



Preliminary Inquiries

HOW TO USE SECTION 7A PRELIMINARY INQUIRY POWERS

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Preliminary Inquiries

Quick Checklist: Conducting Preliminary Inquiries

- Follow the basic investigation principles – be impartial and independent, do not prejudge issues, and do not present opinions contrary to those of the Office.
- If there is already enough evidence available to indicate an investigation is required, it is not appropriate to conduct a preliminary inquiry.
- Preliminary inquiries are most helpful when you ask basic, factual questions or obtain specific information which will allow you to determine whether a complaint is in jurisdiction or whether a discretion under s 6 of the *Ombudsman Act 1976* applies.
- You can only make one substantive preliminary inquiry for each complaint.
- Ensure your preliminary inquiry is clear and thorough so your questions can be answered fully and quickly.

Background

A preliminary inquiry is a one-off, straightforward inquiry made of an agency during the assessment of an approach to determine whether or not to investigate the complaint.

Section 7A of the *Ombudsman Act 1976* allows the Commonwealth Ombudsman to make preliminary inquiries of an agency, in order to:

- decide whether or not to investigate a complaint or
- determine whether the Ombudsman can investigate the complaint (i.e. jurisdiction).

Section 8 of the *Ombudsman Act 1989* (ACT) allows the ACT Ombudsman to make preliminary inquiries for the same purposes.

A preliminary inquiry is not an investigation. Nevertheless, s 7A protects an agency from contravening any laws by disclosing information to the Commonwealth Ombudsman. Section 11(6) of the ACT Act gives the same protection.

Historically, the Office has had concerns about preliminary inquiries being used to conduct an investigation without enlivening our powers under s 8. To prevent this occurring, a decision was made not to exercise the preliminary inquiry power. While use of the power has been reintroduced, safeguards have been implemented to ensure that s 7A is used appropriately. As outlined in this policy, the main safeguards are:

- it can only be used once in each complaint
- only basic and straightforward inquiries should be made, and
- appropriate quality assurance and approval processes apply.

Why we conduct preliminary inquiries

The proper use of preliminary inquiries increases complaint-handling efficiency. It allows investigation officers to:

- Ask basic, factual questions or obtain specific information to determine whether the action or decision complained about is in jurisdiction, or whether a discretion under s 6 of the Ombudsman Act 1976 applies.
- In appropriate circumstances, obtain key documents from an agency quickly instead of waiting for a complainant to provide the information.

The guiding principle behind the use of preliminary inquiries is to use our time as efficiently and effectively as possible. Therefore, if it is clear at the assessment stage that a complaint warrants investigation, a preliminary inquiry is not appropriate. An investigation should be commenced and the information obtained through an s 8 notice.

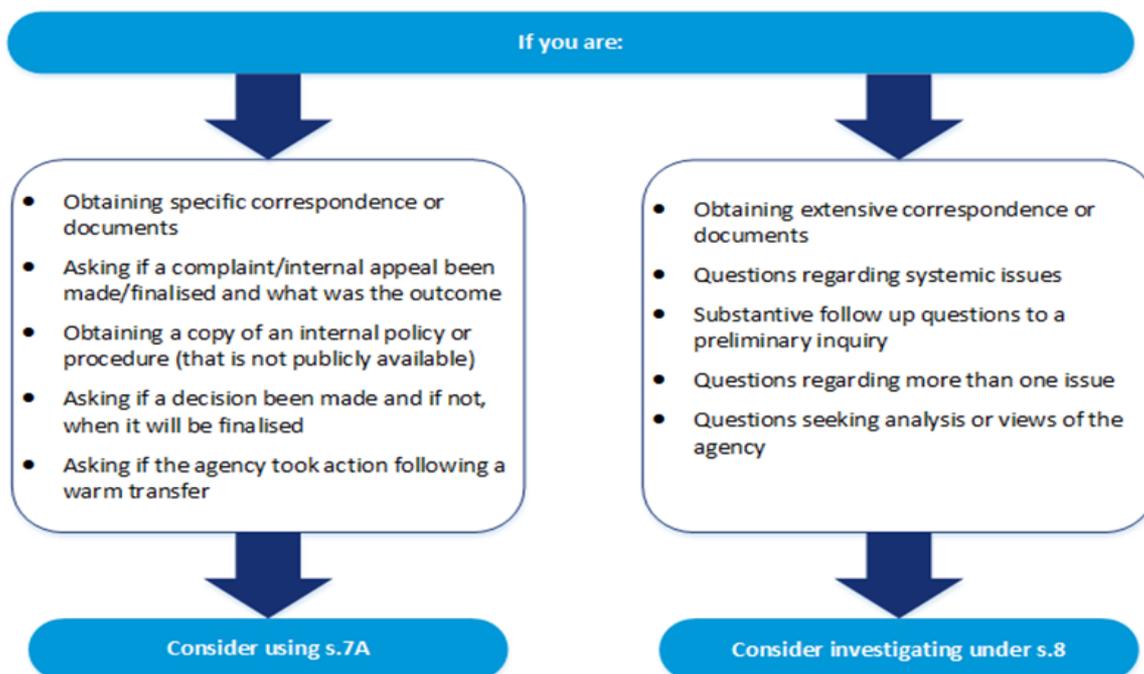
When used as intended, preliminary inquiries can result in many benefits:

