

# The contractor's role in the internal review process

This information sheet is general in nature and provided for information purposes only. It is not intended to be a substitute for legal advice. You should seek your own legal advice as required.

This guidance is for contractors who are engaged by enforcement agencies to provide administrative support in the internal review process.

The information provided in this fact sheet provides further guidance on the use of contractors in internal review and is based on the *Infringements Act 2006* (the Act) and the findings of previous investigations by the Victorian Ombudsman in 2020 and the Director, Fines Victoria in 2021 on the use of contractors in internal review.

## Background

The Act allows only an employee of the relevant enforcement agency to conduct an internal review, [see section 21A \*Infringements Act 2006\*](#). Private contractors are not employees of the 'enforcement agency' under the Act.

Enforcement agencies are bound by law to ensure that contractors do not make internal review decisions.

Contractors should understand that, when undertaking work on behalf of an enforcement agency, their role is limited to administrative processes only.



### Establishing the relationship

If the contractor is to be involved in the internal review process, the contract between an agency and a contractor should clearly limit that role to administrative matters.

The agreement between the agency and contractor should be fully recorded in the written contract, and not be based on informal discussions or undocumented customs.



### Managing applications

Contractors must ensure their role is limited to administrative processes only. This means that contractors must not determine an internal review application under section 24 of the Act or advise on or recommend a decision to an enforcement agency. A contractor also must not decide to request further information from the applicant under section 23 of the Act.

When handling applications, contractors must avoid a perceived or real conflict of interest.



**TIP** Create and implement a conflict-of-interest policy and check how it aligns with the enforcement agency's policies.

The role of the contractor should be clearly outlined and limited to administrative support.

## Corresponding with applicants

### Method of correspondence



Where the contractor is responsible for sending correspondence on behalf of the agency, the contractor must ensure that the Act and Department of Justice and Community Safety Internal Review Guidelines (the Guidelines) are being followed.

The requirements of effective service of documents under the Act are explained in section 5.4.1 of the Guidelines.

### Notice of outcome

The outcome letter must clearly identify the enforcement agency's decision maker, either through name or identifying reference.



## Requesting further information

All requests for further information should be made by the enforcement agency. Contractors can assist with the administrative processing of requests for further information. For the avoidance of doubt, requests sent by the contractor should identify the agency staff member who is making the request.



## Retaining information

Internal review information should be retained.

Enforcement agencies, as a public office, have record keeping responsibilities under the *Public Records Act 1973* and may be required to keep records of all applications, evidence and correspondence.

The contractor should maintain appropriate records to demonstrate that they are acting within the bounds of the contract. Correspondence between the contractor and the enforcement agency should be maintained to demonstrate that the enforcement agency made the final internal review decision.



## Accepting internal review applications

Contractors should ensure that by accepting internal review applications they are not making unauthorised decisions regarding the application.

If an application is received which is incomplete or does not meet the application requirements set out in section 22 of the Act, the application should be referred to the enforcement agency to decide whether to accept the application or request further information under section 23 of the Act.

**Clearly defined roles and accountabilities, as well as strong systems, frameworks and monitoring mechanisms ensure that the contractor does not act unlawfully in the internal review process.**

### Why is it important that contractors understand their role and act appropriately?



Public bodies have a responsibility to act fairly, transparently, and lawfully. As contractors are engaged by public bodies to undertake certain activities, these responsibilities extend to the contractor. The contractor's role must be limited to ensure the enforcement agency is lawfully exercising their power. Failure to lawfully administer the internal review process can result in reputational harm and financial implications for the enforcement agency.

Further information can be obtained via:



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