

LA TROBE UNIVERSITY

**EXPLANATORY MEMORANDUM FOR THE OMBUDSMAN
STATUTE 2009**

Council is invited to make the attached **Ombudsman Statute 2009** (the new Statute).

The new Statute is intended to replace Statute 39 – Reviews and Appeals and all of the regulations made under that Statute (there are currently 5 different regulations made under Statute 39).

The new Statute establishes the office of University Ombudsman and empowers the Council to appoint a person as Ombudsman (section 3). Provision is also made for an Acting Ombudsman (section 4).

The new Statute provides that the functions of the Ombudsman are to conduct mediations and investigations in accordance with the new Statute (section 5(1)).

Section 6 provides for important limitations on the range of matters in respect of which the Ombudsman may conduct a mediation or an investigation. The restricted matters are decisions of Council and the University Appeals Committee, misconduct by staff (as cases of staff misconduct are dealt with under the staff member's terms of employment) and academic progress, except in relation to questions about whether proper assessment procedures were followed.

It is important for the Ombudsman to operate, and to be seen to operate, independently of the University administration and executive structure. The new Statute seeks to achieve this through provisions stating that—

- the Ombudsman is not subject to the direction of the Council or the Vice-Chancellor (section 5(2)(a));
- the Ombudsman is to have an office and office facilities separate from the central administration building of the University (section 8); and
- only the Council may dismiss the Ombudsman or Acting Ombudsman (section 9).

The Ombudsman's power to conduct mediations is dealt with in Part 3. A person may file a grievance with the Ombudsman in respect of a decision or the conduct of an officer or employee of the University, being a decision made or conduct engaged in under or for the purposes of any Statute, regulations, policy or procedure of the University (section 10). Mediations are to be conducted with as little formality and technicality as the requirements of the new Statute permit (section 11). The Ombudsman is required to report the outcome of a mediation to the Vice-Chancellor, and give a copy of the report to the affected parties (section 12).

The Ombudsman's power to conduct investigations is dealt with in Part 4 of the new Statute. Part 4 enables the Ombudsman to investigate a decision or the conduct of an officer or employee of the University, being a decision made or conduct engaged in

under or for the purposes of any Statute, regulations, policy or procedure of the University (section 13). An investigation may be instigated on receipt of a written complaint from any person “whose interests were directly affected by the decision or conduct” (section 13(1)(a)) or on the Ombudsman’s own motion” or at the request of the Vice-Chancellor or the Council (section 13(1)(b)).

In investigating a decision or conduct, the Ombudsman may inquire into whether it was lawful, within power, appropriate, fair or reasonable and whether established policies or procedures were followed (section 13(2)). In investigating a decision (as opposed to conduct), the Ombudsman may also inquire into whether the principles of natural justice, if applicable, were followed (section 13(3)).

Section 14 provides that an officer or employee has a duty to cooperate with the Ombudsman in the conduct of an investigation.

Section 15 provides that the Ombudsman is to report the findings of an investigation to the Vice-Chancellor, and to give a copy of the report to the officer or employee whose decision or conduct was investigated and, if the investigation was launched in response to a complaint, to the complainant.

Finally, section 16 imposes a duty on the Ombudsman to provide annual reports of his or her activities to Council.



LA TROBE UNIVERSITY
OMBUDSMAN STATUTE 2009

The Council of La Trobe University makes this Statute under section 30 of the *La Trobe University Act 1964*.

PART 1—PRELIMINARY

1. Name and commencement

- (1) This Statute is the **Ombudsman Statute 2009**.
- (2) This Statute comes into full force and effect on 1 July 2009.

2. Interpretation

In this Statute—

conduct includes omissions or failures to act;

decision includes a decision not to make a decision and a failure to make a decision;

officer of the University includes a delegate of an officer of the University;

Ombudsman means the University Ombudsman established under section 3.

PART 2—ESTABLISHMENT AND FUNCTIONS OF OMBUDSMAN

3. Establishment of Ombudsman

- (1) The office of University Ombudsman is established.
- (2) The Council may appoint a person as Ombudsman on the terms and conditions that the Council thinks appropriate.

4. Acting Ombudsman

- (1) The Council may appoint a person as Acting Ombudsman—
 - (a) to conduct a mediation in relation to any matter in which the Ombudsman has already conducted an investigation;
 - (b) to conduct an investigation in relation to any matter in which the Ombudsman has already conducted a mediation;
 - (c) during any period for which the Ombudsman is absent from the University; or
 - (d) during any period in which the position of Ombudsman remains unfilled.
- (2) An Acting Ombudsman has all the powers, functions and duties of the Ombudsman.

5. Functions of Ombudsman

- (1) The functions of the Ombudsman are to conduct mediations and investigations in accordance with this Statute.
- (2) In performing his or her functions under this Statute, the Ombudsman—
 - (a) is not subject to the direction of the Council or the Vice-Chancellor; and
 - (b) subject to this Statute, may regulate his or her own procedure.

6. Limits on Ombudsman's functions

Despite anything to the contrary elsewhere in this Statute—

- (a) the Ombudsman may not conduct a mediation or investigation in respect of either of the following—
 - (i) a decision of the Council or the University Appeals Committee;

- (ii) misconduct by a member of the academic or general staff; and
- (b) in relation to a decision regarding academic assessment, the Ombudsman may only conduct an investigation into whether the correct procedures were followed in the making of the decision.

7. Procedure

Subject to this Statute and the regulations (if any), the Ombudsman may regulate his or her own procedure.

8. Location of Ombudsman

The Ombudsman shall have an office and office facilities separate from the central administration building of the University.