- A vulnerable complainant does not need to provide our office with requested documents and we avoid complaint fatigue.
- An agency does not need to report to its senior management on as many investigations and therefore it is able to prepare section 7A responses more efficiently.
- An IO is able to obtain information quickly, even within hours, due to dedicated preliminary inquiry contact arrangements with some agencies.
- A complaint can be closed as a category 2, without the need for investigation.

A decision to investigate should be made based on the merits of the complaint issue, instead of the need to obtain preliminary information from an agency.

Assessing if a preliminary inquiry is appropriate

Quick checklist: Examples of inquiries that are, or are not, appropriate under s 7A



When determining whether to conduct a preliminary inquiry, it is helpful to refer to these fundamental questions:

1. Will it make it more efficient for us?
2. Will it make it more efficient for the agency?
3. Will this lead to a better or more efficient outcome for the complainant?

When not to use preliminary inquiries

If it appears from the information already available that a substantive investigation will be warranted, there will be little utility in undertaking a preliminary inquiry. An investigation will be more efficient as there is only one contact with the agency (compared to a preliminary inquiry and a section 8 notification), it will allow a complaint to be upgraded to category 3 on Resolve, it will provide a longer response timeframe for the agency and will be easier to manage the complainant's expectations.

Likewise, if you are already satisfied there are sufficient grounds to decline to investigate a complaint, there will be no benefit in conducting preliminary inquiries.

When to use preliminary inquiries

Preliminary inquiries may be appropriate where:

- You need more information to decide whether you can or should investigate; or

- You might otherwise consider an investigation only to answer a straightforward and/or limited inquiry.

In these circumstances, your preliminary inquiries will result in:

- Confirmation that you can or should not investigate i.e. no jurisdiction or a compelling discretion applies (i.e s6(2)).
- Confirmation that a discretion is appropriate based on the merits of the case. For example, after obtaining a relevant document, you establish that an investigation is not warranted.
- Confirmation that a warm transfer is appropriate based on the merits of the case. For example, after identifying that a vulnerable complainant has not lodged a complaint, you establish that a warm transfer is appropriate.
- Not requiring an investigation as the information obtained through the preliminary inquiry has made an investigation unnecessary. For example, the complaint is about the agency not responding to a complainant, and through your preliminary inquiry, the agency advised you when it would respond. Therefore an investigation is not warranted.
- Confirmation that an investigation is warranted based on the merits of the complaint. For example, after obtaining a copy of the agency response to the complainant, you consider the response was inadequate.

If you are unsure if it is appropriate to conduct a preliminary inquiry, you should consult with your supervisor.

Conducting a preliminary inquiry

Resolve workflow

Action	Timeframe	Responsible officer
Preliminary Inquiry	2 working days	Investigation Officer
Preliminary Inquiry – Manager Approval	1 day	Director or supervisor
Preliminary Inquiry – Contact Agency	1 day	Investigation Officer
Preliminary Inquiry - Await Agency Response	5 working days	External agency
Preliminary Inquiry - Analyse response	1 day	Investigation Officer

<p>Preliminary enquiry – Decline to Investigate</p> <p>OR</p> <p>Preliminary Inquiry – Investigation Required</p>	<p>1 day</p>	<p>Investigation Officer</p>
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When you have decided that a preliminary inquiry is appropriate, you should commence the ‘Proposed preliminary inquiry’ action on *Resolve*. Following the headings, you should explain why the preliminary inquiry is appropriate in the case, and list the question/s which you propose to ask the agency. The action is then referred to your Director or supervisor for approval.

