- give a new hearing; or
- do whatever else the court requires or suggests is lawful.

Although government bodies usually comply, a declaration is not legally binding. It is not contempt of court to defy a declaration.

Injunction

An injunction is a court order to:

- take a particular action (a mandatory injunction); or
- (more often) cease an unlawful action (a prohibitory injunction).

For example, a court could issue an injunction to stop someone using land for a purpose prohibited by planning laws.

The courts do not often make mandatory injunctions because they involve the court in continual supervision of someone's conduct.

A court will only issue an injunction if it is satisfied that the body that has acted unlawfully may continue to do so. This particularly applies if the legislation imposes a penalty.

Mandamus

Mandamus is an order requiring a public body or official to perform a duty it has failed to perform – for example, to consider a licence application that it is required to consider under legislation. The body or tribunal must be shown to have failed to carry out a duty owed to the applicant; in most cases this means no more than a duty to consider the application, not a duty to grant it.

Prohibition

Prohibition is an order to a lower court, tribunal or similar decision-making body requiring it to cease proceedings. This order should be sought where a body has failed to exercise its jurisdiction properly or where it has failed to provide procedural fairness and its proceedings are continuing (see also Injunction at [9.430]).

Certiorari

If a decision has been made but the decision-maker failed to exercise jurisdiction properly or to provide procedural fairness, the appropriate remedy is an order for certiorari to quash the decision.

[9.440] Judicial review in the Federal and Federal Circuit Courts

Besides reviewing the decisions of federal decision-makers on the common law grounds (see [9.400]), the Federal Court may review certain decisions under the *Administrative Decisions (Judicial Review) Act*.

The Federal Circuit Court may also review decisions under the Act, except matters arising under specified citizenship and immigration legislation. This court has lower fees and deals with less complex matters.

Under the Act, it is not necessary to apply for injunctions, certiorari, mandamus or prohibition. The application is simply an "application for an order of review".

What can be reviewed

Applications for review can be made for:

- a decision (including a report or recommendation) (ss 3(3), 5);
- conduct for the purpose of making a decision (s 6);
- failure to make a decision (s 7).

Reviewable decisions

To be reviewable under the Act, a decision must:

- be administrative (ie, not a decision that is more appropriately classified as judicial or legislative); and
- be made under a federal law.

Exempt decisions

Schedule 1 sets out decisions that are exempt from review. They relate to:

- the federal industrial relations system;
- the security intelligence system;
- certain aspects of the taxation assessment and appeals system;
- foreign investment;
- decisions under the *Defence Force Discipline Act 1982* (Cth);
- a number of other minor areas.

The list of exemptions changes from time to time, and should be checked to ensure that a decision is reviewable under the Act.

Decisions of the Governor-General

Decisions of the Governor-General are not reviewable under the *Administrative Decisions (Judicial Review) Act*.

In the criminal justice system

Process decisions in the criminal justice system are exempt from review. Also, someone being prosecuted for an offence cannot get a review while the case is proceeding (s 9A).

Is common law review available?

If a particular decision is included in Sch 1, and therefore is not reviewable under the Act, it may be reviewable using the common law grounds outlined above (see [9.430]).

Who can apply?

Under the Act, anyone who is aggrieved by a decision – that is, anyone whose interests are adversely affected by it – can make an application to the court (s 3(4)).

The person against whom the decision was made will always be aggrieved, but the court has also heard applications from other parties who were able to show that their interests were adversely affected in a real and demonstrable way.

Time limits

An application must be placed with the court registrar:

- within 28 days of receiving the decision; or
- if a statement of reasons has been requested under the Act, within 28 days of receiving the reasons (s 11(3)).

The court has the discretion to extend this time period.

Obtaining reasons

The procedure for obtaining reasons, where they are not given at the time of the decision, is to make a written application to the decision-maker requiring a statement in writing setting out the reasons. As set out in s 13, the decision-maker has 28 days to furnish a statement of reasons, including the findings on material questions of fact, referring to evidence and other material on which the findings were based, and giving the reasons for the decision.

Grounds for review

The grounds on which a decision may be reviewed are similar to those under common law (see [9.430]), with some qualifications.

Error of law

The "error of law" ground is wider than the common law ground. It does not matter that the error does not appear on the face of the record.

No evidence

To establish that a decision should be reviewed on the ground of "no evidence", it is necessary to show that the person who made it either:

- was required by law to reach that decision only if a particular matter was established, and there was no evidence from which they could reasonably be satisfied that it was established; or
- based the decision on a particular fact, and that fact did not exist (s 5(3)).

Otherwise contrary to law

The "otherwise contrary to law" ground is a catch-all to allow the court to make a favourable ruling in cases not falling into the main categories. If a complaint does not fit into any of the conventional grounds, it may still fit into this one.

