

Refusal by the Tax Agents' Board of New South Wales to provide reasons for decisions not to pursue complaints about tax agents

This is an abridged version of Report No. 03/2004 by the Commonwealth Ombudsman. The full report has not been made publicly available to preserve the privacy of the complainant and tax agent.

The Commonwealth Ombudsman received a complaint about a refusal of the Tax Agents' Board of New South Wales (the Board) to pursue a complaint made to the Board about the conduct of a tax agent and the refusal by the Board to provide reasons for its decision not to pursue the matter.

After investigation, the Ombudsman was satisfied that the decision of the Board not to take action against the tax agent could not be criticised as being unreasonable in the circumstances. It was open to the Board to decide that the behaviour alleged by the complainant would not, in itself, amount to the serious misconduct that might lead to cancellation or suspension of registration of a tax agent.

The main focus in the investigation turned to the Board's policy or practice of not providing reasons to complainants. The Ombudsman accepted that the Board was not in breach of any legal obligation in declining to provide a statement of reasons. However, on other grounds the Ombudsman disagreed with the Board's approach of not providing reasons. It was pointed out to the Board that it is now widely accepted in the public sector that as a tenet of good public administration a decision-maker should at least attempt to give an explanation that will satisfy a complainant.

While accepting that the Board has very limited resources and works under considerable time and workload pressure, the Ombudsman considered that it is incumbent on the Board to recognise the importance of reasoned decision-making in its dealings with members of the public and to be prepared upon request to provide a sensible explanation of its decision-making process. What will suffice as an explanation may vary markedly according to the circumstances of the particular case, including the nature of the decision being made.

The adoption of better practice by the Board to explain its processes would, in the Ombudsman's view, promote community confidence in the regulatory function of the Board and would enhance the relationship between the Board and members of the public.

In the course of the investigation, the Board prepared a draft letter to the complainant that, in the Ombudsman's view, contained an adequate explanation. The Board has been asked to confirm that the letter has been sent and particulars of any other action that the Board proposes to take in relation to revision of the blanket policy or practice of not giving reasons.