If the Director or supervisor does not agree with the proposed preliminary inquiry they will select ‘Not approved’ and discuss with you why they made this decision. This will end the preliminary inquiry workflow and you will not be able to commence it again for this case.

When the ‘Proposed preliminary inquiry’ is approved, a ‘Contact with agency’ action will be created. Following the preliminary inquiry contact protocols with the relevant agency, contact the agency by either email or phone. As preliminary inquiries are designed to improve efficiency, you should contact the agency within one day of receiving approval for the preliminary inquiry.

The agency response should be provided within 5 working days of the contact with the agency however in many cases agencies will be amenable to providing the information in a shorter timeframe – even the same day. IOs should encourage the agency to respond faster than 5 working days where possible.

After receiving the agency response, *Resolve* will commence an ‘Analyse agency response’ action. Here, you should assess the response and outline whether the information is sufficient to determine if the complaint should or should not be investigated, and why. The action provides two options when closing this response – ‘Investigation required’ or ‘No investigation required’. There is no option to further contact with the agency as a substantive preliminary contact can only be made once on each case.

You should then either decline to investigate the complaint (usual s 6 process) or commence an investigation in accordance with the usual work practices. If you decline to investigate the complaint, notify the agency contact of this decision either by phone or using the template email.

The ‘only one’ rule and clarification inquiries

Only one preliminary inquiry can be made on each case. However, in exceptional cases a follow up inquiry may be necessary and appropriate. For instance, if an agency misunderstood a request for a policy and sent the incorrect policy. In such limited situations, further inquiries may be made, subject to Director approval. The purpose of this policy is to emphasise that a preliminary inquiry is not an investigation. The restriction of the preliminary inquiry to the ‘only one’ rule is an important way to reflect the distinction between s 7A and s 8 and ensure we provide agencies with their full and fair procedural fairness entitlements.

APPENDIX A – Template materials

General section 7A email template

Ombudsman ref: 201X-123654

Dear [X],

Section 7A notification – Preliminary inquiry – complaint from Ms Jane Smith

The Ombudsman has received a complaint from Ms Jane Smith (Agency ref: 987 456) regarding the [Department/agency/subject matter].

Please accept this email as notice under s 7A of the *Ombudsman Act 1976* that I have decided to conduct a preliminary inquiry and request information from the Department.

Issue/background:

Ms Smith told us [insert *brief outline of the issue regarding the preliminary inquiry – 1 or 2 sentences*].

Questions:

To assist our assessment of this complaint, would the [Department/agency] please [respond to the following questions/provide the following information]:

1. [...]
2. [...]

I would be grateful if you could respond to this enquiry by [xx Date/as soon as possible]. [If applicable: If possible, I request the [Department/agency] to provide this information by telephone.]

You are welcome to phone me if you would like to discuss this request.

Yours sincerely

Advice to agency of decision not to investigate.

Ombudsman ref: 201X-123654

Dear [X],

No further action - Preliminary inquiry - complaint from Ms Jane Smith

I refer to my preliminary inquiry of [xx date] regarding a complaint from Ms Jane Smith (Agency ref: 987 456).

Thank you for the information provided. After considering this information, I have decided not to investigate [Ms Smith's] complaint. I do not need any information from the [Department/agency].

Yours sincerely

First preliminary inquiry with agency/agency contact.

What is a Preliminary Inquiry?

Under section 7A of the Ombudsman Act 1976, the Ombudsman can conduct a preliminary inquiry to determine whether or not it has jurisdiction to investigate a complaint, or determine whether or not to investigate a complaint.

The Ombudsman's office will conduct a preliminary inquiry to obtain straightforward information regarding a complaint (or to determine our jurisdiction to investigate a complaint). Section 7A(1A) provides protections to your agency/department when disclosing information to the Ombudsman's office in response to a preliminary inquiry.

Preliminary inquiries can assist your agency/department as well. Obtaining information through a preliminary inquiry may lead to us not commencing a formal investigation under our legislation, which in turns means a formal or substantial response may not be required.

We try to resolve preliminary inquiry matters quickly. Where possible, we hope your office/department/agency will be amenable to us making inquiries by phone, or seeking a short turnaround for the requested information.

In some cases, we may decide to investigate after receiving a response to a preliminary inquiry. In that case, we will advise you through our usual section 8 notification process.

If we decide not to investigate the complaint after we receive your response, we will inform you that no further action is required.