Review of conduct

"Conduct engaged in for the purpose of making a decision" may be reviewed on grounds similar to those applicable to the decision itself under s 6 of the *Act*, which covers grievances with procedures either before they commence or while they are taking place.

Review of failure to make a decision

If a decision-maker has a duty to make a decision and fails to do so, the failure to make the decision may be reviewed. Section 7 of the *Act* deals with two variations of this situation.

Where there is no time limit

Where no time limit is imposed on the decision-maker by the law, a person can seek judicial review on the ground of unreasonable delay if nothing is done after a "reasonable" time.

What is unreasonable delay will, of course, be a matter of argument before the court.

Where there is a time limit

Where a time limit for making the decision is specified, the ground is failure to make the decision within that time.

What orders can the court make?

The Federal Court can make an order of review that:

- sets aside a decision;
- refers the matter back to the decision-maker;
- directs the decision-maker to decide the matter or act in other ways;
- restrains the decision-maker from acting in certain ways;
- makes a statement declaring the parties' rights;
- directs the parties to do any act or thing, or to refrain from doing act or thing, that the Court considers necessary to resolve the matter (s 16).

What it can cost

The losing party's costs

The basic rule is that the losing party pays both their own legal costs and those of the other side. This is a significant deterrent to anyone thinking of judicial review.

The government's costs

The High Court, the Federal Court and the state Supreme Court are major courts in which the government frequently briefs two barristers (a senior and a junior counsel) to argue its case – with a solicitor, the cost of the dispute can run to thousands of dollars per day, especially since the person bringing the case is likely to want to brief lawyers of the same standing as the government's counsel.

The winning party's costs

Even the winner may have some costs that will not be met by an order in their favour, these costs could be as much as 20% or 30% of the overall cost of litigation.

Legal aid

Legal aid is available in some circumstances, depending on a means and merit test. Additional restrictions apply to legal aid for immigration cases, which make it very difficult to obtain.

Is it worth it?

People not eligible for legal aid may be deterred from going to court because of the cost, even if they have a strong case.

COMPLAINTS ABOUT POLICE

NSW police

[9.450] Complaints about the conduct of NSW police officers are covered by the *Police Act 1990* (NSW), which defines *conduct* as any action or inaction.

[9.460] What may be complained about?

A police officer's conduct may be alleged to be:

- corrupt;
- illegal;
- unreasonable;
- unjust;
- oppressive;
- improperly discriminatory.

Complaints may also be made about:

- criminal or disciplinary offences committed by a police officer;
- conduct in accordance with a law or established practice that is unreasonable, improperly discriminatory, oppressive or unjust;
- conduct based on improper motives, or irrelevant considerations;
- conduct based on a mistake of law or fact;
- conduct for which reasons should have been given but were not.

[9.470] Where can a complaint be made?

Complaints about NSW police can be made to:

- the Commissioner of Police;
- any police officer;
- the Law Enforcement Conduct Commission; or
- a Local Court.

A complaint may also be made through a member of parliament.

Complaints made to a police officer

Police officers who receive complaints must refer them to the Commissioner of Police, who must forward a copy of all serious misconduct and serious maladministration complaints to the Law Enforcement Conduct Commission.

The Commissioner of Police may decide to have the complaint investigated or may be directed to do so by the Law Enforcement Conduct Commission.

[9.480] Types of complaints

Notifiable complaints

The Law Enforcement Conduct Commission, after consultation with the Commissioner of Police,

has agreed that the following types of complaints must be notified to the Law Enforcement Conduct Commission:

- criminal conduct;
- corrupt conduct;
- failure by a police officer or administrative employee to report police officer misconduct in accordance with s 211F of the *Police Act 1990*;
- conduct which might warrant the following action under the *Police Act 1990*:
  - s 181D removal from the NSWPF; or
  - s 173 reviewable action;
- conduct of an administrative employee which might warrant the following action under the *Government Sector Employment Act 2013* (NSW):
  - termination of employment without giving the employee an opportunity to resign;
  - termination of employment after giving the employee an opportunity to resign;
  - impose a fine on the employee (which may be deducted from the remuneration payable to the employee);
  - reduce the remuneration payable to the employee; or
  - reduce the classification or grade of the employee;
- allegations against the Commissioner of Police or a Deputy Commissioner that are (or could be) officer misconduct;
- allegations of improper association;
- failure to report in writing to the relevant officer as nominated by the NSWPF policy, statements by a judicial officer, whether in a judgment or otherwise in court, critical of:
  - the conduct of a prosecution;
  - the adequacy of an investigation; or
  - the integrity of police witnesses;
- detrimental action or reprisal (including any possible payback complaint) against a police officer or other person making a protected disclosure or allegation about an officer;
- any unauthorised use, misuse or failure to comply with safe keeping of police firearms; or any unauthorised use of any other police appointments, namely Tasers, OC Spray, batons or handcuffs;
- any serious departure from the NSWPF standard operating procedures, guidelines or policies concerning vehicle pursuits;
- any serious failure to follow the NSWPF Critical Incident Investigation Guidelines without adequate explanation being provided as to why such guidelines were not followed;
- any failure to comply with policies and procedures in regards to Declarable Associations Policy, Conflicts of Interest Policy and Procedure and Secondary Employment Policy;
- any falsifying of official records including but not limited to COPS, motor vehicle diary and notebook/duty book entries for the purpose of fraud or obtaining benefit by deception;
- any incompetent or inadequate investigation falling significantly short of NSWPF guidelines;
- allegations of misconduct arising from the exercise of police powers under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), including search, arrest and detention powers;
- unauthorised release of confidential police information or unauthorised or improper disclosure of information;
- conduct which is or might be serious maladministration by an officer or the NSWPF;
- Letters of demand, Statements of Claim, originating process or other pleadings or particulars where the State of New South Wales, Commissioner of Police, or a police officer or administrative employee is named as a defendant or proposed defendant within the body of the document, and that alleges, expressly or impliedly, an act or omission capable of constituting serious misconduct on the part of any police officer, or administrative or temporary employee of the NSWPF.

Non-notifiable complaints

The agreement ensures that less serious complaints can be dealt with less formally and without the direct involvement of the Law Enforcement Conduct Commission. Police are still required to take appropriate action to deal with the matter. The Law Enforcement Conduct Commission does, however, audit police handling complaints about police officers and civilian employees.

[9.490] Making a complaint

Complaints should generally be in writing, setting out details of the incident and giving the names and addresses of anybody who may be able to give evidence about it, although in exceptional circumstances the Law Enforcement Conduct

Commission may agree to accept a complaint that is not in writing. Complaints can be made anonymously.

Getting advice

A person can telephone the Law Enforcement Conduct Commission to discuss whether they should make a complaint and get help in putting the complaint in writing.

The Law Enforcement Conduct Commission

The Law Enforcement Conduct Commission was established in 2017 as a permanent independent investigative commission to provide oversight of the NSW Police Force and NSW Crime Commission. The Law Enforcement Conduct Commission (LECC) replaced the Police Integrity Commission (PIC) and the Police Compliance Branch of the NSW Ombudsman with a single oversight body with two clearly defined functions: detecting and investigating serious misconduct and corruption, and overseeing complaint handling.

[9.500] The Law Enforcement Conduct Commission's role

The Law Enforcement Conduct Commission is completely independent of the NSW Police and NSW Crime Commission. The primary role of the Law Enforcement Conduct Commission is to detect, oversight, investigate and expose misconduct and maladministration within the NSW Police Force and the NSW Crime Commission.

The Law Enforcement Conduct Commission provides independent oversight and review (including, where appropriate, real time monitoring and review) of investigations by the NSW Police Force of misconduct matters concerning the conduct of its officers.

As a result of Law Enforcement Conduct Commission investigations or oversight, the Commission may:

- publish investigation reports;
- refer matters to the NSW Police Force or the NSW Crime Commission for action;
- request further investigation or review of a management action decision by the NSW Police Force or NSW Crime Commission;
- publish reports and/or make recommendations aimed at preventing further potential misconduct or maladministration.

Oversight of police complaint handling

The Law Enforcement Conduct Commission's Oversight Division monitors and reviews how police handle complaints about their officers. The LECC may monitor, in real time, the progress of serious or significant misconduct matters but usually considers the adequacy of the investigation once investigation reports are completed by the relevant law enforcement agency.

If the Law Enforcement Conduct Commission is not satisfied with the way the complaint has been investigated by the relevant agency or with the management action taken, the Commission advises the NSW Police Force of the concerns and the reason for these concerns, and may:

- request further information or advice about the reasons for a decision;
- conduct further inquiries in relation to the misconduct matter; and
- reconsider the findings made or the remedial action to be taken.

In response, the NSW Police Force must provide the information or advice requested, and must notify the Law Enforcement Conduct Commission of their decision in relation to a request for further inquiries or reconsideration of the findings or remedial action to be taken. In the event that the NSW Police Force does not decide to conduct further inquiries, reconsider findings and/or reconsider management action to be taken, they must provide reasons for their decision. If the Law Enforcement Conduct Commission is not satisfied with the decision, it may provide a report to the Minister or a special report to Parliament.