9. Dismissal

Only the Council may dismiss the Ombudsman or an Acting Ombudsman.

PART 3—MEDIATION

10. Filing of grievance

- (1) A person may, by notice in writing to the Ombudsman, file a grievance with the Ombudsman in respect of a decision or the conduct of an officer or employee of the University, being a decision made or conduct engaged in under or for the purposes of any Statute, regulations, policy or procedure of the University, and request the Ombudsman to conduct a mediation of the grievance.
- (2) The Ombudsman may attempt to conduct a mediation of a grievance under this Statute only if the Ombudsman is satisfied that the subject matter of the grievance—
 - (a) appears to arise from circumstances directly related to the functions or activities of the University; and
 - (b) is not subject to any other form of review or dispute resolution within the University.
- (3) If the Ombudsman is to conduct a mediation of a grievance, the Ombudsman must, as soon as practicable after receiving the grievance under subsection (1), by notice in writing—
 - (a) provide a copy of the grievance to the officer or employee of the University whose decision or conduct is the subject of the grievance; and
 - (b) invite that officer or employee to attend a mediation in respect of the grievance on a date specified in the notice.

11. Mediation

- (1) The Ombudsman must conduct each mediation with as little formality and technicality as the requirements of this Statute permit.
- (2) The Ombudsman may request the Council to appoint an Acting Ombudsman to conduct a mediation if the subject matter of the grievance has already been the subject of an investigation by the Ombudsman under Part 4.

12. Reporting the outcome of a mediation

- (1) As soon as practicable after the completion of a mediation, the Ombudsman must give the Vice-Chancellor a written report setting out the outcome of the mediation.

- (2) The Ombudsman must also give a copy of the report referred to in subsection (1) to each of the parties to the mediation.
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PART 4—INVESTIGATIONS

13. Investigations

- (1) The Ombudsman may investigate a decision or the conduct of an officer or employee of the University, being a decision made or conduct engaged in under or for the purposes of any Statute, regulations, policy or procedure of the University—
 - (a) in response to a written complaint about that decision or conduct by a person whose interests were directly affected by the decision or conduct; or
 - (b) on the Ombudsman’s own motion or at the request of the Vice-Chancellor or the Council.
- (2) In investigating a decision or conduct, the Ombudsman may enquire into whether—
 - (a) the decision or conduct was lawful, within power, appropriate, fair or reasonable; and
 - (b) established policies or procedures for making the decision or engaging in the conduct were followed.
- (3) In investigating a decision, the Ombudsman may also enquire into whether the principles of natural justice, if applicable to the decision, were observed or adequately observed by the officer or employee who made the decision.
- (4) In investigating a decision or conduct, the Ombudsman—
 - (a) may inform him or her self on any matter relevant to the investigation as he or she sees fit; and
 - (b) is bound by the rules of natural justice.
- (5) The Ombudsman must not conduct an investigation if the subject matter of the investigation has already been the subject of a mediation by the Ombudsman under Part 3.
- (6) If subsection (5) applies, then only an Acting Ombudsman may conduct the investigation.

14. Officers and employees to cooperate with Ombudsman

An officer or employee of the University must cooperate with the Ombudsman in the conduct of an investigation.

15. Reporting the outcome of an investigation

- (1) As soon as practicable after the completion of an investigation, the Ombudsman must give the Vice-Chancellor a written report setting out the Ombudsman's findings on the decision or conduct investigated and any recommendations based on those findings.
- (2) The Ombudsman must also give a copy of the report referred to in subsection (1) to—
 - (a) the officer or employee whose decision or conduct was investigated; and
 - (b) if the Ombudsman launched the investigation in response to a complaint, the person who made the complaint.

PART 5—GENERAL

16. Annual reports

Within 8 weeks after the end of a calendar year, the Ombudsman must give the Council a written report on the Ombudsman's activities during that calendar year.

17. Regulations

- (1) The Council may make regulations—
 - (a) for or with respect to or providing for any matter or thing for the purposes of this Statute; and
 - (b) amending or revoking any regulations made under this Statute.
- (2) The Council must ensure that regulations made under this Statute are promulgated by having the regulations displayed on an official notice board of the University for a period of at least 14 days.
- (3) For the purposes of determining when regulations made under this Statute come into full force and effect within the meaning of section 30(4) of the Act, the regulations are taken to have been promulgated in accordance with sub-section (2) at the start of the first day on which they are displayed on an official notice board of the University.

18. Transitional

- (1) The Ombudsman appointed under the Old Statute continues in office as if he or she had been appointed as the Ombudsman under this Statute.
- (2) Despite the coming into full force and effect of this Statute, the Old Statute continues to apply to a proceeding which, immediately before the commencement day, had commenced but had not been completed.
- (3) In this section—

commencement day means the day on which this Statute comes into full force and effect;

Old Statute means Statute 39 – Reviews and Appeals, and any regulations made under that Statute, as in force immediately before the commencement day;

proceeding means an investigation, supervisory review, informal appeal or grievance resolution under the Old Statute.

19. Revocation of earlier University legislation

The following Statute and regulations are **revoked**—

- (a) Statute 39 – Reviews and Appeals;
- (b) Regulation 39.1 – Complaints to the Ombudsman;
- (c) Regulation 39.2 – Supervisory Review;
- (d) Regulation 39.3 – Ombudsman’s Investigation;
- (e) Regulation 39.4 – Informal Appeal;
- (f) Regulation 39.5 – Grievance Resolution.

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Approved by the Council—

Approved by the Minister—