If the complaint concerns serious misconduct or maladministration, the LECC can decide to conduct its own investigation.

Investigation of NSW Police serious misconduct

The Integrity Division investigations team consists of two multi-disciplinary capabilities including investigations and intelligence.

Upon receipt by the Law Enforcement Conduct Commission of new allegations of misconduct, usually, but not always, in the form of a complaint, the Commission may choose to initiate an Investigation or a Preliminary Investigation or to make some further enquiries before any further decision is made. This may include contacting

the complainant (if one is identified), another person or another agency in order to seek further information and clarification.

The Law Enforcement Conduct Commission may hold hearings (examinations) as part of its investigation process. The decision to hold a hearing in private or public must have regard to the relevant considerations under the *Law Enforcement Conduct Commission Act 2016* (NSW) (*LECC Act*), particularly those factors set out in s 63(5). The Commission can summons persons to appear at hearings and compel witnesses to produce documents or answer questions.

[9.530] Charges against police officers

When NSW police or the Law Enforcement Conduct Commission find that a police officer has been involved in misconduct, appropriate management action may be taken. In serious cases, criminal charges may be laid and dealt with by the courts in the usual way.

Australian Federal Police

[9.540] A person can make a complaint about:
- individual federal police officers;
- Federal Police practices and procedures.

[9.550] Where can complaints be made?

Complaints can be made to either:
- the Federal Police through an AFP appointee or direct to the Commissioner; or
- directly to the Commonwealth Ombudsman – although the Ombudsman rarely investigates a complaint before the AFP has had an opportunity to do so first.

Complaints to police

Complaints made to the AFP are assessed and assigned a complaint category in accordance with s 40RK of the *AFP Act* and the Australian Federal Police Categories of Conduct Determination as agreed between the Ombudsman and the AFP Commissioner.

The AFP Categories of Conduct provides for four categories of conduct into which a complaint can be categorised. These are:
- Category 1 – This conduct involves minor management matters or customer service issues, such as discourteous behaviour or a failure by an AFP member to provide appropriate or correct advice. Category 1 issues can be handled informally through management action or be investigated by a Complaint Management Team (CMT) from the AFP member's business line area
- Category 2 – This conduct involves minor misconduct or inappropriate conduct, such as a failure to adequately supervise an AFP member, or a failure to meet the standards reasonably expected of an AFP member. Category 2 issues are managed by a CMT
- Category 3 – This conduct involves serious misconduct which does not give rise to a corruption issue, such as excessive use of force against a person, alleged criminal conduct by an AFP member or other conduct that, if proved, would lead to consideration about the AFP member's suitability for ongoing employment within the AFP. Category 3 issues are investigated by AFP Professional Standards. The AFP must notify the Commonwealth Ombudsman of all Category 3 conduct issue.
- Conduct giving rise to a corruption issue – Where the AFP becomes aware of an allegation of corruption by an AFP member, they must notify the Australian Commission for Law Enforcement Integrity (ACLEI) of the corruption issue, including whether the matter is a significant corruption issue. In some circumstances, the ACLEI may agree for the AFP to investigate a non-significant corruption issue, in which case the matter is investigated by investigators within AFP Professional Standards.

Complaints will be categorised in accordance with the relevant Australian Federal Police Categories of Conduct Determination applicable at the time.

All complaints are subject to external oversight by the Commonwealth Law Enforcement Ombudsman, and corruption matters are subject to oversight by the ACLEI.

Complaints to the Ombudsman

The *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* (Cth) commenced on 30 December 2006. This Act repealed the *Complaints (Australian Federal Police) Act 1981* (Cth) (*Complaints Act*) and amended the *AFP Act* and the *Ombudsman Act*.

Prior to these changes, the Ombudsman had an oversight role of the AFP investigations. Now, the AFP has primary responsibility for the whole process of complaint resolution. This means that the Commonwealth Ombudsman now generally only acts if the complaint is unable to be resolved through internal complaint handling methods with the AFP.

[9.560] Making a complaint

The AFP's complaints unit is called the Professional Standards. Complaints may be made orally or in writing.

Phone: 02 6131 6789

Post: GPO Box 401 CANBERRA ACT 2601

Email: prs-complaintscoordinationteam@afp.gov.au

Online: forms.afp.gov.au/online_forms/feedback_form

Prisoners and people in police custody

If a prisoner or person in police custody wants to make a complaint to the Ombudsman only, they must be allowed to write it down and put it in a sealed envelope, which must be sent to the Ombudsman promptly and without being opened (see Chapter 33, Prisoners).

[9.570] Complaint investigations by the Australian Federal Police

The AFP manages complaints in accordance with Pt 5 of the *AFP Act*, the Commissioners Orders on Professional Standards and National Guidelines on complaint management. In some circumstances, the AFP may allocate a complaint to the Commonwealth Ombudsman to investigate, if there is an internal conflict within the AFP.

If conduct is established through an investigation, the AFP will determine what sanctions to impose on the AFP member, which may range from remedial action to termination. If there is sufficient evidence to establish a criminal charge, the matter will be referred to the Commonwealth Director of Public Prosecutions.

[9.580] Investigation by the Ombudsman

Generally, the Commonwealth Ombudsman will refer a complaint regarding the actions of a member of the AFP to the AFP for initial investigation. If the complaint has already been dealt with by the AFP, then the Ombudsman will decide whether an investigation is warranted having considered the reasonableness of the action taken by the AFP in relation to the complaint.

In some instances, the Commonwealth Ombudsman may conduct a joint investigation with the AFP, and may, as with any other Commonwealth agency investigate a matter using his own motion powers.

The Ombudsman's recommendations

If following an investigation the Ombudsman thinks that something should be done by the Federal Police to remedy a situation, a report may be made to the Commissioner recommending action.

Part 5 oversight role

As set out at [9.70], as the Law Enforcement Ombudsman, also has a role in oversighting the AFP's management of complaints through its Professional Standards regime. The Law Enforcement Ombudsman reports annually to parliament in relation to these activities.

COMPLAINTS ABOUT LAWYERS

[9.590] If you are unable to resolve a dispute with your lawyer, or you feel that the lawyer's conduct is seriously unethical or unprofessional, you may wish to consider making a formal complaint.

See the section on Lawyers in Chapter 4, Assistance With Legal Problems, for advice about how to deal with lawyers, and what you are entitled to expect from your lawyer.

The Legal Services Commissioner

[9.600] The Commissioner's role

The Office of the Legal Services Commissioner is established by the *Legal Profession Uniform Law Application Act 2014* (NSW) whereas the *Legal Profession Uniform Law* (LPUL) outlines the procedure for how complaints to the Commissioner are assessed, investigated, resolved and/or determined. Both these Acts came into force on 1 July 2015. The office receives all complaints about:

- solicitors;
- barristers.

The Commissioner is somewhat like an Ombudsman, with powers to resolve disputes between lawyers and their clients and to investigate complaints and take action.

The Commissioner can also initiate a complaint.

Why is there a Legal Services Commissioner?

The Office of the Legal Services Commissioner was set up as a result of consumer dissatisfaction with the investigation of complaints by the Law Society and the Bar Association, which had previously handled all complaints against solicitors and barristers.

Any complaints received by the Law Society or the Bar Association must now be referred to the Commissioner in the first instance. Complaints may still, however, be referred by the Commissioner to the Law Society or Bar Association for investigation.

[9.610] Making a complaint

Formal requirements

Complaints against lawyers must be in writing (s 267). An emailed complaint is considered to be in writing. If a person is unable to write, the Office of the Legal Services Commissioner can help to lodge the complaint. Complaints must also identify the complainant, identify the lawyer or law practice, and describe the alleged conduct of the lawyer (s 267). Note that anonymous complaints generally cannot be dealt with.

What can be investigated

The Commissioner can investigate not only serious allegations of professional misconduct, but also complaints about less serious matters, such as rudeness or poor communication. Some less serious matters may fall within the definition of unsatisfactory professional conduct. Complaints are assessed as comprising either consumer matter issues or disciplinary matter allegations, or on some occasions, both Cost disputes are a subcategory of a consumer matter.

Time limits

Except for costs disputes, complaints must be made within three years of the conduct alleged (s 272(1)), unless there are good reasons for the delay.

The Commissioner has a discretion to investigate older complaints where it is just and fair in the circumstances, or there are allegations of serious misconduct that should be investigated in the public interest.

In respect of costs disputes, complaints must be made within 60 days after the legal costs become payable, or if an itemised bill was requested in accordance with s 187(2), 30 days after the request was complied with (s 272(3)). Section 272(2) allows this time limit to be waived if the complaint is made within four months after the required period, it is just and fair to do so having regard to the delay and reasons for the delay, and the lawyer or law practice has not commenced legal proceedings in respect of the legal costs.

[9.620] What the Commissioner may do

The Commissioner may:

- refer a complaint to the Law Society (solicitors);
- refer it to the Bar Association (barristers);
- resolve or investigate the complaint within the Commissioner's office.

Mediation

The Commissioner may refer consumer matters for mediation (s 288). This may involve a informal or formal process where the complainant and the solicitor or barrister can attempt to resolve the dispute, facilitated by the Commissioner's office.

More often, however, less serious disputes are informally resolved through direct contact with the lawyer.

Prosecution

The Legal Services Commissioner can prosecute lawyers in the NCAT if the Commissioner is of the opinion that the alleged conduct may about to unsatisfactory professional conduct that would be more appropriately dealt with by the NCAT, or if the alleged conduct may amount to professional misconduct.

Where to make a complaint

All complaints about solicitors or barristers should be made initially to the Legal Services Commissioner (see below), who will refer you to other regulatory bodies if necessary.

You may call first to discuss your problem. If necessary, a complaint form will be posted to you.

The type of conduct you may complain about your lawyer is broad, and can include issues such as:

- getting your file back after you have terminated your solicitor's retainer (see Chapter 4, Assistance With Legal Problems);
- finding out about the progress of your matter.

Trust account matters

If you believe your legal practitioner has dishonestly handled money held in a trust account on your behalf, you can also make a claim on the Fidelity Fund, which is administered by the Law Society (see [9.760]).

Overcharging

If you think you have been overcharged by your solicitor, you may wish to apply to have your bill assessed by the Costs Assessment Scheme housed in the Supreme Court (see [9.680]).

Negligence

If your solicitor has been negligent in the work they did for you, you may also be able to make a claim in professional negligence. The solicitor may refer the claim to LawCover, the solicitors' professional indemnity insurer (see [9.700]).

You may need to consult another lawyer, who will advise you about your prospects of succeeding in your claim and will help you to do so if possible.

Legal Aid lawyers

If you are having problems with a lawyer who is employed by the Legal Aid Commission or you are receiving legal aid funding, you can make a complaint to the Director of the Legal Aid Commission as well as the Office of the Legal Services Commissioner.

The Legal Aid Commission has internal disciplinary procedures that apply in addition to the rules binding other legal practitioners.

[9.630] What a disciplinary investigation involves

The investigation process typically involves:

- obtaining sufficient details and information from the complainant, to allow the lawyer to properly understand the allegations about them;
- asking the lawyer to respond to the allegations;
- obtaining relevant information from any other person.

[9.640] What disciplinary action may be taken

When the complaint has been sufficiently investigated, the Commissioner considers all information obtained during the investigative process and makes a decision.

If the information obtained in the investigative process is not sufficient for the Commissioner to form the view that the alleged conduct may amount to unsatisfactory professional conduct or may amount to professional misconduct as defined in the *Legal Profession Uniform Law* (NSW), it will be closed.

If, however, it is serious enough and it is substantiated, there are several options for disciplining the practitioner, depending whether the conduct is characterized as unsatisfactory professional conduct or professional misconduct (ss 299–300).

Disciplinary options

Disciplinary options include:

- a caution;
- a reprimand;
- a fine;
- imposing a practising certificate condition;
- prosecution in the NCAT.

Only if the conduct is characterized as unsatisfactory professional conduct can the complaint be

determined within the Commissioner's office (s 299). If the conduct is characterized as professional misconduct, then the Commissioner cannot determine the matter within the Commissioner's office and can only prosecute the lawyer in the NCAT.

Prosecution

Prosecutions in the NSW Civil and Administrative Tribunal are undertaken by:

- the Office of the Legal Services Commissioner;
- the Professional Standards Department of the Law Society on behalf of the Law Society Council;
- solicitors briefed by the Professional Conduct Department of the Bar Association on behalf of the Bar Council.

[9.650] Review

A person may request an internal review of a decision in relation to a complaint made by the Law Society, the Bar Association or the Commissioner (s 313).

The Commissioner has an absolute discretion as to whether to conduct a review.

What the Commissioner may do

If the Commissioner believes that the complaint was dealt with correctly, the decision may be confirmed.

However, the Commissioner may make a new decision or refer the matter back to the original decision maker if he:

- concludes that the investigation was not carried out properly; or
- does not agree with the decision that was reached.

The Costs Assessment Section

[9.660] A person who believes that a lawyer has overcharged can have the bill assessed by the Costs Assessment Section, which is administered by the Supreme Court. But the Costs Assessment Section and its processes are not court proceedings in the Supreme Court, nor are Costs Assessors officers of the Supreme Court.

If the solicitor did not take reasonable steps to disclose costs in writing initially, and is not covered by one of the exceptions to costs disclosure (see Chapter 4, Assistance With Legal Problems), they cannot take legal action to recover any costs from you until those costs have been assessed (*Legal Profession Uniform Law*, s 178).

You should also consider an independent assessment if costs have significantly increased without you being fully informed by your solicitor, unless you are satisfied with their explanation of the increase.

There are laws about what and how a legal practitioner can charge, and what information about costs must be given to clients. These are discussed in the section Lawyers in Chapter 4, Assistance With Legal Problems.

[9.670] Application for costs assessment

An application to have a lawyer's bill assessed by a costs assessor is made to the Costs Assessment Section located in the Supreme Court.

Fees

The lodgement fee payable for an assessment of costs is the greater of the following:

1. 1% of the remaining unpaid bill(s) or invoice(s);
2. 1% of the amount in dispute at the time the application is made;
3. $100 – the minimum lodgement fee.

This fee may be waived in cases of serious hardship.

The costs assessor's fees, current as at 30 May 2019, for completing the assessment is $313.50 per hour, payable by the party/parties as determined by the costs assessor.

Mediation

An alternative is to enter into mediation with your solicitor to try to resolve the matter.

[9.680] Costs assessment

The costs assessment application will be sent to an independent costs assessor, who will determine whether a valid costs agreement exists and whether the legal costs are fair and reasonable (s 199). The LPUL sets out the factors the costs assessor must take into account including whether the costs were proportionately and reasonably incurred and proportionate and reasonable in amount (ss 172, 200).

Both solicitor and client are given the opportunity to make written statements.

The cost assessor's decision

When assessment is complete, the costs assessor makes a decision, gives reasons for it, and issues a certificate.

Where the bill has not been paid

Where the bill has not been paid, the cost assessor's certificate can be filed in the registry of a court. It then constitutes a judgment of that court for the amount of the unpaid costs (*Legal Profession Uniform Law Application Act 2014*, s 70(5)).

Where the bill has been paid

If a bill has been paid and the costs are assessed at a lesser amount, a certificate is issued which enables the client to recover the amount as a debt in court (*Legal Profession Uniform Law Application Act 2014*, s 70(4)).

[9.690] Review

If either the client or the solicitor is not happy with the results of the costs assessment process, they can be reviewed by a panel of two costs assessors, which can either confirm the original decision or make a new decision.

Court action for negligence

[9.700] LawCover

All insurable solicitors practising in New South Wales are required to hold Professional Indemnity Insurance (PII) under the terms of the *Legal Profession Uniform Law* (NSW).

LawCover is the approved insurer for solicitors. For 2019/2020, the LawCover PII Policy provides law practices with cover up to $2 million per claim, including claimant's costs and defence costs.

All solicitors have compulsory insurance with LawCover against legal actions for negligence.

Barristers

Barristers cannot be sued for negligence in the conduct of a case in court, although they can be sued for negligence in other areas of their work.

[9.710] Bringing an action

A person may be able to bring an action in the courts for damages if it is considered that the lawyer has handled a case negligently, causing the client financial loss or damage.

For example …

Excessive delay on the part of the lawyer may have resulted in the client losing a legal right.

Or the lawyer could have been negligent in handling the client's affairs by not taking the usual precautions; for example, by not making the necessary inquiries about a property in a conveyancing matter with the result that the client goes ahead with the purchase and later discovers that the land cannot be used for the purpose intended.

Where to bring the action

Losses up to $40,000

A client who suffers a loss through a lawyer's negligence not exceeding $40,000 may bring an action in the NCAT Consumer and Commercial Division.

Losses over $40,000

If the loss is more than $40,000, the only legal remedies are in a court action.

[9.720] What must be proved

What will be regarded as negligent varies from case to case. To recover compensation, it must be proved that:

- there was negligence by the lawyer; and
- the client suffered financial loss as a result.

[9.730] Getting help

Getting legal advice

Further legal work may be needed to determine whether a lawyer has been negligent.

The Legal Services Commissioner and the Solicitor Referral Service of the Law Society can provide some preliminary information, and may make some attempt to persuade the solicitor to remedy negligent work. Ultimately, however, a person who wishes to sue may have to consult another lawyer. The Solicitor Referral Service of the Law Society can help a person find a lawyer for that purpose.

Getting Legal Aid

Legal aid may be available from either the Legal Aid Commission or the Commissioner for Fair Trading, who has a discretion to grant aid for negligence claims.

Money held in trust

[9.740] Solicitors' trust funds

Solicitors often hold a client's money on trust (eg, the purchase price of a home the client is buying, or trust funds left with a solicitor to invest). Clients' funds must be deposited in a separate *trust account*, kept by the solicitor and subject to extensive legal controls.

Breaches

The *Legal Profession Uniform Law* defines the various breaches relating to the proper keeping of trust accounts, many of which constitute professional misconduct (*Legal Profession Uniform Law*, Pt 4.2).

[9.750] If problems arise

A person should immediately contact the Law Society of NSW if they are having difficulty:

- obtaining money held in trust; or
- obtaining a financial statement relating to the trust fund.

The Law Society's trust account inspectors can investigate the situation.

[9.760] If money is lost

A client who loses money because of a solicitor's dishonest handling of trust money may be able to get compensation from the Fidelity Fund, a public fund administered by the Law Society.

Solicitors only

The Fidelity Fund covers only money or property entrusted to a solicitor in their capacity as a solicitor, not, for example, as a friend.

Making a claim

To make a claim, contact the manager of the Fidelity Fund of the Law Society of NSW at the earliest opportunity.

The claim form

The claim form is a statutory declaration form that must be signed before a justice of the peace or a solicitor. It is quite long, and you may need help from a solicitor or a Legal Aid Commission officer to complete it correctly. An officer of the Fidelity Fund at the Law Society can also help you complete the form.

Other documents

You will need to produce all documents relating to your business with the solicitor.

Contact points

[9.770] If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see www.communications.gov.au.

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online, see www.tisnational.gov.au.

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See www.service.nsw.gov.au for further details.

Administrative Appeals Tribunal
Level 683, Clarence St
Sydney NSW 2000
Postal:
GPO Box 9955
Sydney NSW 2001
www.aat.gov.au
ph: 1800 228 333

Australian Human Rights Commission
www.humanrights.gov.au
ph: 9284 9600 or 1300 369 711

Australian Information Commissioner, Office of the
GPO Box 5218
Sydney NSW 2001
www.oaic.gov.au
email: enquiries@oaic.gov.au
ph: 1300 363 992

Commonwealth government
www.australia.gov.au

Council for Civil Liberties, NSW
www.nswccl.org.au
email: complaints@nswccl.org.au
ph: 8090 2952

Federal Circuit Court (previously Federal Magistrates Court)
www.federalcircuitcourt.gov.au
ph: 9230 8567

Independent Commission Against Corruption (ICAC)
Level 7, 255 Elizabeth St
Sydney NSW 2000
Postal:
GPO Box 500
Sydney, NSW 2001
www.icac.nsw.gov.au
ph: 1800 463 909 (toll free)

Information and Privacy Commission NSW
GPO Box 7011
Sydney NSW 2001
ipcinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au
ph: 1800 472 679

Law and Justice Foundation of NSW
www.lawfoundation.net.au
ph: 8227 3200

LawCover
The Complaints Officer
Level 12, 580 George Street
Sydney NSW 2000
DX 11527 Sydney Downtown
www.lawcover.com.au
email: lawcover@lawcover.com.au
ph: 9264 8855
fax: 9264 8844

Law Society of New South Wales
170 Phillip Street
Sydney 2000
email: lawsociety@lawsociety.com.au
ph: 9926 0333
Community Referral Service
www.lawsociety.com.au
email: ereferral@lawsociety.com.au
ph: 9926 0300

Legal Services Commissioner, Office of the
Level 9, OCBC Building, 75 Castlereagh Street
Sydney NSW 2000
GPO Box 4460
Sydney NSW 2001
www.olsc.nsw.gov.au
email: olsc@justice.nsw.gov.au
ph: 9377 1800

New South Wales Bar Association
Selborne Chambers
B/174 Phillip Street
Sydney NSW 2000
www.nswbar.asn.au
email: enquiries@nswbar.asn.au
ph: 9232 4055

NSW Civil and Administrative Tribunal (NCAT)
Principal Registry
Level 9, John Maddison Tower
86-90 Goulburn Street
Sydney NSW 2000
www.ncat.nsw.gov.au
ph: 1300 006 228

NSW government
www.nsw.gov.au

Ombudsman, Commonwealth
GPO Box 442

Canberra ACT 2601
By appointment
Suite 2, Level 16, 580 George Street
Sydney NSW 2000
www.ombudsman.gov.au
email: ombudsman@ombudsman.gov.au
ph: 1300 362 072

Ombudsman, NSW
Level 24, 580 George Street
Sydney NSW 2000
www.ombo.nsw.gov.au
email: nswombo@ombo.nsw.gov.au
ph: 02 9286 1000

Police, Australian Federal
Sydney Office
Coordinator OMC
Locked Bag A3000
Sydney South NSW 1232
www.afp.gov.au
ph: 9286 4000

Police, NSW
www.police.nsw.gov.au
ph: 1800 622 571 (customer assistance unit) or 131 444 (general enquiries)

Law Enforcement Conduct Commission
Level 3
111 Elizabeth Street
Sydney NSW 2000
Postal:
GPO Box 3880
Sydney NSW 2001
www.lecc.nsw.gov.au
ph: 1800 657 079 or 9321 6700

Public Interest Advocacy Centre (PIAC)
Level 5, 175 Liverpool St
Sydney NSW 2000
www.piac.asn.au
ph: 8898 6500